

# General Conditions for the Sale and Distribution of RE DEPOSIT Reverse Vending Products (“General Conditions”)

## 1 Definitions

### 1.1 System

A **"System"** consists of hardware and/or software.

### 1.2 Software

**"Software"** means computer programs in the Object Code, the documentation, as a printed version or in a commonly used data format on a generally readable medium, and other related written material, the rights to which are owned by RE DEPOSIT or to which rights of use are otherwise granted by RE DEPOSIT.

A **"Software Platform Product"** allows the Customer to make software extensions (add-on products) via the interfaces defined in the software.

**"Object Code"** means computer programs in binary code and in the form resulting from the compilation of the source code and whose command structures can be executed directly by a data processing system. In addition, so-called "header files", which are necessary for use by the user and developer of application programs, are considered object code.

**"Source Code"** means computer programs, written in a programming language that enables a suitably trained professional to read and understand the code. The Source Code contains a sequence of commands, specific algorithms, instructions, or procedures/structures, etc. to control the operation of a data processing system.

### 1.3 Service

**"Hardware Service"** comprises the repair and maintenance of hardware. **"Software Service"** includes troubleshooting and further development of the Software (update delivery). Hardware Services and Software Services are **"Services"**.

### 1.4 Update

**"Update"** means the growth of software between two immediately successive versions of a software, which cleans the software from errors and/or changes it slightly. An update is recognizable by the increase of the version digits **after** the dot or **after** the slash, x.xx or x/xx (e.g.: from 1.0/00 to 1.0/10 or from 1.1 to 1.2).

### 1.5 Upgrade

**"Upgrade"** means any substantial extension or modification of the features of the Software by RE DEPOSIT. An upgrade is recognizable by the increase of the version number **before** the dot, x.xx (e.g. from 1.1 to 2.0). The delivery of an upgrade is equivalent to a new development level.

### 1.6 System Form / Service Form

A **"System Form"** or **"Service Form"** (together **"Order Form"**) means the contracts and orders concluded under these General Conditions for the ordering of Systems and/or Services, each as described on the respective Order Form.

## 2 Subject of these General Conditions

RE DEPOSIT delivers a System to the Customer. For this System it also provides Services, if agreed. The scope and the prices are stipulated in the respective Order Form.

## 3 General Regulations for the Provision of Services

Unless the following regulations regarding the individual contractual performances or, if applicable, separately concluded agreements between the parties provide otherwise, the following shall generally apply to the respective performance:

### 3.1 Delivery of the System

RE DEPOSIT shall deliver the System to the Customer. The installation and commissioning of the System shall be the responsibility of the Customer, unless the System is installed ready for operation by RE DEPOSIT in accordance with the System Form.

RE DEPOSIT shall deliver the programs to the Customer on the data carriers provided for this purpose together with a set of associated documentation to the address specified in the System Form as delivery address.

### 3.2 Scope of Service

The scope of Service results from the Services specified in the Service Form in connection with the detailed description of the individual Services in the General Conditions for Hardware or Software Service under these Conditions.

The creation of Software is not the subject of the contractual relationship. Training and consulting are also not covered by this agreement and the agreed payment. Such services must be commissioned and paid separately.

As long as RE DEPOSIT is obligated to its Service, the Customer shall have all Service and other work on the equipment (e.g. extensions) performed only by RE DEPOSIT or with its consent.

### 3.3 Update

In order to secure Services, the Customer commits to install the Updates issued by RE DEPOSIT at the latest within 12 months after publication of the Updates or to have them installed by RE DEPOSIT against reimbursement of costs. If the Customer does not comply with this obligation, RE DEPOSIT shall be entitled to terminate the affected service with immediate effect in written form within a period of another month.

### 3.4 Upgrade

If the Customer acquires an Upgrade, the obligation to provide Software Services for the previous version of this software product shall expire. However, RE DEPOSIT is ready to provide services for the Upgrade under the previously agreed conditions and to conclude a corresponding Agreement.

### 3.5 Place of Performance

The place of performance shall be the place of performance specified in the respective Order Form.

If the Customer wishes to set up or install the hardware or the Software in whole or in part at other locations at a later date, he shall request RE DEPOSIT's consent to this in writing in advance. RE DEPOSIT shall refuse its consent to perform the Service at other installation locations within the territory of the Federal Republic of Germany only for good cause. RE DEPOSIT may request that designated specialists be called in for the transport and installation

work connected with a change of the place of performance. All direct expenses and consequential costs of RE DEPOSIT connected with a change of the place of performance shall be borne by the Customer.

### 3.6 Deployment of RE DEPOSIT-Employees at Customer's Site

Should employees of RE DEPOSIT be temporarily active in the Customer's business in order to provide the services, these employees shall not be subject to instructions of the Customer with regard to the time, manner and method of performance of the services. Only the house rules of the Customer as well as instructions on operational safety shall apply to these employees. The performance of the Services shall be coordinated in each case by a contact person designated by RE DEPOSIT, who shall be the Customer's exclusive contact person for all questions regarding the performance and execution of the Services and who shall receive and implement the Customer's instructions in this respect. In such cases, the Customer shall also provide adequate work rooms and work equipment in due time and free of charge.

