

General Terms and Conditions of Contract (TC-Leasing/Hire-Purchase)
for the Financing of Hardware and/or Software Products through
Leasing and Hire-Purchase Contracts Version 01/2024

1. Object of the Contract

1.1 Financing Recipient's Rights of Use

Upon the conclusion of any individual Leasing or Hire-Purchase Contracts, (Individual Contracts, hereinafter "IC"), Miller Leasing Miete GmbH, Louisenstraße 145, 61348 Bad Homburg, Germany, hereinafter "MLM" shall grant the Financing Recipient the right to use the object of the leasing or hire-purchase contract (hereinafter "the Object") within the framework of its customary business operations in accordance with the provisions set forth in the IC, which shall be supplemented by these TC. The Financing Recipient shall not use the Object except in its capacity as an entrepreneur and in accordance with its intended use. Where the Object comprises any software, the right to use such software shall in addition be governed by the relevant terms of the supply contract (as defined in Sec. 2.2) concluded with the manufacturer/supplier (hereinafter "Supplier"), with which the Financing Recipient must comply as well.

1.2 Objects with Several Independently Usable Parts/Separation

If the Object consists of several parts or components which may be used independently, the provisions of this Contract shall apply separately to each and any part/component of the Object. The Contracting Parties shall consequently act as if they had entered into as many legally independent ICs as there are parts or components listed. Where the parts/components that are not affected cannot be used independently, both parties hereto are entitled to terminate the IC for cause in accordance with Sec. 9.2. In such event, too, Sec. 9.3 shall apply.

1.3 Independence of IC

MLM points out to the Financing Recipient that the existence of the IC shall be independent, legally and economically, of any consultancy agreement that may have been concluded with the Supplier or with any other third party, and shall therefore be separate therefrom. The Financing Recipient may therefore not claim vis-à-vis MLM in connection with the IC any adverse rights, pleas or objections whatsoever arising from a faulty performance of such consultancy agreement. This shall also apply where the Financing Recipient has concluded a software license agreement directly with the Supplier or any third party. **It is hereby pointed out to the Financing Recipient that the Supplier may not in any way act as a representative, vicarious agent or similar for MLM.**

2. Procurement of the Object

2.1 Purchase by MLM

Once the IC has been concluded, MLM shall purchase the Object selected by the Financing Recipient from the Supplier selected by the Financing Recipient, on the basis of the offer which the Financing Recipient has decided shall be used for the purchase. The Financing Recipient takes the procurement decision and therefore the Financing Recipient bears the obligations under the Supply Chain Act ("Lieferkettengesetz") with regard to the selection of the supplier itself.

2.1.1

To the extent that the Financing Recipient has not yet entered into a supply contract regarding the Object with the Supplier, MLM is hereby instructed to conclude such contract on the basis of an offer known to the Financing Recipient.

2.1.2

To the extent that the Financing Recipient has already entered into a supply contract regarding the Object with the Supplier, the Financing Recipient already now declares its consent to MLM'S stepping into this supply contract in its place. The Financing Recipient shall provide to MLM comprehensive information on the supply contract already concluded by it, and shall hand over to MLM any related documents.

In the event that MLM enters into a software license agreement between the Financing Recipient and the Supplier, the Supplier shall assign to MLM all of its license rights and rights of use as well as its right to payment of the license fees, with MLM accepting such assignment.

2.2 Supply Contract

The supply contract shall be based on the terms and conditions agreed by the Financing Recipient and the Supplier. The supply contract may consist of a sales contract and/or a contract for work and services, and of a licensing agreement if the Object comprises any software. At the Financing Recipient's request, MLM shall make available to it a copy of the supply contract. The Financing Recipient shall be liable without fault for any infringement of the terms and conditions of the supply contract or the license agreement, and shall hold MLM harmless upon first request.

2.3 Failure of Step-in

The IC shall be subject to the condition subsequent of MLM's failure to step into the supply contract owing to the occurrence of a condition subsequent in accordance with Sec. 2.4 below for reasons beyond MLM's control, or such step-in not coming about in the first place. In the event of such condition occurring respectively of the contract not arising, MLM shall notify the Financing Recipient thereof immediately.

