picturemaxx

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General Terms and Conditions – GTC of picturemaxx AG

§ 1 General provisions

1.1 Scope of application

1.1.1 These General Terms and Conditions (hereinafter: "GTC") as amended and available on www.picturemaxx.com by the time of the declaration of the customer shall exclusively govern any and all contractual and pre-contractual obligatory relationships in the business dealings and transactions of picturemaxx AG (hereinafter: "picturemaxx") with its customers, unless the parties specifically agree otherwise in writing. Any different, contradictory, or supplementary terms and conditions of the Customer shall only become a component of the contract to the extent that picturemaxx has expressly consented to their application in writing. These GTC shall specifically apply to contracts concerning the permanent licensing of software (§ 2), contracts concerning temporary licensing of software as an in-house solution or via Application Service Providing (hereinafter: "ASP") (§ 3), update and support contracts (§ 4), contracts concerning participation in the Media Network operated by picturemaxx (§ 5), and the rendering of push services by picturemaxx (§ 6).

1.1.2 If the Customer uses GTC on its own, the contract shall be concluded even in the absence of express agreement on the inclusion of the GTC. The GTC shall be deemed as having been agreed upon to the extent they agree in terms of their content. Any conflicting individual provisions shall be replaced by the provisions of non-mandatory legal provisions. This shall likewise apply if the Customer's GTC include provisions not contained within these GTC. If these GTC include provisions not included in the Customer's GTC, these GTC shall apply.

1.1.3 The Customers shall be deemed Unternehmer [statutory "business people"] as defined in § 14 BGB [German Civil Code] for purposes of these GTC, unless otherwise designated below in the individual case.

1.1.4 All references to the applicability of statutory provisions shall solely serve the purpose of clarification. Unless directly contracted away by these GTC, all statutory provisions shall apply without such clarification.

1.2 Confidentiality

1.2.1 Subject to the provisions below, the parties agree to treat any and all documents they receive from the other party or information of which they become aware prior to or in the course of the performance of the contract and which are legally protected or which include business or operational secrets or have been labeled as confidential (hereinafter referred to as "Information"), in a confidential manner, including without limitation after the end of the contract, unless the information becomes publicly known without a violation of the obligation of confidentiality. The Customer shall be permitted to use the information disclosed to him by picturemaxx solely for the duration and the purposes of the respective contract concluded with picturemaxx. Both parties shall keep and safeguard such documents and information in such a manner that access thereto by third parties is precluded. After the end of the contractual relationship, the Customer shall be obligated to delete or, as the case may be, return all of the information in his possession. picturemaxx shall be entitled to demand an affidavit from the Customer in this regard.

1.2.2 The Customer shall only disclose the information to the employees and other third parties that require access in order to perform their official duties. The Customer shall instruct such parties about the need to treat such matters in a confidential manner.

1.2.3 picturemaxx will record the Customer data required to conduct the respective business transactions in compliance with applicable provisions of data protection law.

1.3 Compensatory damages

1.3.1 Liability on the part of picturemaxx for breaches of contractual duties and arising from tort shall be limited to intention and gross negligence. These liability restrictions shall not apply in the case of claims concerning breach of substantial contractual duties (cardinal duties), in the case of absence of promised attributes, in the event of death or injury to body or health, or in the case of claims under the Produkthaftungsgesetz [German Product Liability Act] or liability for the compensation of default damage (§§ 280, 286 BGB [German Civil Code]). In this regard picturemaxx shall be liable for any degree of culpability.

1.3.2 Except in the case of intentional conduct, liability on the part of picturemaxx for compensatory damages shall be limited to the foreseeable, typically arising damage. This liability restriction shall not apply in the case of death, injury to body or health or in the case of claims under the Produkthaftungsgesetz [German Product Liability Act]. In this regard picturemaxx shall be liable for any degree of culpability

1.3.3 Except in the case of intentional conduct, picturemaxx shall not be liable for other damages than those occurring to the contractual object itself; in particular, it shall not be liable for lost profit or other pecuniary damage to the Customer.

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1.3.4 To the extent that liability on the part of picturemaxx has been barred or limited in accordance with the foregoing subsections, this shall also apply to the personal liability on the part of picturemaxx employees, representatives, or vicarious agents.

1.3.5 picturemaxx shall be free to raise the defense of contributory negligence. The Customer shall, in particular, have a duty in all cases to make regular data backups, particularly to create security copies of the data that are fed in the picturemaxx computer center and to ensure state-of-the-art virus protection.

1.3.6 Further, picturemaxx shall not be liable for the proper functionality of data networks or data transmission lines to its computer center, nor for power outages or breakdowns of networks or servers over which picturemaxx has no control, provided that picturemaxx has not caused the malfunction, outage, or failure in an intentional or grossly negligent manner.

1.4 Limitation of actions, assignment, and offset

1.4.1 Claims by the Customer shall have a one-year limitation period unless a shorter limitation period is applicable pursuant to statutory law.

1.4.2 Notwithstanding subsection 1.4.1, the statutorily prescribed limitation period for compensatory damage claims shall apply to damage claims relating to death or injury to body or health, other compensatory damage claims based on intentional or grossly negligent breach of duty, claims under the Produkthafungsgesetz [German Product Liability Act], claims arising from the breach of other substantial contractual duties and claims based on defects if picturemaxx fraudulently concealed the defect or assumed a warranty as to quality and condition.

1.4.3 Except in the scope of § 354 a HGB [German Commercial Code], a partial or total transfer or assignment of rights and duties of the Customer arising from the legal relationship with picturemaxx to third parties shall be barred. The Customer can only offset claims that are acknowledged by picturemaxx or established by final judgment. A right of retention or right to refuse to perform on the part of the Customer shall be barred.

1.5 Applicable law, place of performance, and place of jurisdiction

1.5.1 These GTC and all legal relationships between picturemaxx and the Customer shall be governed by the law of the Federal Republic of Germany; the UN Convention on Contracts for the International Sale of Goods and the provisions of German private international law shall be excluded.

1.5.2 Munich shall – to the extent statutorily permissible – be the place of performance and the exclusive place of jurisdiction for all claims arising from and in connection with the legal relationships between picturemaxx and the Customer.

1.6 Written form clause

Amendments of and addenda to the contract must be in written form in order to be valid. It shall also suffice for purposes of satisfaction of the written form requirement if a transmission is made in text form, specifically, by fax or e-mail – unless otherwise stated in the individual case below.

§ 2 Permanent software licensing

The following provisions shall specifically apply, in addition to the provisions in § 1, to contracts concerning permanent software licensing:

2.1 Conclusion of the contract

2.1.1 The Customer's purchase order to picturemaxx shall constitute a binding offer to enter into a corresponding software license contract.

2.1.2. picturemaxx will promptly confirm the receipt of a purchase order, if the Customer orders the software electronically. The confirmation of receipt of the purchase order shall not constitute a binding acceptance of the purchase order. The confirmation of receipt can be combined with such an acceptance declaration. If the Customer orders the goods electronically, picturemaxx will save the text of the contract and e-mail it, together with these GTC, to the Customer upon request.

2.1.3 Offers by picturemaxx shall be subject to change and non-binding unless the offer is designated as binding in writing. A legal obligation shall come into existence only as the result of a contract signed by both parties or a written order confirmation by picturemaxx within the meaning of subs. 1.6 and or as the result of picturemaxx's beginning to render performance as agreed in the contract.

2.2 Subject matter of the contract, scope of performance, transfer of risk

2.2.1 The subject matter of the software license contract is the delivery of standard software and the grant of the simple use rights set forth in subs. 2.3. The Customer shall install and set up the software on its own unless otherwise agreed by the parties The Customer shall, in particular, be responsible for the integration of the software into its software environment.