### 3.7 Subcontracting

RE DEPOSIT shall be entitled to provide the services by subcontracting them to third parties (subcontractors).

## 4 Rights of Use

RE DEPOSIT grants the Customer the non-exclusive, non-transferable right to permanently use the Software delivered according to the System Form for his own purposes.

Each acquired right of use entitles the Customer to use the program on only one terminal device; insofar as the program was delivered together with a hardware product, only use on this terminal device is permitted. Insofar as the program is to be used on a central computing unit (server) due to its nature, the Customer shall be entitled to use the program on this computing unit. The Customer shall only be entitled to use this program on terminal devices connected to the server if it has acquired corresponding rights of use for this. For each extension of use (e.g. use on additional terminal devices), the Customer shall acquire an additional right of use.

4.1 Subject to further requirements and specifications, the Customer may transfer the rights of use granted to a third party only as a whole and together with the ownership of the associated delivered hardware or the original data carrier delivered by RE DEPOSIT. Insofar as the Software was not delivered on hardware or a data carrier, a transfer of the granted rights of use to a third party is only permitted with the consent of RE DEPOSIT.

4.2 The rights of use granted to the Customer entitle the latter,

- to load, transfer, run and store the programs within his own internal data processing on the hardware and software platforms supplied or named in the respective System Form;
- to copy the programs for data storage, archive and backup purposes. However, only the absolutely mandatory number of copies may be kept.
- Extend software platform products with (third-party) software via the defined interfaces.

4.3 The Customer explicitly assures,

- not to make the delivered programs and copies made thereof accessible to third parties during the period of use by the Customer;
- in the event of a complete transfer of its rights of use to a third party, to only transfer the rights referred to in clause;
- not to reproduce the rights of use and to pass them on to third parties;

- to make only such modifications, translations, decompilations, disassemblies or reverse engineering of the delivered programs that are absolutely necessary for the intended use of the programs;
- to reproduce the documentation provided only for its own purposes and only within the scope of the rights of use granted.

4.4 In the event of exercising the rights of clause 4.3 the Customer obligates to notify RE DEPOSIT thereof in writing without delay.

4.5 The parties agree that the Customer shall grant RE DEPOSIT access to his business premises during the Customer's business hours, after prior written notice, in order to verify the use of the programs, the documentation and the whereabouts of the copies made.

The verification shall be carried out by an expert third party at the expense of RE DEPOSIT. If the Customer has not complied with the relevant clauses of the Agreement, the Customer obligates to bear the costs of the verification.

4.6 The surrender of the Source Code is only owed if this has been explicitly agreed.

4.7 As far as open source Software is subject of a delivery/Service, RE DEPOSIT cannot transfer any rights of use to the Customer, as RE DEPOSIT itself is not entitled to grant such rights of use to third parties. In this respect, the license terms of the respective open source Software shall apply and, if applicable, the Customer may claim for surrender of the source code. Any liability of RE DEPOSIT for material defects or defects of title is excluded due to the specific nature of open source Software.

4.8 As far as software of third parties (e.g. Microsoft; Sun Java license terms) is subject of a delivery/Service, the license terms of the respective third party shall apply, in particular with regard to the granted rights of use as well as liability and warranty. If the Customer is not familiar with these license terms, they can be requested from RE DEPOSIT.

## 5 Copyrights and Industrial Property Rights

All copyrights and other industrial property rights shall remain exclusively reserved to RE DEPOSIT, unless they have been explicitly granted to the Customer on the basis of the transferred rights of use.

The embodied work results may only be used by the Customer within the framework and for the purposes of this Agreement and may not be made accessible to third parties outside the purpose of the Agreement.

Unless otherwise contractually agreed, RE DEPOSIT shall always remain entitled to the joint use and other arbitrary use of its ideas, concepts, experience, tools, program development modules, techniques, expert opinions and other work results used or developed in the performance of the services.

## 6 Reservation of Title of the Systems

6.1 With regard to the contractual performance, RE DEPOSIT reserves the ownership, in particular to the hardware of the Systems, the Software, data carriers, and the rights to be granted until full payment of the remuneration owed. Prior to that, the rights are always granted only provisionally and freely revocable by RE DEPOSIT.

6.2 In case of exertion of the reservation of title by RE DEPOSIT, the right of the Customer to further use the Software expires. All program copies made by the Customer must be deleted.

## 7 Payment

7.1 System Prices

The prices for the purchase of the hardware and the use of the software as well as other prices that are not payable on an ongoing basis stem from the Order Form and, unless otherwise agreed in the Order Form, become due after the delivery or Service has been provided and the invoice has been issued to the Customer.

Invoice amounts shall be paid without deduction and shall be credited to RE DEPOSIT in a time to allow RE DEPOSIT to dispose of such amounts as of the due date.

#### 7.2 Service fees

The amount of the Service fees is specified in writing in the Service Form.