2.4 Conditions Subsequent

MLM's stepping into the supply contract shall be subject to the following conditions subsequent:

a) the date of delivery specified for the Object being exceeded by a period of 21 days for reasons within the Financing Recipient's or the Supplier's domain, and MLM thereupon declaring in text form to the Supplier and the Financing Recipient its will to disengage from the contract;

b) the Object not having been taken over within a period of 21 days following delivery, for reasons within the Financing Recipient's domain, and MLM thereupon declaring in text form to the Supplier and the Financing Recipient its will to disengage from the contract;

c) prior to takeover of the Object, insolvency proceedings being initiated concerning the Financing Recipient's assets, execution being imposed on the Financing Recipient's assets or a significant deterioration of its financial situation occurring which appears to threaten performance of the IC, and MLM thereupon declaring in text form to the Supplier and the Financing Recipient its will to disengage from the contract.

2.5 Consequences of a Condition Subsequent Occurring

In the event of the above conditions occurring, MLM shall be entitled to rescind the supply contract, with the effect that a supply contract existing directly between the Financing Recipient and the Supplier shall be revived. Furthermore, the IC shall become frustrated.

2.6 Down Payments

The Financing Recipient shall hold MLM harmless in the event that MLM makes any down payments to the Supplier on the basis of the supply contract taken over in accordance with Sec 2.1.1. or 2.1.2.

3. Legal Status of the Object

3.1 Ownership

MLM shall acquire ownership of the Object. Upon conclusion of the IC, the Financing Recipient shall waive, for the benefit of MLM, any expectant right it may have in the Object.

3.2 Maintenance of the Object

The Financing Recipient shall treat the Object carefully, shall comply with the Supplier's relevant terms and recommendations in using the Object and shall comply with all and any laws and other provisions governing possession and operation of the Object.

The Financing Recipient is obliged to maintain the Object at its cost and risk in a condition that is safe, free from defects and functional. The Financing Recipient is obliged, in particular, to perform data backup and to protect against malware in accordance with the current state of the art. It shall therefore enter into a **maintenance agreement** with the Supplier or a specialist company authorized by the Supplier for the hardware portion of the Object and a support agreement for the software portion of the Object. The Financing Recipient shall also bear the cost of any repairs or replacement parts.

3.3 Changes to the Object

The Financing Recipient may not make changes to the Object other than with MLM's prior consent, to be granted in text form. The Financing Recipient and MLM agree already now that any parts built in shall pass to MLM with no compensation falling due; in that respect, as well, the Financing Recipient becomes a bailee. Upon the expiration of the IC, the Financing Recipient is entitled, and shall, upon MLM's request, be obliged, to return the Object to its original condition at the Financing Recipient's cost and risk.

3.4 Removal of the Object from the Location, Transfer of Use to Third Parties, Right to Inspect, Duty to Identify

No removal of the Object from the location agreed in the IC is permitted other than with MLM's prior consent, granted in text form, save where such removal occurs in accordance with the intended use. Any sub-leasing or transfer of use to any third parties shall require MLM's prior consent in text form. MLM however agrees already now to the Object being transferred to third parties for purposes of repair, maintenance or support as well as for the performance of claims for subsequent fulfillment. No assignment, transfer of any kind or pledge of any rights and claims to which the Financing Recipient may be entitled under this Contract shall be permitted other than with the prior consent, in text form, of MLM.

3.5 MLM or any parties entrusted by it have the right to view and examine the Object. Upon MLM's request, the Object shall be permanently marked as MLM's property.

3.6 Connection of the Object

Where the LO is connected in a fixed manner with any plot of land or building or any other object, such connection shall only occur for a temporary purpose and with the intent to remove respectively disconnect the Object therefrom following expiration of the IC.

3.7 Impairment of Ownership

The Financing Recipient shall notify MLM immediately if MLM's ownership rights are being impaired, for example due to any third parties gaining access to the Object. Save where such third party attempting to access the Object is asserting claims vis-à-vis MLM, the Financing Recipient shall bear the cost of any intervention in the relationship with MLM.

3.8 Indemnification

The Financing Recipient shall hold MLM harmless against all and any claims by any third parties for which MLM is not responsible and which are asserted by such third parties vis-à-vis MLM in its capacity as the owner of the Object. This shall apply *mutatis mutandis* to any infringements of industrial property rights or in the event of any breach, by the Financing Recipient, of any terms of the license agreement forming part of the supply contract. The Financing Recipient shall bear all and any fees, contributions, taxes and other levies relating to the use or possession of the Object. MLM may meet any justified claims following prior coordination with the Financing Recipient and may demand that the Financing Recipient reimburse MLM's expenses.

3.9 The Financing Recipient shall not have a right to purchase the Object under the IC except where the parties have entered into a hire-purchase contract or a lease contract with option to purchase.