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2.2.2 Before entering into the contract, the Customer has verified that the specifications of the software conform to the Customer's wishes and needs. The Customer is aware of the essential functional characteristics and conditions of the software. Only upon mutual agreement shall picturemaxx be obligated to adjust the licensed software to reflect the Customer's needs.

2.2.3 The scope, nature, and quality of the deliveries and services shall be governed by the contract signed by both parties or the written order confirmation by picturemaxx, or otherwise the offer by picturemaxx.

2.2.4 Other types of deliveries and services (such as software updates, setup and installation of the software, ASP use, access license for Media Networks, licensing of RF material) may only be subject to separate agreements. Unless otherwise agreed, the delivery of updates and upgrades shall not be a subject matter of this contract. picturemaxx reserves the right to make updates and upgrades available on websites or in other ways, the use of which shall be at the discretion of the Customer. picturemaxx promises for a period of three months from the conclusion of a software licensing contract to enter into an update and support contract and a contract for the setup and installation of the software under the terms and conditions in effect at that time (available at www.picturemaxx.com) at the Customer's request. Otherwise both parties are at liberty to make such contracts.

2.2.5 Product descriptions and presentations in test programs shall constitute performance specifications to the extent that picturemaxx made them available to the Customer prior to the Customer's purchase order or to the extent that they have been incorporated into the contract in a manner consistent with these GTC. A guarantee shall require the express written declaration by picturemaxx management.

2.2.6 Unless otherwise agreed, the software ordered by the Customer shall be delivered in machine-readable form on a suitable data medium to the delivery address indicated by the Customer (purchase involving the shipment of goods) or by means of data transmission. In the latter case, picturemaxx can inform the Customer by e-mail about the establishment of the option to download. In addition to the software, the scope of delivery shall include installation instructions and a user manual in digital form. There shall be no obligation to deliver the source code.

2.2.7 The risk of the accidental loss or accidental deterioration of the software shall pass to the Customer upon delivery of such software to the haulage agent, freight carrier, or other person or organization commissioned to make the delivery, but at the latest it shall pass to the Customer at the time of delivery to the Customer. If the Customer defaults with respect to acceptance, this shall be deemed to be equivalent to delivery. If delivery is made by means of data transmission, delivery shall be deemed to have been effected at the moment at which the software has been installed by picturemaxx in the computer location designated by the Customer.

2.3 Scope of the use right

2.3.1 The licensed software (including accompanying material) is legally protected. Within the relationship among the contracting parties, any copyrights, patent rights, trademark rights and other ancillary copyrights to the software, as well as other objects that picturemaxx licenses or makes available to the Customer in the course of contractual negotiations and contractual performance, shall belong exclusively to picturemaxx. If such rights are held by third parties, picturemaxx has relevant rights of use and exploitation.

2.3.2 picturemaxx shall transfer to the Customer a non-exclusive (simple) right to use the permanently licensed software in accordance with the following provisions.

2.3.3 The copying of the transferred software in machine-readable or printed form shall only be permissible within the scope of the intended use. This shall include installation in the main memory and loading into the working memory for use.

2.3.4 Data backup and the creation of duplicate copies of the documentation shall be permissible within the scope of the contractually appropriate use.

2.3.5 Simultaneous use of the software on multiple workstations in a network or in client-server applications shall only be permissible for the total agreed-upon number of workstations or clients.

2.3.6 The Customer's use right shall be limited to the number of stored media (files) defined in the respective license contract. If the Customer wishes to use the software on a more extensive basis, he must purchase an appropriately extended license from picturemaxx for a consideration.

2.3.7 The Customer shall not be entitled to change the software code in any way, not even for the purpose of debugging. picturemaxx shall enable the remediation of errors within the framework of defect liability (2.5) and within the framework of a separately concluded update and support contract.

2.3.8 It shall not be permissible to make the software or parts thereof publicly available. Any dissemination of the licensed software to third parties shall only be permitted in such a manner that the Customer passes on the original data medium with the delivered copy of the software, deletes the copy of the software in its system, obligates the third party in writing to comply with this license condition and informs picturemaxx of such transfer and the written agreement of such third party.

2.3.9 The software or parts thereof may only be leased to third parties with the consent of picturemaxx. The Customer shall also be obligated not to make the software available to third parties within the scope of use similar to an ASP. The Customer shall not be entitled to grant sub-licenses.

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2.3.10 The program may only be decompiled or its codes otherwise translated if picturemaxx has failed to provide the Customer with the software information required for interoperability in spite of a request and in violation of § 69 e UrhG [German Copyright Act]. The same shall apply to database-generating programs. Any other translation for codes shall be impermissible for other purposes, including debugging.

2.3.11 It shall be generally impermissible to remove copy protection or similar protection routines. The Customer may only remove such copy protection or similar protection devices if they impair or prevent the trouble-free operation of the software and picturemaxx has failed to remedy the disruption within a reasonable period after being requested to do so. The Customer shall bear the burden of proving the impairment or prevention of trouble-free operation resulting from the protection mechanism.

2.3.12 Disruption remediation may only be left to commercially operating third parties that have a direct or indirect competitive relationship with picturemaxx if picturemaxx refuses to undertake the desired program changes for a reasonable consideration. The Customer must grant picturemaxx a reasonable time period to review the acceptance of the order.

2.4 Performance time, delays

2.4.1 Delivery and performance times named by picturemaxx shall only be legally binding if such times have been agreed upon in the form of fixed dates expressly and in writing. picturemaxx shall only be in default after having received a specific reminder from the Customer, even if binding delivery times have been agreed upon. picturemaxx shall be entitled to render partial performance if the delivered parts in isolation can be reasonably used by the Customer.

2.4.2 The periods for delivery and performance shall be extended by such periods during which the Customer is in default under the contract and by any periods during which picturemaxx is prevented from assisting with the delivery or service by circumstances for which it is not responsible, particularly force majeure, labor disputes, or a lack of or insufficient cooperation by the Customer.

2.4.3 If the contracting parties subsequently agree on additional services that affect the agreed upon time limits, such time limits shall be extended by a reasonable period.

2.4.4 Notices to perform and time limits set by the Customer shall be effective only if they are in writing. Any additional time for performance that is set must be of reasonable duration.

2.5 Remuneration

2.5.1 Unless the license agreement provides otherwise, the agreed remuneration shall become due and payable without deductions within 14 days after delivery of the software to and receipt of the invoice by the Customer. All prices are net prices, to which the statutory value added tax applicable on the date of the invoice shall be added.

2.5.2 In addition, cost of transport, allowable expenses, postage, and telecommunication fees shall be reimbursed as incurred. Additional services requested by the Customer (such as consulting and support with installation) shall be invoiced as specified on picturemaxx's current price list.

2.5.3 Notices to perform that establish default of an obligor of a claim for remuneration can also be transmitted in text form (via fax or e-mail).

2.6 Customer's obligations

2.6.1 The Customer shall be obligated to inspect all deliveries in accordance with the provisions of commercial law (§ 377 HGB [German Commercial Code]) and promptly complain to picturemaxx in writing concerning all visible defects, including a precise description of the defect. Hidden defects must be notified immediately upon their discovery. The Customer shall thoroughly test each software module for usability in a specific situation before using it operationally. This also applies to programs picturemaxx makes available to the Customer as part of debugging or under an update and support contract.

2.6.2 The Customer must take reasonable precautions (by means of data backup, malfunction diagnosis, regular examination of the results, for example) for improper operation or partially improper operation of the software.