These fees are generally invoiced for 12 [twelve] months in advance and are due without deduction immediately upon receipt of the invoice, unless otherwise stipulated in the Service Form.

RE DEPOSIT reserves the right to increase the fees after the expiry of 12 [twelve] months in each case without giving reasons. The Customer shall be notified of such an increase. The increase shall then become effective at the end of the following month.

If RE DEPOSIT increases the service fees by more than 5%, the Customer shall have the right to object. If the Customer does not object to the increase within 30 [thirty] days after the notification, the increased Service fees shall be deemed agreed between the parties at the end of the following month.

7.3 In the event that the Customer objects, RE DEPOSIT shall be entitled to an extraordinary right of termination with respect to the affected Service within a period of 30 days to the end of the calendar month after expiration of the objection period. The termination shall become effective at the end of the following month. The original service fees must then be paid until the termination takes effect.

#### 7.4 Value Added Tax

In addition to the requirements set out in clauses 7.1 and 7.2 the applicable value added tax shall be invoiced additionally.

#### 7.5 Maturity Interest

RE DEPOSIT shall be entitled to charge maturity interest amounting to 8 percentage points above the respective base interest rate.

#### 7.6 Set-Off

The Customer shall only be entitled to assert a right of retention or set-off to the extent that the underlying counterclaim has been legally established by final court decision or is acknowledged by RE DEPOSIT.

#### 7.7 Omission of the Object of Performance

If an agreed Service is terminated by the Customer without justification or becomes impossible for reasons for which the Customer is responsible, e.g. because the Customer dismantles the equipment concerned, then 30% of the remaining service fees for the remaining period of the Agreement after the time of the impossibility or termination shall be paid from the Customer to RE DEPOSIT. RE DEPOSIT and the Customer can, upon respective proof, demand higher or lower amounts.

### 8 Default of the Customer

If the Customer is in default of payment, he shall pay default interest at a rate of 8 percentage points above the respective base interest rate. In addition, he shall bear all further costs caused by his default.

### 9 Cooperation Obligations of the Customer

9.1 The Customer shall support RE DEPOSIT in the provision of Services owed to a reasonable, necessary and expedient extent. Among other things, the Customer shall always ensure that RE DEPOSIT receives all necessary information and documents in a timely and complete manner, that the prerequisites necessary for the performance of Services on its premises are fulfilled (such as, in particular, IT and communication infrastructure, adequate locations and office services), and that the Customer's specialized personnel is available to an adequate extent in order to ensure the performance of the contractual Services.

9.2 In particular, the Customer shall allow RE DEPOSIT's personnel access to the relevant hardware or Software for service, installations or similar. He shall also keep the technical facilities necessary for the performance of local services - such as power supply, telephone connections and data transmission lines - ready for operation and shall make them available free of charge to a reasonable extent.

9.3 The Customer shall - if necessary for the provision of Service, installations or similar - disconnect the hardware from the power supply or have it disconnected.

9.4 The Customer shall provide RE DEPOSIT with a listing of the affected hardware, including serial number and location, prior to the commencement of Service, installations or similar.

9.5 As far as RE DEPOSIT owes services in connection with errors or similar, the Customer shall either himself or through a qualified employee describe occurring errors and problems or the course of system failures as precisely as possible. This shall include the preparation of an error report, system logs and memory dumps, the provision of the affected input and output data, interim and test results and other documents suitable for illustrating the errors or other defects. If a description comprehensible for RE DEPOSIT is omitted, RE DEPOSIT shall in this case point out the deficiencies of the error description to the Customer and shall not be obliged to perform in this respect.

9.6 At the request of RE DEPOSIT, the Customer shall appoint a representative at the place of performance as a contact person and to support the personnel.

9.7 Upon request, the Customer shall immediately confirm to RE DEPOSIT each individual service rendered by signing off on the performance records submitted by RE DEPOSIT or its employees.

9.8 The Customer shall back up its data at regular intervals.

9.9 The Customer shall ensure regular maintenance of the hardware and shall further ensure that the replacement of consumables is carried out in accordance with the documentation issued by RE DEPOSIT.

9.10 The obligation to provide Services or similar of RE DEPOSIT shall not apply if

- hardware and/or Software is used on equipment that has not been adequately maintained and/or is used contrary to its intended purpose or power fluctuations and failures or climatic or similar external influences have impaired or are impairing the functionality of the hardware;
- Software is installed on a platform other than the authorized platform;
- hardware and/or Software has been maintained or modified by unauthorized persons or in an unauthorized manner;
- the Customer is in default with his payment obligation.

9.11 If the Customer does not provide a required cooperation obligation, does not provide it on time or does not provide

it in the agreed manner, the consequences arising from this (e.g. delays, additional expenses) shall be borne by the Customer.

RE DEPOSIT shall in particular be entitled to claim the additional costs from the Customer resulting from the non-compliance with the obligations to cooperate in the sense of clauses 9.1 to 9.10 at the respective applicable rates.