4. Delivery and Takeover of Object/Commencement of Contract

4.1 Delivery

The Object shall be delivered by the Supplier to the Financing Recipient. Save where otherwise agreed by MLM and the Financing Recipient, delivery, assembly and installation of the Object shall be at the Financing Recipient's cost and risk. Regardless of MLM's stepping into the supply contract in accordance with Sec. 2.1.2, the Financing Recipient shall be invoiced directly by the Supplier for any ancillary costs (e.g. cost of packaging, transport, installation etc.) where such costs arise. Where this is required in accordance with the relevant legal system, MLM hereby entrusts the Financing Recipient to accept the Object by proxy for MLM for the purpose of MLM acquiring ownership of the Object. The Financing Recipient accepts this mandate.

4.2 Exclusion of liability

Subject to Sec. 14 below, MLM is not liable for delivery of the Object in accordance with the terms of the contract nor for delivery in due time.

4.3 Acceptance, Duty to Examine and to Give Notice of Defects

Immediately after accepting the Object, which the Financing Recipient is obliged to do, the Financing Recipient shall carefully examine the Object to establish whether it is complete, free from defects, functional and safe according to the content specifications in the supply contract, and shall immediately give notice of any defects or incompleteness to the Supplier in text form, and shall notify MLM thereof in text form. This shall apply *mutatis mutandis* to any other complaints.

4.4 Takeover Certification

Where the Object is according to the quality owed under the supply contract complete, free from defects, functional and safe, the Financing Recipient shall take it over forthwith and shall immediately confirm such takeover to MLM in a legally binding manner by means of a Takeover Certification in text form, stating the date of takeover, the serial numbers or license numbers and confirming the location stated in the IC. Such Takeover Certification shall form an integral part of the IC. Issue of the Takeover Certification shall form the basis of MLM's payment obligation vis-à-vis the Supplier. Any errors or omissions in issuing the Takeover Certification for which the Financing Recipient is responsible shall be on the Financing Recipient's account and shall make it liable to pay damages. Furthermore, objections and defenses may be lost.

4.5 Commencement of Contract

The Contract shall commence on the day of takeover of the Object, alternatively, by way of precaution, on the day of receipt of the Takeover Certification.

4.6 Commencement of the Term of the Contract

Save where otherwise agreed, the non-terminable basic duration of the lease/fixed rental period shall commence on the first day of the month following takeover. To the extent said takeover is declared on the first day of a month, then the Term of the Contract shall commence on that day.

5. Payments

5.1 Due Dates of Leasing and Hire-Purchase Installments/Compensation for Use

Leasing / hire-purchase installments shall be due for payment for the first time on the first day of the month following the date of takeover, and thereafter continuously in advance. Where the Object is taken over on the first day of a month, the payment obligation shall commence on such day. If a different calendar day is agreed in the IC as a due date for the leasing / hire-purchase installments, then the agreed upon calendar day following takeover shall be decisive.

5.2 MLM shall make out an invoice to the Financing Recipient for a compensation for use on a pro-rata basis covering each and every day of the period between the Commencement of the Contract and the first due date of the leasing / hire-purchase installment, which invoice shall be due for payment immediately and in addition to the agreed installments, and will be based on the amount of said installments.

5.3 Modification in the Event of a Change of the Reference Rate

The Financing Recipient's payment obligations as set forth in the IC shall be calculated on the basis of the Euro-Euribor interest rate swap (bid rate) (for contracts concluded in U.S. dollars, calculated on the basis of U.S. dollar interest rate swaps (bid rate); for contracts in CHF, calculated on the basis of CHF interest rate swaps (bid rate)) as published and serving as the reference rate, equivalent to the calculatory duration of the IC. If the IC has a calculatory duration that does not correspond to the maturity of any interest swap rates published, then the next longer term to maturity shall apply. The decisive rate in this case shall be the reference rate in effect on the day of calculation. This date shall be stated in the IC. Where the reference rate changes in the period of time between the date of calculation to be stated in the IC and the day of receipt of the Takeover Certification, MLM is entitled and obliged to modify the Financing Recipient's obligations to pay by taking such change into account.

5.4 Modification in Case of Change of Purchase Price of Object

Sec. 5.3, last sentence, shall apply correspondingly if the purchase price of the Object, and, thus, the basis for the calculation of the Leasing or Hire-Purchase Contract changes.