2.6.3 The Customer must promptly inform picturemaxx in writing of any change of the Internet protocol addresses of the computers on which the licensed software is installed

2.7 Technical advancements

2.7.1 Generally the life cycle of the software products distributed by picturemaxx shall be 5 years.

2.7.2 Technical incompatibilities cannot be ruled out following the end of that time span if the software that is purchased is not regularly brought up to the latest state of development under an update and support agreement. picturemaxx assumes no liability for such incompatibility.

2.8 Rights of the Customer in the event of defects

2.8.1 Software cannot be created fully free of defects. Defects in the licensed Software or its accompanying material shall be corrected by picturemaxx upon notification by the Customer. Any functional impairment of the software based on hardware defects, environmental conditions, faulty operation, or the like shall not be deemed to constitute defects. The Customer shall forfeit all rights relating to defects resulting from any contractually inappropriate use of the software.

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2.8.2 At picturemaxx's discretion, defects shall be removed by cost-free remediation or replacement delivery. In the case of a replacement delivery, the Customer shall be obligated to return the defective software or, as the case may be, accompanying material. The Customer must accept an equivalent new software release or an equivalent previous software release that is free of the defect if it can be reasonably expected to do so. In the case of legal defects, picturemaxx shall, at its discretion, provide the Customer the possibility of legally unobjectionable use of the software or equivalent software.

2.8.3 The Customer shall assist picturemaxx in the error analysis and defect remediation by specifically describing any problems that may occur, informing picturemaxx comprehensively and granting picturemaxx sufficient time and opportunity to remedy the defect. At its discretion picturemaxx shall be entitled to perform the debugging either on-site, at its own premises, or, in particular, by means of remote service. The Customer shall ensure at its own expense that the necessary technical requirements for such services are met and shall grant picturemaxx access to its computer facilities upon prior notice.

2.8.4 picturemaxx can demand reimbursement of any extra expenses incurred as a result of the fact that the software is modified, used outside of the specified environment or inappropriately operated. Further, picturemaxx can claim reimbursement for expenses if no defect is found. The burden of proof shall be with the Customer. § 254 BGB [German Civil Code] shall apply.

2.8.5 If picturemaxx is unwilling or unable to remedy the defect or deliver a replacement – the remediation shall be deemed to have failed after three unsuccessful attempts at remediation – or if remediation or replacement delivery is delayed for reasons picturemaxx is liable for, or such measures are frustrated for other reasons, the Customer shall be entitled at its discretion to reasonably reduce the agreed upon remuneration (reduction of the purchase price) or terminate the contract. The Customer shall not be entitled to terminate the contract in case of an immaterial defect. In case of a termination of the contract, the value of any benefits derived from the product in the interim shall be deducted from the purchase price. The provisions in subs. 1.3 shall be applicable to compensatory damage claims.

2.9 Reservation of transfer and cancellation of the Customer's use rights

2.9.1 The rights set forth in subs. 2.3 shall not pass to the Customer before all existing payment claims against the Customer arising from the current business relationship with picturemaxx have been fully satisfied. Prior thereto the Customer shall only have a temporary contractual right of use that is revocable under subs. 2.9.2.

2.9.2 picturemaxx may revoke the rights set out in subs. 2.3 for good cause. The Customer's rights under subs. 2.9.2 shall be automatically extinguished effective immediately if, and as soon as, the Customer substantially violates the use restrictions set forth in subs. 2.3.

2.9.3 If the use right granted in subs. 2.3 does not materialize or comes to an end, the Customer shall be obligated to promptly delete all copies of the software in its possession and return all other accompanying material. picturemaxx can demand that the Customer return the materials provided or submit a written declaration that they have been destroyed, as well as the deletion or destruction of all copies of the items that have been provided and a written certification that this has been done. picturemaxx shall be entitled to demand an affidavit in this regard.

2.10 Proprietary rights of third parties

The Customer shall promptly inform picturemaxx in writing if third parties assert the infringement of proprietary rights (such as copyrights or patent rights) resulting from the Customer's contractually appropriate use of the software licensed by picturemaxx. The Customer authorizes picturemaxx to conduct the dispute with such third party on its own in the Customer's name. If picturemaxx avails itself of this authorization, the Customer may not acknowledge the third party's claims without picturemaxx's consent. In such case picturemaxx shall defend the third party's claims at its own expense and hold the Customer harmless from all costs associated with the defense against such claims, unless these arose from a breach of duty by the Customer (especially, but not limited to contractually improper use of the software).

2.11 Commencement of the limitations period

The limitation period on the Customer's rights in the event of defects shall begin to run at the time of the delivery of the software. If no delivery has occurred, the limitation period shall begin to run at the end of the year during which the claim arose. Otherwise subsection 1.4 shall apply.

2.12 Training

2.12.1 If the rendering of training services is agreed upon, such training services shall, at picturemaxx's discretion, take place at the Customer's premises or at a different location designated in consultation with the Customer. If the training is held at the Customer's premises, the Customer shall make the necessary locations and technical equipment available in consultation with picturemaxx. For training courses to be held elsewhere, the Customer shall rent the premises and make the required hardware and software available on-site.

2.12.2 picturemaxx may cancel a training event for good cause. picturemaxx shall inform the Customer of any cancellations in a timely manner and offer replacement dates.

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§ 3 Temporary software licensing

The following provisions shall specifically apply, in addition to the provisions set forth in
§ 1, to contracts concerning temporary software licensing, be it as an in-house solution or via Application
Service Providing (ASP contracts):

3.1 Conclusion of the contract
3.1.1 The Customer's purchase order to picturemaxx shall constitute a binding offer to enter into a
corresponding software license contract.
3.1.2. picturemaxx will promptly confirm the receipt of a purchase order, if the Customer orders the software
electronically. The confirmation of receipt of the purchase order shall not constitute a binding acceptance of
the purchase order. The confirmation of receipt can be combined with such an acceptance declaration. If the
Customer orders the goods electronically, picturemaxx will save the text of the contract and e-mail it, together
with these GTC, to the Customer upon request.
3.1.3 Offers by picturemaxx shall be subject to change and non-binding unless the offer is designated as
binding in writing. A legal obligation shall come into existence only as the result of a contract signed by both
parties or a written order confirmation by picturemaxx within the meaning of subs. 1.6 and or as the result of
picturemaxx's beginning to render performance as agreed in the contract.
3.1.4 Offers shall be in German or English language.

3.2 Subject matter of the contract
3.2.1 In the case of the conclusion of a contract concerning temporary software licensing, the Customer shall
be granted the temporary use of software applications (software) that are contractually agreed upon in an
individual contract. picturemaxx shall make the software available to the Customer, either for in-house use or
via ASP on the picturemaxx host computer in the picturemaxx computer center (computer center).
3.2.2 In the case of ASP contracts, picturemaxx shall keep one copy of the respective current version of the
software selected by the Customer available at its computer center for the Customer for retrieval via the
Internet for the contractually agreed use term. The respective software shall remain on the picturemaxx
system. picturemaxx is not obligated to guarantee the Customer's access to the Internet or the operation of
data transmission lines or data networks as part of the Internet.
3.2.3 Additional programs, such as other databases, software options, etc., in favor of which the Customer
decides at a later time, can be separately agreed upon in writing.