- 9.12 If RE DEPOSIT recognizes that it is hindered in the performance of Services by circumstances of any kind whatsoever, it shall immediately notify the Customer thereof in writing. Thereupon, the Customer shall immediately decide on the further course of action. If the decision is not made immediately or if the impeding circumstances are the responsibility of the Customer, the Customer shall bear the additional costs resulting from any delay. If the impeding circumstances are not the responsibility of the Customer, the parties shall agree on an appropriate postponement of the agreed dates and an appropriate adjustment of the payment.

## 10 Acceptance

- 10.1 Insofar as work performances („*Werkleistungen*“) are to be rendered by RE DEPOSIT, the Customer is obliged to check the rendered performances without delay and to declare acceptance after successful review of the performances rendered in accordance with the Agreement.

RE DEPOSIT is entitled to participate in any acceptance.

- 10.2 The declaration of acceptance shall be made in writing in an acceptance report. However, the unconditional use of the performance (live operation) shall be equivalent to acceptance. Acceptance shall also be deemed granted if the Customer has not reported any significant defects in writing after the expiration of 10 [ten] working days since the declaration of readiness for acceptance by RE DEPOSIT. RE DEPOSIT shall point out this period to the Customer upon declaration of readiness for acceptance.

### 10.3 Error Classes

The following error classes apply to the acceptance procedure:

Error class 1:

The contractual use is unreasonably restricted or excluded.

Error class 2:

Although the contractual use is restricted, the acceptance procedure can be carried out.

Error class 3:

The contractual use is not or only insignificantly restricted by the errors.

The assignment of errors to the error classes is done by RE DEPOSIT.

- 10.4 The Customer is entitled to refuse acceptance if errors of error class 1 are present. The elimination of errors of error class 2 shall be carried out as far as possible during the acceptance procedure. Errors of error classes 2 and 3 shall not entitle the Customer to refuse acceptance. These remaining errors after the acceptance shall be remedied by RE DEPOSIT within the scope of the warranty according to clause 12, 13 pursuant to a schedule to be agreed upon by the parties. If this schedule is not implemented by RE DEPOSIT and a subsequent reasonable grace period set by the Customer does not result in the elimination of the errors, the Customer may withdraw the acceptance.

- 10.5 RE DEPOSIT shall be entitled to declare the readiness for acceptance for self-contained partial performances. The aforementioned acceptance procedure shall also apply to the acceptance of partial performances.

Acceptance of the overall performance (final acceptance) shall be deemed to have taken place when the last partial acceptance has taken place.

## 11 Liability for Material Defects

### 11.1 Material Defect

The work to be performed and the products to be delivered, including the Software to which the Customer is granted rights of use (hereinafter referred to as "**Contractual Objects**"), shall comply with the contractually agreed service/product description and shall not be afflicted with any defects that would nullify or significantly reduce their value or their suitability for the fulfillment of the contractual purposes, provided that the Services are used by the Customer in accordance with the Agreement.

However, this does not include a guarantee that the Contractual Objects will always function without interference.

Documentation, product sheets and other descriptions of the subject matter of the Agreement shall not constitute independent declarations of warranty, but an agreement on the quality of the Contractual Objects.

Statements made in marketing brochures, advertisements or other public statements by RE DEPOSIT shall not constitute any warranties as to the quality of the Contractual Objects.

### 11.2 Elimination of Defects

If Contractual Objects are defective, RE DEPOSIT shall be obliged to remedy the defect.

At RE DEPOSIT's option, the supplementary performance shall be effected by removal of the defect or manufacture of a new work; this may be effected by transfer of a replacement or bypass solution.

The place where the supplementary performance takes place shall be determined by the place of delivery of the Contractual Objects.

If RE DEPOSIT does not comply with its obligation of subsequent performance within a reasonable period of time set by the Customer or if such a setting of a period of time is dispensable in the sense of the law (e.g. in case of failure of the subsequent performance), the Customer shall be entitled, taking into account the respective legal requirements, to withdraw from the performance concerned or to reduce the remuneration, as well as to claim damages or compensation for futile expenses within the scope of clause 19. The Customer shall not be entitled to remedy defects itself and to demand reimbursement of the expenses required for this. The Customer has therefore in no case a claim to surrender of the Source Code of the developed Software, unless this is to be handed over to the Customer within the framework of the Agreement.

As far as RE DEPOSIT provides a substitute or work-around solution, the provided Service shall no longer be defective; as far as possible, RE DEPOSIT shall be entitled in this context to make changes to the configuration of the Contractual Objects, if and as far as the operability of the Contractual Objects is not affected individually or as a whole.

### 11.3 Exclusion of Liability for Material Defects

The claim for liability for material defects shall be excluded if the Customer does not immediately test the Services after they have been provided and immediately report any defects detected.

- 11.4 The claim for liability for material defects shall expire if the Customer or third parties make changes to the Contractual Objects which RE DEPOSIT has not expressly agreed to

beforehand. This shall only apply insofar as the Customer proves that the defect is not due to the modifications and that these modifications have not impeded the identification and elimination of the defect. The Customer's statutory rights to make changes that are necessary for the contractual use of the subject matter of the Agreement shall remain unaffected.