5.5 Modifications in Case of Changes in Tax Law

The Financing Recipient shall bear any present and future public-law taxes (taxes, charges, levies etc.), at the rates applicable from time to time, that relate to the possession or use of the Object, or to any insurance covering the Object. Any performance or service subject to turnover tax owed under this IC and in connection therewith shall be exclusive of statutory turnover tax, at the rate applicable from time to time. Any modifications of turnover tax law following the conclusion of the IC as well as any changes in the evaluation of the legal situation by the fiscal authorities shall also entitle and oblige MLM to adjust the Financing Recipient's payment obligations. This also applies if the public-law taxes (taxes, charges, levies etc.) applicable at the time of conclusion of the IC which concern MLM in its capacity as the owner of the Object are modified or if such taxes are newly introduced.

5.6 The IC, in connection with a permanent installment advice to be issued by MLM, shall be deemed an invoice as defined by the German Turnover Tax Act (*Umsatzsteuergesetz*) for all and any performance or services subject to turnover tax.

5.7 SEPA Core Direct Debit

5.7.1 The Financing Recipient, in its capacity as the party liable for payment, hereby authorizes MLM, until revoked, within the context of the applicable mandate, to collect all and any payments due by means of SEPA Core direct debit. The bank shall thus be authorized to honor SEPA CORE direct debits.

5.7.2 Pre-Notification, Term of Pre-Notification

Prior to the first collection of a SEPA core direct debit, MLM shall send to the Financing Recipient a Pre-Notification advising it specifically of the date on which the account shall be debited. MLM shall make out such Pre-Notification in the form of a notification and undertakes to send out such Pre-Notification no less than five calendar days prior to the due date of the first installment.

5.8 Exclusion of Right to Set-off and Right of Retention

The Financing Recipient shall have no right to set-off or right of retention save where its counterclaim has been recognized by declaratory judgment, has been acknowledged by MLM, or is undisputed.

5.9 Fees for Returned Direct Debits

MLM shall charge the Financing Recipient an amount of 40.00 EUR per IC for each and any returned direct debit. The Financing Recipient shall be free to prove that it is not at fault. Each Party shall have the right to prove that no costs, lower costs or higher costs were incurred (banking fees, work performed or costs incurred internally).

6. Risk of Loss or Damage, Price Variation Risk

6.1 Damage

The risk of loss or damage and the price variation risk shall be borne by the Financing Recipient, at the latest from takeover of the Object and until return of the Object or scrapping/disposal thereof, such risk including in particular the risk of destruction, including accidental destruction of, damage to or loss of the Object, cessation of possibility to use the Object, premature depreciation or deterioration of the Object, for whatever reason, save where MLM is responsible for such reason. Where such risk occurs before the Object has been taken over, MLM and the Financing Recipient may rescind the IC in cases where the damage to the Object is not merely insignificant or where the Object is destroyed. In such cases, the Financing Recipient is obliged to refund to MLM all and any costs that have been or are being incurred in connection with the procurement of the Object. By way of compensation, all and any claims MLM may have vis-à-vis the Supplier or any other third parties involved in the delivery shall be assigned to the Financing Recipient. Any refunds by way of insurance payouts shall be credited to the Financing Recipient by MLM.

6.2 Duty to Inform

Where any damage as defined in Sec. 6.1 occurs, the Financing Recipient shall notify MLM thereof immediately in text form, and shall keep MLM informed of the settling of such damage continuously and in a timely manner. The Financing Recipient shall furthermore report to the police immediately any damage caused by fire, explosion, housebreaking, theft, robbery and looting and shall in addition present to MLM immediately a copy of such report made to the police.

6.3 Expert Report

In the event of any damage as defined in Sec. 6.1, MLM may demand that the Financing Recipient present a report by a sworn expert concerning the cause, scope and amount of the damage as well as the replacement value of the Object. The cost of such expert report shall be borne by the Financing Recipient.

6.4 Repair of Object, Replacement Purchase, Right to Terminate

In the event of any damage caused to the Object, the Financing Recipient shall immediately, at its cost and risk, restore the Object to a condition conforming to the Contract. In this connection, any repairs exceeding an amount of EUR 500.00 shall be coordinated with MLM in advance. Following coordination with MLM, the Financing Recipient is also entitled to replace the Object at its cost by an item of equal value and equal kind. Sec. 8.8 shall apply accordingly.

6.5 In the event of a destruction or loss of the Object or if the amount of the damage exceeds 60 % of the replacement value of the Object, both parties are entitled to terminate the IC without notice for good cause. In case of such termination, the Financing Recipient shall reimburse to MLM, at MLM's option, either the present value of the Object in a condition conforming to the Contract, or the damage caused by the fact that the LC will not be performed. The latter shall in particular comprise all installments that would have fallen due until the (next) regular date of expiration of the Contract, the final payment, where agreed, which would have fallen due upon termination at the next regular date of expiration of the Contract, any agreed calculatory residual value as well as any prepayment indemnity that may fall due. The relevant obligations to pay shall be reduced, by way of a balancing of the accounts, by any interest rate advantages arising to MLM (deduction of unaccrued interest), compensations paid by any third parties, in particular insurance companies, and by the proceeds of any realization of the Object, which shall in turn be reduced by any cost of such realization. The claim for compensation shall fall due immediately following termination.