3.3 Scope of the use right
3.3.1 The Customer shall be entitled to use the software and the related documentation provided to the
Customer for use on a fixed-term basis, or made available on the picturemaxx host computer at the computer
center, exclusively for its own purposes and for the processing of data.
3.3.2 The Customer shall be granted a simple, non-exclusive right to use the software limited to the contract
term if this is necessary for the use of the software. The provisions in subs. 2.3.1 and 2.3.3 through 2.3.12
shall also be applicable to the scope of the use rights; however, the provision in subsection 2.3.6 shall not be
applicable in the case of software made available via ASP. The Customer shall not be entitled to any other
license beyond this. In particular, the Customer shall not be entitled to permit third parties full or partial access
to the licensed software for non-independent use.
3.3.3 In the case of ASP contracts, the Customer shall be given the opportunity to save data that the
Customer transmitted to the IT center in a separate storage area. The Customer may not disclose its ASP
password to third parties, in particular not to technical service providers.

3.4 Supply, delivery, availability
3.4.1 In the case of ASP contracts, picturemaxx shall install at the computer center a copy of the contractual
software usable by the Customer. In the case of in-house solutions, the software shall be made available to
the Customer for download via remote data transmission.
3.4.2 picturemaxx shall make installation instructions and an operator's manual available to the Customer in
digital form as documentation for the agreed upon software.
3.4.3. picturemaxx shall make the software available to the Customer at its computer center for use with an
availability rate of 99% based on the annual average. This shall not include times during which the use of the
software is interrupted or impaired for urgent technical reasons or due to necessary maintenance work for
which picturemaxx is not responsible.

3.5 Remuneration
3.5.1 A time-dependent monthly consideration shall be charged for the Customer's use of the software. Billing
is based on the type and scope of services requested or provided, functionalities and modules used.

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3.5.2 If the Customer defaults on payment of the monthly remuneration in whole or in part for two consecutive months, picturemaxx shall be entitled to block the Customer's access to the software until the Customer has fulfilled all outstanding and due payment obligations with respect to picturemaxx. If the Customer remains in default in whole or in part despite two reminders regarding a due payment, picturemaxx shall also be entitled to block the Customer's access until the Customer has fulfilled his outstanding and due payment obligations. Alternatively, picturemaxx may at its own discretion completely deactivate the picturemaxx system set up for the Customer in the event of non-payment despite two reminders. If the picturemaxx system is deactivated, the Customer's end customers shall also lose access to the picturemaxx system set up for the Customer. In the cases covered by sentence 1 and sentence 2, picturemaxx shall also be entitled to terminate the contract by way of extraordinary termination in accordance with subsection 3.11.2. In the event of extraordinary termination the system shall be permanently deactivated. If picturemaxx has not declared extraordinary termination, the blocking or deactivation of picturemaxx shall be lifted after the Customer has settled the outstanding receivables.

3.6 Rights of the Customer in the event of defects
3.6.1 If the software that has been made available for use has a defect that eliminates or substantially diminishes its fitness for the contractually intended use or if the software lacks a assured feature, picturemaxx shall be obligated to remedy the defect within a reasonable period. Unless agreed otherwise the defect shall be remedied by providing an update. The fitness for the use under the contract shall not be dependent on whether the software made accessible to the Customer meets the Customer's specific needs. The assurance of specific features or the guarantee of a certain quality must be set forth in writing. It is hereby pointed out to the Customer that software that is completely free of defects cannot be created. Contractually appropriate use of the software shall constitute a prerequisite to liability for defects.
3.6.2 The Customer shall immediately notify picturemaxx of any defects in the delivered software. Should the Customer fail to make such notification, the Customer's rights with respect to such defects shall be extinguished.
3.6.3 If picturemaxx is unable to remedy the defect, the Customer shall have the choice of reasonably reducing the agreed remuneration or declaring extraordinary termination of the contract pursuant to subsection 3.11.2.
3.6.4 The transfer of Customer data to and from the computer center shall occur at the sole risk of the Customer. Delays, losses or changes of data during such transfer shall not result in any Customer's rights in the event of defects.

3.7 Ownership and property rights
The software, including the accompanying documentation, provided or made available to the Customer shall remain the property of picturemaxx. picturemaxx shall in all cases remain the owner of all rights to the software, including the respective accompanying material.

3.8 Proprietary rights of third parties
picturemaxx shall hold the Customer harmless against any claims by third parties arising from the infringement of proprietary rights to the software in the version set forth in the contract, unless such claims resulted from the Customer's contractually improper conduct or conduct that is otherwise in breach of duty.

3.9 Liability
Strict liability claims by the Customer against picturemaxx, particularly concerning initial defects, shall be barred. Subsection 1.3 shall apply in all other respects.

3.10 Commencement of the limitation period and limitation of actions
The limitation period on the Customer's rights in the event of defects shall begin to run at the time at which the software is provided to the Customer or, as the case may be, the possibility of using the software is made available to the Customer via ASP. If the software was not provided or, as the case may be, the possibility is not made available, the limitations period shall begin to run at the end of the year during which the claim arose. Subsection 1.4 shall apply in all other respects.

3.11 Term of the contract
3.11.1 Subject to contrary agreement pursuant to individual contract, the license contract can be terminated by either party by means of written declaration with a notice period of three months effective at the end of the contract year.
3.11.2 Any substantial breach of the obligations under the contract shall entitle both parties to terminate the contract for good cause. In particular the disclosure of the login password by the Customer to third parties shall, in the case of ASP contracts, constitute good cause for extraordinary termination by picturemaxx. The Customer's use rights set forth in subs. 3.3 shall be automatically extinguished effective immediately if, and as soon as, the Customer substantially breaches the use restrictions of subs. 3.3.

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3.11.3 No termination shall be valid unless made in writing pursuant to §126 BGB [German Civil Code].

3.11.4 On the date the termination becoming effective, the Customer shall be obligated to delete all copies of the software in its possession and return all other accompanying material, such as the user documentation. picturemaxx shall be entitled to demand an affidavit from the Customer in this regard.

3.12 Amendments to the GTC

picturemaxx is entitled to make changes to the GTC at any time. If the amendments are also intended to apply to existing contractual relationships, picturemaxx shall offer the amended GTC to the Customer in text form no later than one month before their planned date of entry into force. The Customer's consent shall be deemed to have been given if he fails to give notice of rejection in text form prior to the planned effective date of the amendments. picturemaxx shall inform the Customer of this de facto consent when it sends the offer.

§ 4 Update and support contracts

The following provisions specifically apply, in addition to the provisions in § 1, to update and support contracts:

4.1 Subject matter of the contract

4.1.1 picturemaxx shall render the following services for the Customer within the framework of an update and support contract:
- Delivery of updates, subs. 4.2.
- Debugging, subs. 4.3.
- Answering Customer inquiries (hotline service), subs. 4.4.

4.1.2 By signing an update and support contract, picturemaxx agrees to maintain the software products, designated by individual contract (maintained software), that picturemaxx has provided for use by the Customer within the framework of a permanent software license contract (cf. § 2) or temporary software license contract (§ 3).

4.2 Supply of updates

4.2.1 picturemaxx shall adjust the maintained software to reflect changing legal requirements in a reasonable period of time within its operational and economic capabilities. Such obligation shall not apply if the adjustment would entail unreasonable efforts on the part of picturemaxx.

4.2.2 picturemaxx aims to continuously develop and improve the maintained software.

4.2.3 The number of updates shall be determined by picturemaxx in its reasonably exercised discretion, taking into consideration the number and nature of the defects recognized and the resulting interference with the functioning of the maintained software.