For Software Platform Products, which the Customer has extended via interfaces, which are intended for it according to the documentation, RE DEPOSIT warrants up to the interface. Furthermore, RE DEPOSIT does not warrant for Software Platform Products, if Customer or third parties have made changes in the sense of the preceding paragraph. This shall also apply to the integration of Software of any kind.

11.5 The following defects shall not be subject to liability for material defects:

- Defects caused by extraordinary environmental influences (e.g.: overvoltage, magnetic fields or similar).
- The assumption of extraordinary waiting or set-up times, which can be traced back to a lack of obligation to cooperate on the part of the Customer. In particular, in the event of default of acceptance of the service to remedy the defect on the agreed date.
- Defects that are due to force majeure (e.g. flooding, lightning or similar).
- Defects that are due to wear and tear and/or consumable parts, or directly affect wear and tear and/or consumable parts (e.g. illuminants, transport belts, etc.), in particular wear and tear on floppy disks, tapes, picture tubes (burn-in, loss of brightness) and LCD backlights.
- Defects caused by components not approved by RE DEPOSIT (e.g. memory chips).
- Defects caused by improper handling by the Customer or third parties (e.g.: glass breakage, LCD breakage, housing damage).
- Defects caused by vandalism or manipulation.
- Defects caused by repairs or modifications made to the product by the Customer or third parties, or by special interventions carried out by workshops not authorized by RE DEPOSIT.
- Defects caused by improper installation, improper operation - especially in case of non-compliance with the manufacturer's operating specifications - and/or incorrect handling.
- The resetting of security functions (deletion of passwords, etc.) by the Customer to enable RE DEPOSIT to carry out warranty work.

## 12 Liability for Defects of Title

- 12.1 RE DEPOSIT declares that the Contractual Objects are free of third party industrial property rights in the territory of the Federal Republic of Germany, which exclude or restrict the use by the Customer.
- 12.2 If after conclusion of the Agreement third parties claim infringements of industrial property rights, such as patents, utility models, trademarks, design patents, copyrights (hereinafter referred to as "**Industrial Property Rights**") against the Customer and thereby impair or prevent the contractual use of the Contractual Objects, the Customer undertakes to notify RE DEPOSIT immediately in writing of these claims of third parties, at the latest within 10 [ten] calendar days.
- 12.3 The Customer undertakes not to acknowledge alleged infringements but to support RE DEPOSIT in defending its rights to a reasonable extent. The Customer may only acknowledge rights of third parties if RE DEPOSIT agrees

in writing beforehand or if RE DEPOSIT does not act after being notified, i.e. does not react at all within a period of 10 [ten] working days.

- 12.4 If the Customer stops the use of the Contractual Objects for reasons of mitigation of damages or for other important reasons, he shall be obliged to point out to the third party that the cessation of use does not imply any acknowledgement of an infringement of the INDUSTRIAL PROPERTY RIGHTS.
- 12.5 RE DEPOSIT shall be entitled to take all defensive measures or - at RE DEPOSIT's option - to conduct settlement negotiations with third parties claiming the infringement of INDUSTRIAL PROPERTY RIGHTS.
- 12.6 If the Customer has complied with his obligation to notify RE DEPOSIT and if the contractual use of the Contractual Objects is fully or partially legally prohibited, RE DEPOSIT shall carry out supplementary performance, e.g. at its option and expense and as far as possible under reasonable conditions either
- provide the Customer with a right to use the contractual objects, or
  - modify or replace the Contractual Objects in such a way that an infringement no longer exists, but they still essentially comply with the agreed specifications.
- 12.7 If RE DEPOSIT does not comply with its obligation of supplementary performance according to clause 12.6 within a reasonable period of time set by the Customer or if such a setting of a period of time is dispensable in the sense of the law (e.g. in case of failure of supplementary performance), the Customer shall be entitled, taking into account the corresponding legal prerequisites, to withdraw from the performance concerned and to claim back the remuneration against return of the Contractual Objects less a reasonable rate of value for their use taking into account the usual period of use.
- 12.8 In addition, RE DEPOSIT shall reimburse the Customer within the scope of clause 18 for necessary court and attorney fees (or to an appropriate extent, if no legal cost regulation exists) and shall pay damages within the scope of clause 18 or shall indemnify the Customer from legally established claims of third parties.
- 12.9 As far as RE DEPOSIT provides software of third parties to the Customer, RE DEPOSIT shall be liable in case of infringement of property rights with regard to this software only to the extent that RE DEPOSIT itself is entitled to enforceable claims against the respective third party.
- 12.10 If the Customer has failed to inform RE DEPOSIT about the assertion of rights by third parties within the period mentioned in clause 12.2, he shall lose his claims under clauses 12.5 and 12.6.
- 12.11 The elimination of the defect of title and an indemnification according to the aforementioned regulations shall be excluded if the Customer uses a hardware or software not released by RE DEPOSIT or has unlawfully modified the Contractual Objects or uses the Software with software not licensed by RE DEPOSIT or under other conditions of use than agreed upon in the Agreement.
- 12.12 In all other respects, liability shall be governed by clause 18.
- ## 13 Acceptance of Third-Party Components on Behalf of the Customer (Third-Party Component Clause)
- 13.1 In case of the technical connection of old/used and untested machines/parts of machines as well as operating/working equipment from the Customer's stock (foreign