6.6 Claims vis-à-vis Third Parties

The Financing Recipient is entitled and obliged, subject to revocation, even following the termination of the IC, to immediately assert and enforce at its own cost and risk any claims vis-à-vis third parties (including insurance companies) arising under an infringement of ownership rights, asserting such claims for the benefit of MLM, if required in a court of law. MLM shall be kept informed of the situation continuously, in text form and in a timely manner, with copies of any correspondence being enclosed. Any third party damage payments received by MLM shall be deducted from the payment obligations set forth in Sec. 6.5. Where the Financing Recipient has already complied with its respective obligations, MLM shall assign its respective claims respectively shall pay over to the Financing Recipient such damage payments received.

7. Object Insurance

7.1 Electronic Equipment Insurance

MLM shall take out electronic equipment insurance for the Object, as the insured party, from the commencement of the duration of the lease or hire-purchase period as specified in Sec. 4.5 above, and shall charge the Financing Recipient the cost hereof. The terms and conditions of such electronic equipment insurance are available in the form of an information sheet ("Merkblatt zur Elektronikversicherung") at the following link on MLM's home page: <https://www.miller-leasing.de/en/legal> MLM has the right to change the insurer at any time and to amend the information sheet accordingly.

7.2 Where in exceptional cases the Financing Recipient takes out such insurance itself, the insurance must comply with the terms and conditions as set out on MLM's homepage under the link above. The Financing Recipient hereby assigns the claims against the insurance company to MLM as security for MLM's claims under the IC. MLM hereby accepts this assignment. The Financing Recipient shall furnish proof of such insurance cover to MLM by means of an Insurance Certificate for Lenders/Lessors ("Sicherheitsschein für Leasinggeber") as provided by MLM. If such confirmation has not been provided to MLM within two months from receipt of the Takeover Certification by MLM, then MLM shall be entitled to take out such insurance for the Object in accordance with Sec. 7.1 at the Financing Recipient's cost.

7.3, Termination of Insurance Cover

Following the occurrence of a damaging event, MLM may terminate the insurance cover according to this Sec. 7 without notice. Such termination shall require text form. In the event of such termination, the Financing Recipient is obliged to immediately take out insurance for the Object itself. The Financing Recipient hereby already now assigns to MLM all and any rights under such insurance. Sec. 7.1 and 7.2 shall apply accordingly to any such insurance procured by the Financing Recipient. The Financing Recipient shall cause the insurer without undue delay to issue to MLM an insurance certificate made out to MLM or a Insurance Certificate for Lessors ("Sicherheitsschein für Leasinggeber"). Where no such confirmation of insurance cover has been submitted to MLM within one month following receipt of the termination, or where the Financing Recipient has failed to pay the insurance premiums, MLM may take out such insurance at the Financing Recipient's cost.

8. Defects of the Object/Assignment of Claims under the Purchase Contract

8.1 Exclusion of Liability

MLM in its capacity as the lessor shall at no time be liable under rental law. In the event that the Object is not delivered or not delivered in due time, or in the event that the Supplier or any third party (e.g. a supplier of the Supplier) commits any other breach of duty, then the Financing Recipient's claims shall only be against the Supplier and/or the third party/parties. The liability of MLM under Sec. 14 below, if any, shall not be affected hereby.

8.2 Assignment, Authorization

In order to compensate for the exclusion of liability according to Sec. 8.1 above, MLM hereby assigns to the Financing Recipient all and any claims to which it is entitled under and in connection with the supply contract vis-à-vis the Supplier, the Supplier's supplier or any other third party. Such assignment shall comprise in particular claims due to incomplete or non-timely delivery as well as claims regarding material or legal defects, in particular the right to subsequent performance, repudiation of the supply contract, reduction of the purchase price as well as damage claims or compensation of expenses incurred in vain. The above assignment shall not include claims for procurement of possession of the Object, claims arising in connection with any rescission of the supply contract, claims for return, and claims under or in connection with any down payments made by MLM, nor any damage caused to MLM. The Financing Recipient shall assert and enforce, and if required enforce in a court of law, such claims assigned to it without undue delay and in a timely manner, at its cost and risk. In the event of any repudiation of the supply contract or reduction of the purchase price, the Financing Recipient shall demand that payment be made to MLM. The conditions subsequent concerning the step-in into the supply contract as set forth in Secs. 2.3 and 2.4 shall not be affected.