4.3 Debugging

4.3.1 The question of whether a defect is present shall be determined according to the performance described in the software specifications for contractually proper use of the maintained software. A defect shall be deemed to be present, in particular, if the maintained software does not fulfill the functions stated in the product information, delivers incorrect work results, shuts down on an uncontrolled basis, or otherwise fails to work properly according to its functions, such that the use of the maintained software is impossible or substantially limited. Errors whose remediation is covered by the Customer's rights in the event of defects arising from the respective software license contract shall be reasonably taken into consideration in the remuneration provision in subs. 4.7.2.

4.3.2 Disruptions caused by improper handling of the maintained software, especially but not limited to non-compliance with the installation instructions or the conditions of use described in the product information, shall not constitute defects within the meaning of this provision. Lack of usability of the maintained software resulting from a change in the Customer's use requirements shall likewise not constitute a defect.

4.3.3 The Customer must promptly report to picturemaxx the defect that is to be remedied and describe it as specifically as possible.

4.3.4 picturemaxx shall, using the means at its disposal, begin the debugging within four hours of receipt of the legitimate defect notification – Monday through Friday, with the exception of statutory holidays at picturemaxx's registered office, between 9:00 a.m. and 7:00 p.m. If an immediate debugging is not possible, picturemaxx shall inform the Customer immediately after becoming aware thereof, including a statement of the reasons, as well as the expected time estimated for the debugging. picturemaxx will also make an effort to offer a work-around solution to the Customer.

4.3.5 picturemaxx shall be free to remedy the error by supplying debugged software parts or versions (updates). The Customer must accept the update and install it on its hardware according to the installation instructions.

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4.3.6 After the defect has been remedied, the Customer must accept the product. picturemaxx shall notify the Customer that it is ready for acceptance after completion of the work. Within 14 days after having been notified, the Customer must declare acceptance or the grounds on which acceptance is denied. If the Customer does not make any declaration within said 14 days both parties shall deem picturemaxx's work to have been performed in compliance with the contract, and hence acceptance shall be deemed to have been declared.

4.4 Service
4.4.1 picturemaxx maintains a hotline service for answering Customer inquiries relating to the maintained software.
4.4.2 The Customer shall make inquiries by e-mail, fax or via the "Service" area on the picturemaxx homepage. It is hereby expressly stated that no obligation exists to maintain constant availability on the part of picturemaxx.
4.4.3 picturemaxx shall be obligated to respond to Customer inquiries to the best of its knowledge. picturemaxx shall be entitled to refuse to process multiple inquiries that relate to the same subject matter and are attributable to user errors or a breach of covenant by the Customer. It is hereby pointed out that the quality of the response will largely depend on the information received from the Customer. The Customer shall receive an answer to its inquiry within 4 hours – Monday through Friday, with the exception of statutory holidays at picturemaxx's registered office, between 9:00 a.m. and 7:00 p.m. – by e-mail. picturemaxx does not have an obligation to ensure the Customer's success in resolving its concern.

4.5 Other services
4.5.1 If a written addendum agreement is closed, picturemaxx will be available to the Customer with additional services that are related to the maintained software, but not included in the range of services described in subsections 4.2 through 4.4 of these GTC, for a separate remuneration.
This shall apply specifically to the following:
a) all work and services performed at the Customer's request outside the specially agreed times and not required under subs. 4.2;
b) work and services necessitated by improper handling of the maintained software and/or breaches of warranty by the Customer, such as non-compliance with the handbooks (including electronic handbooks) or instructions for use, regardless of whether they were carried out by the Customer, its vicarious agents, or other persons not authorized by the Customer;
c) work and services necessitated by force majeure or other circumstances for which picturemaxx is not responsible;
d) work and services necessitated by the installation of an update provided to the Customer, as well as instructions and training relating to such software versions;
e) work and services resulting from modified or new user requirements of the Customer.
4.5.2 Unless an addendum agreement will be closed, picturemaxx will not be obligated to perform services that are not a subject matter of an update and support contract, particularly the services named in subsection 4.5.1, above. However, picturemaxx shall strive within the scope of its operational possibilities to support the Customer to the extent necessary for a sensible economic utilization of the maintained software.

4.6 Customer's obligations
4.6.1. The Customer must assist picturemaxx in fulfilling the latter's contractual service obligations at no charge. The Customer shall, in particular, do the following:
a) at the beginning of the term of the contract, designate in writing a responsible contact person and a substitute for him or her who shall be vested with the decision-making powers and authority required to perform the update and support contract;
b) exactly observe the symptoms, as well as the system and hardware environment, when defects are reported and report a defect to picturemaxx by indicating information relevant to the debugging of the defect, such as the number of users affected, description of the system and the hardware environment and, if applicable, simultaneously loaded third vendor software and documents;
c) make detected defects available in a reproducible manner on a suitable data medium;
d) use its best efforts to support picturemaxx in detecting the root cause of the defect and instruct its employees to cooperate with picturemaxx, if necessary;
e) allow the employees assigned by picturemaxx to provide the software support access to the computers on which the software to be updated is stored and/or running;
f) load the software received from picturemaxx in compliance with picturemaxx's instructions and comply with picturemaxx suggestions for defect detection and debugging;
g) keep all data used in connection with or created with the maintained software available in machine-readable form as a data backup, in order to enable a reconstruction of lost data at reasonable expense.
h) bear the communication expenses (such as telephone, fax, e-mail, and postage expenses) and labor costs incurred by the Customer by such support services as well as the labor cost of its own employees.

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4.6.2 The obligations for cooperation set out above constitute substantial obligations under the contract. If the Customer culpably violates its obligation to cooperate to a substantial degree, picturemaxx shall not be obligated to perform. In case of repeated or major breaches, picturemaxx shall be entitled to declare extraordinary termination of the update and support contract with a notice period of one month effective at the end of the month.

4.7 Remuneration

4.7.1 The update and support fee shall be agreed in individual contracts.

4.7.2 The update and support fee - according to the remuneration share arising from the update and support contract – for the debugging shall be reduced by 1/3 during the running of picturemaxx's statutory warranty period for defects in the software that has been made available on a permanent or fixed-term basis.

4.7.3 Additional services of picturemaxx, including but not limited to those set forth in subs. 4.2 through 4.4, specifically other services within the meaning of subs. 4.5, must be paid for separately by the Customer according to the price list valid at the time of the performance of the service.

4.7.4 Travel and other expenses must be paid for separately if the Customer has given its prior consent to a visit by a picturemaxx employee or if other services within the meaning of subs. 4.5 are involved.

4.8 Defect rights of the Customer

4.8.1 If the performance by picturemaxx under subsection 4.3 in case of a contract for work is not suitable for the contractually required use or if software within the meaning of subs. 4.2 does not have the agreed upon characteristics or is unsuitable for the contractually required or typical use, picturemaxx shall be entitled and – if it does not involve an unreasonable effort – obligated to make two subsequent deliveries. If picturemaxx is unable to remedy or work around the defect within a reasonable period to permit the Customer to use the software as contemplated by the contract, the Customer may, at its discretion, reasonably reduce the remuneration or terminate the contract.

4.8.2 In setting the time period for remedial improvement or debugging, the Customer shall be obligated to grant picturemaxx a reasonable time period based on the specific circumstances of the individual case.

4.8.3 In the event the Customer sets a deadline for picturemaxx to remedy defects, the Customer shall submit a written declaration to picturemaxx concerning how to proceed with the contract immediately after the unsuccessful expiration of the deadline. If the Customer does not submit such declaration, picturemaxx shall be entitled to assume that the contract will remain in force unchanged.

4.8.4 The defect rights shall not extend to defects that are attributable to the Customer, particularly the devices or information that the Customer has used or made available, operating errors, non-compliance with safety measures, carelessness on the part of the Customer or its employees, or force majeure.