components) to the System of RE DEPOSIT on behalf of the Customer, these foreign components shall not be covered by the warranty and/or liability of RE DEPOSIT under this Agreement. The Customer as operator of these foreign components is obliged according to BetriebSichV and TRBS 1111 as well as TRBS 2131 or other applicable regulations to subject his System, in particular such foreign components, to a risk assessment or to have them tested. Warranty and/or liability from this Agreement refer only to the parts of the System delivered and tested by RE DEPOSIT as well as the connection of the Customer's external components as a separate service. The commissioning test by RE DEPOSIT can consider foreign components only with regard to their integrative interaction with the RE DEPOSIT System parts and does not include a test of safety, reliability and functionality for these foreign components. The Customer himself is responsible for the safety of the foreign components provided by him.

- 13.2 Third-party components may be integrated separately into the EMERGENCY STOP system of the RE DEPOSIT System or may have their own EMERGENCY STOP system.
- 13.3 CE markings on RE DEPOSIT equipment refer exclusively to the tested products of RE DEPOSIT. The Customer shall bear the sole liability under machine law and under the Agreement for converted, remaining or other system parts of the Customer as well as third-party components which are interchangeably connected with the RE DEPOSIT System.
- 13.4 The Customer shall indemnify and hold RE DEPOSIT harmless from any claims made by third parties against RE DEPOSIT for damages caused by or to third party components in the equipment.
- 13.5 The Customer shall be responsible for the safe use of the entire System as well as for the System components provided by it and for products of third-party manufacturers under machinery law (e.g. GPSG, 9. GPSGV) according to BetriebSichV or applicable foreign law.

#### **14 Limitation of Liability for Reconditioning / Refurbishment**

- 14.1 RE DEPOSIT shall perform contractual Services on behalf of the Customer on the System components or Systems to be provided by the Customer. The System parts remain in the possession and responsibility of the Customer (operator).
- 14.2 These Services are limited only to the replacement of wearing parts, do not include any significant modification of the System components with regard to current technical requirements and therefore do not include any safety-related acceptance of the foreign components and no assumption of release responsibility by RE DEPOSIT. The responsibility of RE DEPOSIT for the contractual quality and compliance with the safety standards of its own products during the execution of the Service is not affected by this. Services for the testing of third-party components must be agreed upon separately.
- 14.3 Insofar as Customer requests a final inspection by RE DEPOSIT for the recommissioning of the entire System with reprocessed components, this inspection shall require a separate written agreement regarding the scope of inspection and costs.

#### **15 Exclusion of liability for partial System deliveries**

- 15.1 In case of a limited delivery of partial Systems agreed in the Order Form, the responsibility of RE DEPOSIT from this Agreement refers exclusively to these components of RE DEPOSIT as partial System and not to external technology, which is put into operation by the Customer or by

third parties in the overall System with supplementary external technology.

- 15.2 According to BetriebSichV and TRBS 1111 as well as TRBS 2131, the Customer as operator of such a complete System is himself obliged to subject his System, in particular the third-party components of the System, to a risk assessment or to have them checked by the third-party manufacturer. Warranty and liability from this Agreement shall only refer to the parts of the System delivered and tested by RE DEPOSIT.
- 15.3 CE-markings on RE DEPOSIT sub-units refer exclusively to the tested components of RE DEPOSIT. RE DEPOSIT shall not be liable under machine law or under the Agreement for components of other manufacturers which are interchangeably connected to the RE DEPOSIT subsystem. The Customer shall ensure the CE conformity of the supplementary components and the compliance with the safety-relevant and technical requirements for the CE marking of the entire plant via the third-party manufacturer before commissioning.
- 15.4 The Customer undertakes to refrain from putting into operation incomplete RE DEPOSIT System, if the machine or plant, into which the incomplete RE DEPOSIT System has been installed or of which it is a component, as a whole does not comply with the provisions of the Machinery Directive 2006/42/EC as well as with the national decree transposing the Directive into national law and if the corresponding declaration of conformity has not been issued before putting into operation, or, if applicable, if similar foreign regulations are not complied with. In the event of a breach of this obligation to cease and desist, the Customer shall bear sole responsibility for the commissioning.
- 15.5 The Customer shall indemnify and hold RE DEPOSIT harmless from any claims made by third parties against RE DEPOSIT for damage caused by or to any third party components in the equipment.
- 15.6 The Customer shall be responsible for the safe use of the entire equipment as well as for the plant components provided by Customer and for products of third-party manufacturers in accordance with the German Ordinance on the Safe Use of Plant and Machinery (GPSG, 9. GPSGV) or similar foreign provisions.