8.3 Default, Duty to Inform

Where the Financing Recipient exercises such assignment and/or authorization, it shall without undue delay declare the opposing party/parties to the claim to be in default, and, in the event of any payment claims, it shall demand default interest at the statutory rate applicable from time to time. MLM shall be kept informed continuously and in a timely manner, in text form, concerning the assertion of claims.

8.4 Performance of IC

In the event that the Financing Recipient and the Supplier fail to reach agreement on the validity of any repudiation of the supply contract declared by the Financing Recipient, on the reduction of the purchase price and/or damage claims or the compensation of expenses incurred in vain, the Financing Recipient shall only have the right to cease paying the leasing / hire-purchase installments in connection with any defects of the Object – temporarily, and, in the event of a reduction of the purchase price, on a pro rata basis only – once it has filed the relevant action against the Supplier. Where the Financing Recipient uses the Object during the assertion and enforcement of the claims arising from any defects in accordance with para 1 above, the Financing Recipient is obliged to continue paying the leasing / hire-purchase installments. In this connection, the Financing Recipient may demand to pay such installments into an escrow account opened for the benefit of MLM. Instead of continued payment, the Financing Recipient may also provide to MLM surety for the same amount through a financial institution admitted in Germany. Where the Financing Recipient does not use the Object during the assertion and enforcement of the claims arising from any defects in accordance with para 1 above, the Financing Recipient is obliged to keep the Object in safe custody at its cost, exercising the due diligence of a prudent businessman, until such time as said claims have been finally resolved. Where the Financing Recipient fails to comply with this duty, MLM is entitled, notwithstanding any other rights, to place the Object in safe custody. The enforcement of any claims to subsequent performance in a court of law shall not release the Financing Recipient from its obligation to pay the leasing / hire-purchase installments.

8.5 Return of the Object

In its relationship with MLM, the Financing Recipient will only return the Object at its own cost and risk contemporaneously with performance vis-à-vis MLM of the payment obligations by such party to which return of the Object is owed (e.g. the Supplier or its supplier).

8.6 Paying over Payments

Any payments due to MLM that are made to the Financing Recipient in performance of any claims for defects, the Financing Recipient shall accept only in a fiduciary capacity for the purpose of paying such monies over to MLM without undue delay.

8.7 Reduction of Purchase Price

Where the Financing Recipient has enforced a reduction of the purchase price, the leasing / hire-purchase installments shall be adjusted accordingly. MLM shall refund to the Financing Recipient any amounts overpaid.

8.8 Subsequent Performance

Where the Financing Recipient has enforced subsequent performance in the form of delivery of an object free from defects, the Financing Recipient shall agree with the Supplier that the latter shall transfer ownership in the Object that has been delivered as a substitute to MLM directly. The IC shall then be continued with respect to the Object that has been delivered as a substitute, subject to no changes. The Financing Recipient's duties to examine and to give notice of defects under Sec. 4.3 above shall also apply to such Object having been delivered as a substitute respectively having been cured.

8.9 User Fee

Where a user fee (compensation for any profits drawn and benefits enjoyed) falls due for the Object that has to be returned, MLM shall pay such fee following coordination with the Financing Recipient. Should this payment (plus interest) lead to MLM suffering a shortfall compared to full amortization at the end of the IC and following realization of the Object, the Financing Recipient shall refund such difference upon request.

8.10 Frustration of Contract

Where the Financing Recipient has enforced a repudiation or rescission of the supply contract by way of damage compensation instead of

receiving performance, the IC will become frustrated. The IC shall then be rescinded. MLM shall repay to the Financing Recipient the leasing / hire-purchase installments received, to the extent that the Financing Recipient has not derived any benefits from the use of the Object. Leasing / hire-purchase installments received shall not be repaid if the Financing Recipient would have been able in accordance with the rules of orderly management to derive benefits from the use of the Object.

8.11 Re-Assignment

In the event of a termination of the IC, the Financing Recipient already now hereby reassigns to MLM all and any claims assigned to it under Sec. 8.2 above which the Financing Recipient is not at the time of termination of the IC enforcing in a court of law. Any advantage that MLM shall gain thereunder, MLM shall credit against the Financing Recipient's obligations.