4.8.5 If it turns out in the course of the remedial work that the defects concerning which the complaint was made cannot be imputed to picturemaxx, picturemaxx shall be entitled to charge the Customer for the time expenditure and the cost incurred in accordance with the current price list.

4.8.6 The statutory provisions shall apply with respect to the services in accordance with subs. 4.4.

4.9 Commencement of the limitation period

The limitation periods on the Customer's rights in the event of defects shall begin to run upon delivery in the case of services within the meaning of subs. 4.2, at the time of the stated or constructive acceptance in the case of services within the meaning of subs. 4.3 and at the time at which the service is rendered in the case of services within the meaning of 4.4. Subs. 1.4 shall apply in all other respects.

4.10 Term of the contract

4.10.1 The term of the contract and the termination notice periods shall be agreed upon individually.

4.10.2 All termination notices must be in writing pursuant to § 126 BGB [German Civil Code] in order to be effective.

§ 5 Use of the picturemaxx Media Network

The following provisions shall specifically apply, in addition to the provisions in § 1, to contracts concerning the use of picturemaxx Media Network operated by picturemaxx (former i-picturemaxx Media Network), hereinafter referred to as the "Media Network"):

5.1 Media Network

5.1.1 In the Media Network operated by picturemaxx, data material digitalized by the participating Customers can be offered, distributed and purchased, provided that this activity does not violate statutory provisions or these GTC. Access to the Media Network and participation in the trading that takes place there shall is exclusively provided by picturemaxx on the basis of software developed by picturemaxx for this purpose.

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5.1.2 picturemaxx itself does not offer media data (images, videos, etc.) and shall not personally become a contractual counterparty under the contracts concluded exclusively among the participating Customers of the Media Network. Therefore, the execution of the contracts concluded via the Media Network shall be carried out exclusively among the participating Customers. The Customer shall be personally responsible for archiving the information it needs for purposes of securing evidence, bookkeeping, etc., on his own storage medium.

5.2 Authorization to participate

5.2.1 Only natural persons or legal entities admitted by picturemaxx shall be authorized to participate in the Media Network. As a rule admission shall be carried out by means of the grant of a fixed-term access license, e.g. picturemaxx MEDIAPORT. No right to admission for participation in the Media Network shall exist.

5.2.2 In the admission application, the Customer must state his company data, computer data, and a contact person, and must indicate whether it would like to use the Media Network for sale and/or purchasing. Acceptance of the admission application shall be carried out by means of admission confirmation by picturemaxx. As a consequence of admission, a service contract comes into existence for an indefinite term between the Customer and picturemaxx in addition to the license contract concerning use of the access software in accordance with the following provisions.

5.2.3 The Customer is in agreement with the storage of his billing data for evidentiary purposes as well as within the framework of statutory retention obligations.

5.2.4 The Customer shall have the ability to use the Media Network in accordance with these GTC by way of the ID number transmitted in the admission confirmation and the individually changeable password assigned to the Customer.

5.2.5 The Customer shall be responsible to picturemaxx for ensuring that the information it provides to picturemaxx, particularly within the framework of his application for admission in accordance with subsection 5.2.2, is true and complete. The Customer promises to always promptly inform picturemaxx of all future changes in the information that is provided.

5.2.6 picturemaxx shall be entitled to withdraw admission from the Customer or block access to the Media Network if sufficient suspicion exists that the Customer has violated these GTC. The Customer can avert such measures if it eliminates the suspicion by means of presentation of appropriate documentation at its own expense.

5.2.7 Individualized ID numbers, which may only be used by the authorized Customer (participant), shall serve the purpose of identification of the Customers (participants) of the Media Network. The Customer (participant) shall be obligated to keep his Media Network access data (username, password) secret and protect them from unauthorized access by third parties. The Customer shall promptly inform picturemaxx in the event of suspicion of abuse by a third party. picturemaxx shall promptly block the access of the unauthorized user as soon as it becomes aware of the unauthorized use.

5.3 Protection against access by third parties

The Customer shall also be obligated to take appropriate preventative measures in order to prevent unauthorized access by third parties to the access software and the documentation. The Customer must store the delivered original data media at a location that is secure from unauthorized access by third parties and emphatically instruct his employees to comply with these contractual conditions and copyright.

5.4 Scope of the use authorization

5.4.1 The contractual conditions agreed upon among the Customers shall apply exclusively to all transactions executed between the participating Customers.

5.4.2 All declarations of intent submitted through use of a Customer's respective login shall be valid in favor of and against such Customer, unless the recipient of the declaration is aware of the lack of representative authority on the part of the declarant.

5.4.3 The execution of contracts concluded via the Media Network shall be carried out exclusively among the respective participating Customers. With respect to the contracts concluded via the Media Network, picturemaxx shall assume neither a guarantee of fulfillment of the contracts nor liability for physical or legal defects of the media rights that are traded. picturemaxx shall also not be subject to any obligation to ensure the performance of the contracts that come into existence among the participating Customers.

5.4.4 picturemaxx shall assume no warranty with respect to the participating Customers' true identity or power of disposition. In case of doubt, the participating Customers must inform themselves concerning the true identity and power of disposition of the other participating Customer.

5.4.5 The provision set forth in subs. 2.3 shall apply mutatis mutandis with respect to the scope of the authorization to use the access software licensed on a temporary basis.

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5.4.6 During the term of the contract, picturemaxx and the Customer shall each be entitled to use the other party's trademarks, logos, company names, and business names in unchanged form - exclusively within the framework of use of the Media Network, to a reasonable degree, and in a manner that falls within typical business practice - in marketing material and within the framework of their own respective Internet site; in this regard, the other party's ownership of rights must be pointed out, and no rights to such trademarks and other rights shall be established in favor of the using party.

5.5 Operator services
In addition to the operation of the Media Network, picturemaxx shall particularly render the following services for the participating Customers:
- Activation for participation in the Media Network,
- Announcement of the Customer's technical access data to the Customers registered for participation in the Media Network,
- Keeping available the possibility to use the Media Network following the Customer's admission in accordance with subsection 5.2,
- Enablement of negotiations and the conclusion of contracts among admitted Customers via the Media Network,
- Entry of the purchaser customer data into the administrative software,
- Constant notification of the Customer concerning new customers or changes within the media customer group.

5.6 Remuneration
picturemaxx shall collect a one-time setup fee, which shall be due at the time of the conclusion of the contract. The regular monthly fee for the access license and the rendering of operator services shall be calculated as a function of the average number of pictures offered by the Customer via the Media Network in the respective accounting month - unless the license is already paid for via a picturemaxx BACKSTAGE Archive license. The provision in subsection 3.5.1, sentence 3, shall apply for the calculation of said average.

5.7 Liability for defects
5.7.1 Defects of the access software, including the accompanying documents, shall be remedied by picturemaxx within a reasonable period of time following appropriate notification of the defect by the Customer. Defect remediation shall be carried out, at picturemaxx's discretion, by means of no-cost remediation or replacement delivery.
5.7.2 The Customer may not undertake any reduction by means of deduction from the agreed upon license fee. Any enrichment claims or compensatory damage claims shall remain unaffected thereby.
5.7.3 The Customer's right of termination on the grounds of failure to grant use within the meaning of § 542 BGB [German Civil Code] shall be barred, unless the remediation or replacement delivery must be viewed as having failed.
5.7.4 If the possibility exists through the Media Network to forward to databases, websites, services, etc., of third parties, such as by means of posting links or hyperlinks, picturemaxx shall not be liable for the accessibility, existence of security of such databases or services, or for the content thereof. In particular, picturemaxx shall not be liable for their legality, substantive correctness, completeness, or currentness.