#### **16 Disclaimer with regard to ergonomics and labor law requirements**

The positioning and set-up of the Systems is carried out by RE DEPOSIT according to the specifications of the Customer and the spatial possibilities in the respective market. Unless expressly agreed in writing, the planning of RE DEPOSIT does not include an examination of ergonomic requirements for the machine with regard to the establishment of an operating site in conformity with, e.g., labor law.

#### **17 Limitation of claims for defects**

- 17.1 Claims based on a defect shall become statute-barred - except in the case of fraudulent concealment of the defect or a guarantee of quality or durability - within 12 [twelve] months from delivery or from acceptance of the respective Service in case of work performances ("Werkleistungen").
- 17.2 This shall not affect claims for injury to life, body or health due to a defect and defects caused by gross negligence.

#### **18 Liability**

RE DEPOSIT shall be liable only in accordance with the provisions set forth in these General Conditions.

- 18.1 RE DEPOSIT shall be liable without limitation for damages resulting from injury to life, body or health.

- 18.2 RE DEPOSIT shall be liable without limitation for damages caused by gross negligence or willful misconduct by its legal representatives or executive employees.
- 18.3 In case of negligent violation of essential contractual obligations by legal representatives or executive employees, RE DEPOSIT shall only be liable for the foreseeable, typical damage.
- 18.4 In case of other agents ("*Erfüllungsgehilfen*"), RE DEPOSIT shall be liable for intentional and grossly negligent causation of damage as well as for slightly negligent violation of essential contractual obligations to the foreseeable and typical damage.
- 18.5 Material obligations are obligations the fulfillment of which makes the proper performance of the Agreement possible, the violation of which jeopardizes the achievement of the purpose of the Agreement and the compliance with which the Customer regularly relies on.
- 18.6 The foreseeable, typical damage shall be limited in amount to the respective order value resulting from the respective Order Form.
- 18.7 RE DEPOSIT shall not be liable for the negligent violation of non-essential contractual obligations.
- 18.8 RE DEPOSIT shall not be liable for damages occurring to the Customer due to force majeure, i.e. unforeseeable unavoidable events.
- 18.9 Further claims for damages are excluded. In particular, liability for consequential damages, including the non-occurrence of the profit expected by the Customer, which arise from the use of RE DEPOSIT products or are in a causal connection, shall be excluded. Such exclusions shall not apply to the extent RE DEPOSIT has given an assurance of quality ("*Beschaffensvereinbarung*") to the Customer that specifically is supposed to protect against the occurrence of such damage.
- 18.10 In case of data loss or data destruction RE DEPOSIT shall only be liable if it causes the destruction intentionally, grossly negligently or due to a violation of an essential contractual obligation and the Customer has at the same time ensured that the destroyed data can be reconstructed with reasonable effort from data material kept ready in machine-readable form.
- 18.11 Service levels as well as response and/or recovery times stated in these General Conditions shall be understood as average values (standard case), the regular compliance with which RE DEPOSIT shall endeavor to achieve as a target. However, the Customer shall not have a claim to exact compliance with the individual Services, unless specific agreements have been made in connection with the respective response and recovery time or the SLA; these shall be conclusive in this respect and further claims than these agreed claims shall be excluded in case of non-compliance with the agreed times or service levels.
- 18.12 Liability for fraudulent concealment of a defect, for the assumption of a guarantee for the quality or durability of an item or a work and liability under the Product Liability Act shall remain unaffected by the above conditions.
- 18.13 The aforementioned clauses shall apply accordingly to claims of the Customer for compensation for expenses.
- 19 Secrecy**
- 19.1 The Parties undertake to maintain strict secrecy about all confidential processes, in particular business or trade secrets of the other Party and in particular the methods and procedures used in the Software delivered/created by RE DEPOSIT, which come to their knowledge within the scope of this contractual relationship, and neither to pass

them on to third parties nor to exploit them in any other way. This shall also apply to unauthorized employees of both RE DEPOSIT and the Customer, unless the disclosure of information is necessary for the proper fulfillment of RE DEPOSIT's contractual obligations. Third parties in the sense of this provision are not consultants, lawyers and similar persons who are entrusted with the protection of the interests of the respective party. The companies affiliated with RE DEPOSIT shall also not be considered as third parties in the sense of this provision. In case of doubt, the Parties shall be obliged to ask the respective other party for consent prior to such disclosure.

The Parties shall not be obligated to maintain secrecy with respect to such information that becomes generally known, is disclosed by third parties without breaching a duty of secrecy towards the Party concerned or is required to be disclosed due to official or statutory regulations.

- 19.2 Both Parties undertake to maintain secrecy about these conditions and the contents of the Agreement.
- 19.3 Both Parties undertake to agree on a provision corresponding to this clause also with all employees employed by them in connection with the execution of the Agreement as well as with further third parties.
- 19.4 In the event of termination of the Agreement, the obligation to maintain secrecy under the aforementioned clauses shall remain in force for a period of 5 [five] years after termination of the Agreement.
- 19.5 Furthermore, both Parties shall be obliged to maintain banking secrecy and the relevant provisions of data protection law.