8.12 Pre-Owned Objects

Where the Object has been pre-owned, it shall be leased to the Financing Recipient subject to the exclusion of any liability for defects save where the Financing Recipient has previously reached an agreement with the Supplier concerning the latter's liability and the rights thereunder have passed to MLM. In such case, the above Secs. 8.1 to 8.11 shall apply as well in this context.

9. Termination

9.1 Contractual Termination

No contractual termination of the IC is admissible save where a right of termination has been expressly agreed therein.

9.2 Termination for Cause

Both parties hereto may give notice of extraordinary termination of the IC for an important reason, without observing a notice period. An important reason shall exist for MLM, in addition to the reasons provided for by law, in particular if

- the Financing Recipient has provided incorrect information prior to the conclusion of the IC concerning its financial circumstances and has thereby materially deceived MLM with regard to its ability to meet financial obligations;
- a material deterioration of the financial circumstances of the Financing Recipient or of one of its personally liable shareholders has occurred which appears to threaten the performance of the IC;
- the same applies in the event of a material loss in value of any collateral provided by the Financing Recipient, save where such collateral is adequately supplemented or replaced within a reasonable period of time (usually, three weeks);
- the Financing Recipient, in spite of having received a warning notice, is in material breach of its duties under this contract (e.g. Secs. 3.2 to 3.5 and 11.1 to 11.3) or fails to rectify the consequences of any such breach of contract forthwith;
- payment intervals of more than one month have been agreed and the Financing Recipient is in default of payment of one installment or of a not inconsiderable part thereof for longer than one month.
- circumstances arise during the term of the contract that would require MLM to terminate the contract due to a money laundering offense pursuant the Money Laundering Act GWG (Geldwäschegesetz)

The Financing Recipient's heirs shall not have an extraordinary right of termination following the Financing Recipient's death.

9.3 Damage Compensation

In the event of an extraordinary termination for an important reason, with no notice period observed, the Financing Recipient shall compensate MLM for the damage suffered due to the non-performance of the IC. Such damage shall be calculated in accordance with Sec. 6.5. The claim shall be due immediately.

10. Return of the Object

10.1 Conditions for Return

Upon the expiration of the contract, the Financing Recipient shall return the complete Object, packed in a manner safe for transport and covered by transport insurance, at its cost and risk, including proof of maintenance and/or support (see Sec. 3.2), to the seat of MLM. Where MLM has a rightful interest, it may at its reasonable discretion, taking into consideration the Financing Recipient's interests, specify a different location for the return of the Object. The Financing Recipient must not be placed in a less favorable position, economically or legally, than it would be in if it was to return the Object to MLM's seat. In the case of hardware, "complete" means including external devices, cables, keyboard, mouse, stands, other small parts and documentation. Any existing passwords as well as all and any data loaded or entered by the Financing Recipient, with particular regard to personal data, shall be deleted prior to return of the Object. Where the Object comprises any software, the obligation to return also covers the license keys, data carriers (including those required for updates, patches and extensions), documentation and accessories. The Financing Recipient shall delete any further copies of the software existing at the Financing Recipient's as well as the version installed on the hardware. The Financing Recipient shall cease use of the software, and shall confirm to MLM in text form that is has deleted such software and shall henceforth cease using it. The Financing Recipient shall have no right to retain the Object save where its counterclaim has been recognized by declaratory judgment, has been acknowledged by MLM, or is undisputed. Any obligations the Financing Recipient may have vis-à-vis the Supplier with regard to the software shall not be affected hereby.

10.2 Condition of the Object

Upon return of the Object, the Object must have been cleaned and shall be in a state of repair corresponding to its age and its contractual use, and must be operational, free from defects, functional and safe.

10.3 Uninstalling the Object

The cost and risk of any uninstallation of the Object shall be borne by the Financing Recipient. In this context, the Financing Recipient is obliged to return the Object in a complete and proper condition, which guarantees that it may be taken into operation anew without trouble. This also applies if the Financing Recipient entrusts MLM to uninstall the Object.

10.4 Withholding of the Object

Where the Financing Recipient retains the Object following expiration of the IC without being entitled to do so, MLM may demand, by way of compensation and subject to the asserting of further damage, for the duration of such withholding that the agreed leasing / hire-purchase installments be paid. For the duration of such withholding, the Financing Recipient's obligations under the IC shall continue to apply, *mutatis mutandis* if required. A tacit extension of the IC is excluded.

10.5 Disposal/Scrapping of the Object

MLM may demand that the Object be returned in the manner that MLM entrusts the Financing Recipient to scrap/dispose of the Object at the Financing Recipient's cost. In doing so, the Financing Recipient shall comply with all and any applicable provisions of the law and shall submit to MLM a confirmation of scrapping in due form.