5.8 Technical usability of the Media Network
The Customer's right to use of the Media Network and its functions shall exist only within the framework of the current state of the art. picturemaxx shall temporarily restrict its services if it is necessary to do so in light of capacity limits or the security or integrity of the services or in order to implement technical measures and if it serves the purpose of proper or improved rendering of services (maintenance work). In such cases, picturemaxx shall take the legitimate interests of the Customers into consideration, for example, by means of advance information.

5.9 Prohibited offers
The Customer shall be prohibited from offering media rights to, for example picture materials, the offering, sale or purchase of which violates statutory provisions or public morality or infringe the rights, particularly copyrights and trademark rights, of third parties. picturemaxx reserves the right to block third party content if it is criminally punishable under the applicable statutes or clearly serves the purpose of preparation of criminal acts. picturemaxx itself assumes no warranty with respect to the media files that are offered. The Customer shall indemnify picturemaxx from all claims that the other participating Customers or other third parties assert against picturemaxx concerning violation of their rights as a result of offers or contents that the Customer has placed onto the Media Network or concerning the Customer's other use of the Media Network. In this regard, the Customer shall also assume the cost of necessary legal defense by picturemaxx, including all court costs and necessary attorney's fees. This shall not apply to the extent that the Customer is not responsible for the violation of rights. However, the Customer shall be obligated to inform picturemaxx of factual situations that are not compatible with these GTC promptly after becoming aware of them.

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5.10 System integrity
5.10.1 The Customer shall not be entitled to use mechanisms, software or other scripts in connection with the use of the Media Network that are capable of disrupting the functioning of the Media Network. The Customer shall not be permitted to disruptively interfere with the Media Network in any way or access data that it is not authorized to access. In addition, the Customer must ensure that his information and posted data transmitted via the Media Network are not infected with viruses, worms, Trojan horses, or the like. The Customer promises to compensate picturemaxx for all damage that arises from culpable non-compliance with these duties and indemnify picturemaxx against all claims that third parties assert against picturemaxx as a result of the Customer's non-compliance with these duties.
5.10.2 The content stored in the Media Network may not be copied or disseminated or otherwise used or reproduced without the prior consent of the holders of the rights.
5.10.3 picturemaxx shall be entitled, for purposes of maintenance and fostering of the data transfer intended by the Customer, as well as for reasons of data security, to ascertain and save the Customer's use-relevant data (for example, administered media volume, current software version) and store them on a data medium - in particular, using a master client or a debugger tool.
5.10.4 The Customer shall be obligated to
- establish and maintain the necessary data backup precautions during the entire contract term; this relates, in substantial part, to the careful and conscientious handling of logins and passwords;
- immediately inform picturemaxx of technical changes occurring within his area if such changes are capable of negatively affecting the rendering of services or the security of the Media Network;
- cooperate in clearing up attacks against the Media Network by third parties, to the extent that such cooperation by the Customer is necessary;
- execute transactions via the Media Network exclusively within the framework of the commercial business operation and for business purposes.

5.11. Data backup and data protection declaration
5.11.1. The servers of picturemaxx are secured in conformity with the state of the art, particularly by means of firewalls. However, the Customer is aware that the danger exists for all participants that transmitted data can be intercepted on the transmission path. This applies not only to the exchange of information via e-mail within the Media Network, but to all other transmissions or data as well. The confidentiality of the data transmitted within the framework of use of the Media Network can therefore not be guaranteed.
5.11.2. The Customer's inventory data shall be used and processed for client consulting and for information concerning offers and market research. The Customer therefore expressly gives his consent to the fact that picturemaxx will gather, process, and use the Customer's personal data and forward such data to third parties, to the extent that it is necessary to do so for purposes of the establishment, substantive design, or modification of the contractual relationship, as well as utilization and billing of the relevant services.
5.11.3. picturemaxx shall be entitled to use the name or, as the case may be, company name of the Customer, as well as the Customer's web address, as a reference for marketing purposes, particularly in advertising brochures and on Internet web pages operated by picturemaxx. The Customer's information for this purpose is voluntary. The Customer shall be entitled in all times to object to such use of his data.
5.11.4. Use of personal data beyond the uses stated above shall require a separate consent of the Customer. The Customer shall have the right at all times to receive information at no charge concerning his stored personal data and, if applicable, a right to have such data corrected, blocked, or deleted.
5.11.5. picturemaxx shall also treat in a confidential manner all data that relate to the Customer and which the Customer labels as confidential and only use such data in accordance with these GTC. picturemaxx reserves the right to deviate herefrom if data of the Customer have to be disclosed on the basis of statutory or governmental orders.
5.11.6. Upon admission to the Media Network in accordance with subs. 5.2, the Customer shall guarantee picturemaxx and all other participating Customers that the requirements of data protection law are observed with respect to the data that it transfers and shall indemnify picturemaxx from any and all claims of third parties, including those that are of a public law nature.

5.12 Term of the contract
5.12.1 Subject to contrary agreement pursuant to individual contract, the access authorization shall run for an indefinite term and can be terminated by either party by written declaration with a notice period of three months effective at the end of a calendar month.
5.12.2 picturemaxx shall be entitled, in particular, to declare extraordinary termination of the contractual relationship if concrete evidence exists that the Customer is violating statutory provisions, infringing rights of third parties, or these GTC or breaching other contractual agreements with picturemaxx and fails, in spite of a request to refrain from the violation, infringement, or breach, to end such violation, infringement, or breach within a time period of three weeks. The right of extraordinary termination on the part of both parties shall remain unaffected thereby.

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5.12.3 At the end of the contractual relationship, the Customer shall be obligated to return all original data media, as well as the complete documentation, materials, and other documents with which it has been provided. Proper return shall also include the complete and final destruction of any existing copies. picturemaxx may renounce the return and demand the deletion of the software and the destruction of the documentation. picturemaxx will expressly inform the Customer if it exercises this elective right.

5.12.4 After the end of the contractual relationship, the Customer shall no longer be authorized to exercise the rights granted to him in this framework; in particular, the Customer shall no longer be authorized to use the access license, participate in the Media Network, utilize the data of other participating Customers made available to him within the framework of the contractual relationship with picturemaxx, or use the trademarks or business names of picturemaxx.

§ 6 Provision of services for testing purposes

The following provisions shall apply in addition to the provisions in § 1 in the event that picturemaxx makes services offered by picturemaxx available to the Customer for a fee or free of charge for testing purposes for a certain period of time.

6.1 Scope of services

6.1.1 It is picturemaxx's sole discretion to decide which services of picturemaxx shall be offered to the Customer for testing purposes within the framework of a test phase. picturemaxx has the sole discretion to decide which performance features and functions shall be made available to the Customer within the framework of a test phase, whether free of charge or for a fee, and which prerequisites the Customer must fulfill in order to make use of a test phase.

6.1.2 The services made available by picturemaxx for a test period may have a reduced scope of functions and may deviate in their graphic design from any full version offered by picturemaxx in return for payment. picturemaxx shall, at its own discretion, provide Customers with information on any deviations via a communication channel selected by picturemaxx.

6.1.3 picturemaxx shall not assume any warranty for the proper functioning and availability of the services made available for testing purposes. Insofar as access software to the media network or other software is provided to the Customer for test purposes, no technical support shall be provided during the test period. The test period is intended solely to enable the Customer to assess whether picturemaxx's services appear suitable for the Customer's purposes from the Customer's point of view.