## 20 Further Agreements

- 20.1 RE DEPOSIT shall be entitled to name the Customer as a reference. This shall also include the naming in press releases.
- 20.2 The Customer undertakes to notify RE DEPOSIT in writing of any relocation of its registered office.
- 20.3 In case of a sale of the Customer and/or a merger with other companies, the right to use the Software in terms of clause 4 shall remain unaffected; RE DEPOSIT shall, however, be entitled to adjust the remuneration to the new circumstances.

## 21 Transfer of Rights and Obligations

- 21.1 The Customer shall always require the consent of RE DEPOSIT for the transfer of rights and obligations arising from this contractual relationship. RE DEPOSIT shall refuse such consent only for good cause. § 354a HBG shall remain unaffected.
- 21.2 The Customer may assign his claims against RE DEPOSIT only if RE DEPOSIT consents in writing. RE DEPOSIT shall refuse consent to an assignment only for good cause.
- 21.3 RE DEPOSIT may assign this contractual relationship to a third party. The assignment shall not become effective if the Customer objects in writing within 4 [four] weeks after receipt of a corresponding notification; RE DEPOSIT shall point this out in the notification.
- 21.4 RE DEPOSIT shall be entitled at any time to assign rights arising from this contractual relationship to third parties without the consent of the Customer; this shall apply in particular to payment claims.

## 22 Export

- 22.1 The Customer shall not be entitled to export the developed Software or technical data linked to the Software from the

Federal Republic of Germany without prior written consent of RE DEPOSIT.

- 22.2 If the Customer, with the consent of RE DEPOSIT pursuant to clause 23.1, intends to transfer the contractual services to a country other than the country of the place of performance, Customer shall observe the import and export regulations applicable to the deliveries or services on its own responsibility, in particular those of the United States of America. In the case of cross-border deliveries or services, the Customer shall bear any customs duties, fees and other charges incurred. The Customer shall handle legal or official approval procedures in connection with cross-border deliveries or services on its own responsibility.

### 23 Disposal of electrical equipment

- 23.1 The Customer shall bear the costs for the deinstallation, removal and disposal of the contractual items. This shall also apply in particular to electrical equipment in accordance with the Electrical and Electronic Equipment Act (ElektroG) of 16.03.2005 (Federal Law Gazette 2005 Part I No. 17 of 23.03.2005). Insofar as the Customer transports the Contractual Objects to other European countries, the corresponding national implementations of Directive 2002/96/EC of 27.01.2003 (WEEE) shall be complied with. Otherwise, the Customer is solely responsible for complying with applicable comparable laws.
- 23.2 The Customer shall be free to dispose of the Contractual Objects on his own responsibility in accordance with the requirements of the ElektroG or comparable foreign law. Upon Customer's request RE DEPOSIT or a third party commissioned by it shall provide these services at RE DEPOSIT's disposal prices valid at that time, if agreed.
- 23.3 In case of transfer of electrical appliances to third parties, the Customer undertakes not to transfer these delivery items, neither against payment nor free of charge, to private households in the sense of § 3 para. 4 ElektroG and/or comparable foreign law.
- 23.4 Furthermore, the Customer undertakes to oblige the third party to bear the disposal costs including transport, to refrain from sales to private persons as well as in case of further transfer to further oblige its end Customer according to this clause.

- 23.5 The Customer shall indemnify RE DEPOSIT and its subsidiaries against all claims asserted against RE DEPOSIT by third parties in connection with the disposal and transport of the Contractual Objects and/or incurred by RE DEPOSIT due to the disposal and transport of the Contractual Objects.

- 23.6 The above obligations shall also apply beyond the termination of this contractual relationship.

### 24 Miscellaneous

- 24.1 Amendments and supplements to these Conditions must be made in writing to be effective. Verbal collateral agreements shall be ineffective. This shall also apply with regard to a waiver of this provision.
- 24.2 Should one or more of the above provisions be invalid, this shall not affect the remaining provisions. In such a case, the parties shall be obliged to replace an invalid provision by a valid provision which comes as close as possible to the actually intended purpose of the invalid provision.
- 24.3 Any terms and conditions other than these General Conditions shall only apply if expressly accepted in writing by both Parties and signed by the authorized signatories. In particular, they shall not bind RE DEPOSIT without explicit written acceptance, even if they are mentioned in an agreement or order of the Customer. The same shall apply if RE DEPOSIT delivers the ordered products or renders services in whole or in part.

### 25 Place of Jurisdiction, Applicable Law

- 25.1 The contractual relationship to which these General Conditions refer shall be governed by the laws of the Federal Republic of Germany. The applicability of the United Nations Convention on Contracts for the International Sale of Goods (CISG, dated 11 April 1980) is excluded.
- 25.2 The place of jurisdiction shall be Essen, Germany. If RE DEPOSIT is plaintiff, it shall also be entitled to appeal to the court having jurisdiction over the place of business of the Customer. Any exclusive place of jurisdiction shall have priority.