11. Information, Inspection

11.1 The Financing Recipient shall make available to MLM, in order so that MLM may fulfil its statutory duty of care and information (such as duties to identify under the German Money Laundering Act (*Geldwäschegesetz*), any required information and documentation, and shall forthwith notify MLM in text form of any changes occurring during the term of the Contract (such as a change of legal form, change in any representative body).

11.2 The Financing Recipient shall at any time during the term of the Contract at MLM's request disclose its financial circumstances and shall furthermore make available its annual accounts as well as any interim accounts and, where applicable, consolidated annual accounts, all prepared in accordance with the provisions of the law, forthwith following the preparation of such accounts but no later than 6 months after the closing of the financial year.

11.3 MLM is entitled to hand over the documentation received from the Financing Recipient for purposes of reviewing its creditworthiness, prior to the conclusion of the Contract as well as in subsequent years, to the respective refinancing institution for inspection.

12. Refinancing

12.1 MLM is entitled to assign the rights arising under the IC in whole or in part to any third parties; such assignment shall in particular be admissible in the context of refinancing. The Financing Recipient hereby consents to the assignment of the claims under the IC.

12.2 The Financing Recipient is obliged to make all and any declarations to the refinancing institution which such institution commonly requires for purposes of the refinancing transaction, taking into account in a reasonable manner the Financing Recipient's interests. Where such information is already in MLM's possession, MLM is entitled to pass it on to the refinancing institution.

13. Changes of Address, Changes in Ownership and Similar Events

The Financing Recipient is obliged to notify MLM without undue delay in text form of all and any material changes in its circumstances that are relevant to its entrepreneurial activities, such as changes of address, changes in ownership. This shall apply correspondingly to any information pertaining to the beneficial owner. Where no change of address has been notified, the address last notified to MLM shall be deemed the address appropriate for service of any declarations.

14. MLM's Liability

14.1 Where MLM is liable for any damage suffered by the Financing Recipient due to MLM's fault or the fault of its legal representatives or vicarious agents, MLM's liability shall be restricted to cases of intent or gross negligence. In the event of any harm to life, physical injury or harm to health as well as any breach of material contractual obligations, MLM shall also be liable for ordinary negligence. In this context, material contractual obligations shall be such obligations the performance of which alone will make possible the proper implementation of the IC and which the Financing Recipient commonly trusts or may trust MLM to comply with or the ones precisely which MLM is obliged to grant to the Financing Recipient under the IC. In the event of any breach of material contractual obligations, the extent of the liability shall be restricted to the damage foreseeable at the time the IC is concluded. Liability under the German Product Liability Act (*Produkthaftungsgesetz*) shall not be affected. MLM is free to raise the objection of contributory negligence.

14.2 MLM is furthermore not liable for any lost profit, for any damage to recorded data nor for any other indirect or consequential damage.

14.3 MLM's liability is furthermore excluded when the failure is caused by an operating error committed by the Financing Recipient or by any circumstances outside of the Object.

14.4 MLM does not accept any liability for the systems (hardware) or programs (software) running without errors and interruptions, nor for the resolution of any faults occurring. Nor shall MLM be liable for the selected programs and the functionalities contained therein running on the combination of devices selected by the Financing Recipient and satisfying the Financing Recipient's requirements. In this context, MLM shall assign to the Financing Recipient any claims due to it in this respect under the supply contract vis-à-vis the Supplier in order to support the Financing Recipient in enforcing such claims.

15. Miscellaneous – Place of Jurisdiction – Place of Performance

15.1 Any modifications of and/or additions to the IC and of the General Terms and Conditions of Contract is it based on, as well as the cancellation thereof may be made exclusively in text form.

15.2 To the extent that the Financing Recipient is a merchant (*Kaufmann*), a corporation under public law or special fund under public law, the place of jurisdiction and place of performance shall be the registered seat of MLM. This shall also apply if the Financing Recipient moves its registered seat or habitual place of residence outside the Federal Republic of Germany following the conclusion of the contract or its registered seat or habitual place of residence is unknown at the time an action is brought.

15.3 Should any individual provisions of this Contract be or become invalid in whole or in part or should a gap become apparent in the Contract, this shall not affect the validity of the remaining provisions. The Parties undertake in such case to replace such invalid provision by a legally admissible provision which comes closest, economically, to the intended purpose.

15.4 The law of the Federal Republic of Germany shall apply, with the exception of conflict of law provisions.