6.2 Conditions of the test phase

6.2.1 Unless expressly agreed otherwise, the Customer shall be permitted to test picturemaxx's services only once within the framework of a test phase. picturemaxx may, at its own discretion, permit the Customer to test services several times within the framework of a test phase; however, the Customer shall have no claim to this effect. The productive use of the services provided on a test basis is not permitted.

6.2.2 In order to use any test phase, it may be necessary for the Customer to provide a payment method (e.g., credit card). picturemaxx shall inform the Customer via a communication channel selected by picturemaxx whether this is required.

6.2.3 Unless expressly agreed otherwise, the test phase shall run for thirty (30) days. The test period begins at the time agreed with the Customer. Unless an express agreement has been made, in the case of the provision of access software and/or other software, the test phase shall commence upon completion of the Customer's registration; otherwise upon completion of the agreement on the test phase.

6.2.4 Insofar as access software or other software is the subject of the test phase, only the Customer shall be entitled to access it. The responsibility for any activities carried out under the user account using the password during the test phase shall be borne solely by the Customer.

6.2.5 The Customer shall receive a simple right of use, limited to the duration of the test phase, to use the services made available to it by picturemaxx exclusively for test purposes. Section 5 para. 5.10 shall apply accordingly. After the test period is over, picturemaxx shall discontinue the use of the services provided on a test basis.

6.3 End of the test phase

6.3.1 Unless expressly agreed otherwise, the test phase shall end automatically upon expiration of the agreed test period. Termination by the Customer is not required.

6.3.2 After the test phase is over, the Customer shall be obliged to uninstall any software provided by picturemaxx.

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§ 7 Rendering of push services picturemaxx Broadcast

The following provisions shall be specifically applicable, in addition to the provisions in § 1, to contracts concerning the rendering of push services picturemaxx Broadcast by picturemaxx:

7.1 Subject matter of the contract

7.1.1 Under the title of push services picturemaxx transmits for its Customers, pursuant to relevant instruction, digital media files to the FTP server of the recipient named by the Customer. picturemaxx shall not be obligated to resend content if disruptions occur within the networks of third parties that delay or permanently prevent the delivery of content by the intended recipient.

7.1.2 In order to maintain or improve the service, picturemaxx can carry out reasonable changes and modifications to the interfaces or the infrastructure used for the execution of the services in a manner that takes into account the legitimate interests of the Customer. Foreseeable changes and conversions will be announced to the Customer by no later than one business day in advance.

7.2 System availability and service

7.2.1 The availability of the systems of picturemaxx for the rendering of push services shall be 99% based on the annual average. This shall not include periods during which the rendering of the service is interrupted for technical reasons or due to necessary service work or impaired for reasons picturemaxx is not liable for.

7.2.2 If foreseeable service is necessary, it shall be announced with a lead time of at least one day. The service work will then be executed during off-peak time.

7.2.3 If planned service work is necessary in order to maintain the system functionalities, picturemaxx will promptly inform the Customer of this, including indication of the starting and end times.

7.3 Duties of the Customer

7.3.1 In addition to his duty to pay the contractually agreed upon remuneration on the due date, the Customer shall be obligated to mandatorily follow the instructions provided by picturemaxx when using the push services of picturemaxx.

7.3.2 The Customer shall be solely responsible for the content delivered to picturemaxx for forwarding. The Customer guarantees that the content shall only be transmitted to recipients that are in agreement with receiving such content and have declared such agreement in a legally significant way (prohibition against spamming).

7.3.3 In particular, the Customer shall be obligated
- not to circumvent any security precautions of the systems of picturemaxx or third parties or, as the case may be, otherwise abusively utilize service offerings and not attempt to do so or assist third parties in such attempts;
- not to transfer any viruses or other discommoding data or data not requested by the recipient.
- to transmit data within the framework of the offered service exclusively in accordance with the specifications set forth in the respective user handbooks or technical specifications.
- to carefully store the passwords or other access numbers provided to him for the purpose of using the service and keep them secret in order to avoid abuse. The Customer must have his password changed by picturemaxx as soon as he has reason to suspect that the password is being abused.
- promptly announce in writing any change of his name, business headquarters, or, as the case may be, billing address, legal form, and bank account information.

7.3.4 picturemaxx can block access or service if the Customer substantially breaches his duties and fails to remedy such contractually violative conduct in spite of warning. The Customer shall indemnify picturemaxx against all claims by third parties that arise in connection with the Customer's breach of his aforementioned duties and hold picturemaxx harmless in this regard.

7.4 Remuneration

7.4.1 picturemaxx shall create an account statement of payable fees for the Customer on a monthly basis depending on the services that have been selected. The basis for the account statements shall be the billing data that are generated in the picturemaxx in-house systems for the respective service type.

7.4.2 The billing data shall be stored up to 24 months after the sending of the invoice. Following deletion of the data, picturemaxx shall be released from the duty to submit such data for the purpose of documentation of the correctness of the billing of the fees.

7.4.3 The fees payable by the Customer shall be due without deduction upon receipt of the invoice.

7.4.4 The Customer shall also have to pay fees that have arisen as a result of third-party utilization of the services permitted by the Customer. The Customer must further ensure that such third parties comply with the aforementioned duties. The Customer must pay fee claims that arise as a result of unauthorized use of the services by third parties if, and to the extent that, the Customer is responsible for the unauthorized use.

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7.5 Performance disruptions and liability

7.5.1 If picturemaxx defaults with respect to a contractual service, the Customer shall be entitled to terminate only if he has previously set a reasonable remedial period for picturemaxx and picturemaxx has failed to perform within such remedial period. The remedial period must generally be at least two weeks.

7.5.2 For purposes of the rendering of the service, picturemaxx is dependent upon the furnishing of data networks of third-party providers. If disruptions occur in the networks of the operators (for example, Internet, data transmission lines), both of a technical or other nature, or if disruptions occur as a result of force majeure that impair or temporarily or permanently prevent the operation of the service, picturemaxx shall be released from fulfillment of its contractual obligations for the duration of the event. picturemaxx will endeavor to remedy the disruption as quickly as possible. picturemaxx assumes no liability for any damage or losses resulting from such disruptions.

7.5.3 picturemaxx shall not be liable for damage that arises as a result of the fact that content is not available to the Customer, or is only available on a delayed basis, as a result of circumstances that are outside of the control of picturemaxx, for example, as a result of lack of availability of data transmission lines of third parties. Liability for indirect damage and consequential damage, including but not limited to loss of sales revenue or profit, shall be barred in this regard. Subsection 1.3 shall apply in all other respects.

7.6 Commencement of the limitation period

The limitation period on the Customer's rights in the event of defects shall begin to run upon the rendering of service. Subsection 1.4 shall apply in all other respects.

7.7 Contract term, termination, and block

7.7.1 Subject to contrary agreement pursuant to individual contract, the push services contract can be terminated by either contracting party by means of written declaration with a notice period of three months effective at the end of the calendar month.

7.7.2 In the event of substantial breaches of contractual obligations by the Customer, both parties shall be entitled to declare an immediate extraordinary termination.

7.7.3 Any notice of termination shall require written form within the meaning of § 126 BGB [German Civil Code] in order to be valid.

7.7.4 If the Customer breaches his contractual obligations, picturemaxx shall be entitled, at its discretion, to temporarily block the Customer's access and temporarily suspend the rendering of services ("block"). The block will be lifted promptly, within not later than three days, after picturemaxx has received knowledge that the basis for the block has been eliminated.

7.8 Confidentiality and data protection

The provisions in subsection 5.11 shall apply mutatis mutandis.

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