

**General Terms and Conditions of  
brodos.net GmbH for the use of the brodos.net system**

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## I. GENERAL PART

### 1. Area of Application, Legal Validity, Definitions

- 1.1. brodos.net GmbH (hereinafter "**PROVIDER**"), Erlanger Strasse 9-13, 91083 Baiersdorf, entered in the Commercial Register of Fürth Local Court under the number HRB 10525, offers at the internet address [www.brodos.net](http://www.brodos.net) a web-based ERP system with various applications in the shape of a multi-sided internet platform. This system takes account of the requirements retailers have for a modern shop management system and a modern and web-based trading platform. This POS system offered by the PROVIDER including the relevant applications and services is referred to hereinafter as "**BRODOS.NET**".
- 1.2. These General Terms and Conditions of Business (hereinafter "**Terms**") regulate the legal framework for the use of BRODOS.NET by entrepreneurs (cf. §14 German Civil Code - BGB), legal entities under public law and special funds under public law. They apply for use between the PROVIDER as the provider of BRODOS.NET and a User who has registered to use BRODOS.NET in accordance with these Terms (hereinafter the "**USER**"). By registering to use BRODOS.NET (see section 5) the USER explicitly accepts the legally binding nature of these Terms. Once the PROVIDER has explicitly informed the USER that these Terms shall apply, a "**User Agreement**" concerning the use of BRODOS.NET by the USER is concluded between the PROVIDER and the USER ("**Parties**") in accordance with these Terms. The USER shall confirm acceptance of the Terms by pressing the button "*I agree that the Terms of BRODOS.NET shall apply*". Thereafter the PROVIDER shall send the USER an e-mail confirming that the USER has been registered at BRODOS.NET and that these Terms shall apply for using BRODOS.NET. Irrespective of the above, the USER can download these Terms to the memory of his or her computer and / or print them off. These Terms shall apply to contracts concluded between the PROVIDER and third parties, providing the validity of these Terms is agreed in such contracts, i.e. if the current Terms are incorporated by reference into such contracts. These third parties are also USERS in the sense defined above.
- 1.3. Alongside the General Part of these Terms (cf. section I.) which applies to the use of BRODOS.NET as a whole, certain services which may be performed by the PROVIDER in connection with the operating of BRODOS.NET and/or individual features made available to the USER on a case by case basis may be governed by separate "**Special Terms of Use**". Unless incorporated elsewhere in their business relations by the PROVIDER and the USER (hereinafter collectively the "**Parties**"), these Special Terms and Conditions of Use are printed after the General Part of these Terms (cf. Section I.). They are an essential component of these Terms.
- 1.4. If and insofar as the Special Terms of Use differ from the General Part of these Terms (cf. section I.), the respective Special Terms of Use shall take precedence. The same shall apply in the event of contradictions

between the General Part of these Terms and the Special Terms of Use.

- 1.5. Any deviating Business or Purchase Terms on the part of the USER shall only apply if and to the extent that the PROVIDER explicitly recognises them in writing.
  - 1.6. All definitions used in these Terms which are written in bold anywhere other than in a heading have the meaning throughout these Terms which is defined in the applicable provision in which they are first emphasised by being written in bold.
- ### 2. Scope of services offered by BRODOS.NET, description of services, various tariff options and options for use, ability to use software entirely without disruption or error not covered by the scope of services offered by BRODOS.NET, as a rule no data backup in BRODOS.NET
- 2.1. After registering to use BRODOS.NET (cf. section I.5), the USER is provided in accordance with these Terms with the technical possibility and entitlement to access BRODOS.NET via Internet technology in return for a payment and to use BRODOS.NET on his or her server or PC using Internet transmission in accordance with these Terms.
  - 2.2. The scope of services and the description of services offered by BRODOS.NET are specified in general in sections I.2. and concerning the availability of BRODOS.NET in section I.3 of these Terms. The above provision and any possible additional descriptions of services offered by BRODOS.NET, in particular those descriptions found at [\[www.brodos.net\]](http://www.brodos.net), do not constitute any legal warranties concerning the properties of the services nor do they constitute any other warranty or guarantee given by the PROVIDER to the USER.
  - 2.3. BRODOS.NET consists of various features, applications and other services integrated into a uniform system in accordance with the following provisions. The USER is in principle provided with the possibility of using the features, applications and other services listed below (referred to hereinafter collectively as "**Features**") in their entirety in accordance with these Terms. The PROVIDER also, however, grants the USER the option of only using certain of the entire range of features available at BRODOS.NET and/or only making use of a certain part of the range of services on offer within individual features by selecting the relevant tariff from a range of available tariff models. The USER determines the range of the features he or she would like to use in BRODOS.NET by selecting the relevant tariff model(s). The USER can view and if required alter the selected tariff models in his or her user account (cf. Section I.6). The USER can view and if required alter the selected tariff models in his or her user account (cf. Section I.5).
  - 2.4. If BRODOS.NET or individual features thereof provide the option of using software, the PROVIDER shall as a matter of principle take all reasonable efforts to ensure that the USER can use this software in BRODOS.NET without disruption or error. Notwithstanding the above, however, the **PROVIDER hereby clarifies that the ability to use software entirely without disruption or error is explicitly not included in the scope**

- of services offered by BRODOS.NET.** In view of the above, BRODOS.NET includes a service and support hotline for the USER, the BRODOS.NET hotline, one function of which is to assist the USER in accordance with the provisions stipulated in section 1.2.17 of these Terms by analysing and remedying disruptions in the use of BRODOS.NET.
- 2.5. Unless expressly stated otherwise by the PROVIDER or agreed otherwise between the Parties, **the range of services offered by BRODOS.NET explicitly does not cover backup of data and documents entered into BRODOS.NET by the USER.** Accordingly, the **PROVIDER strongly advises the USER to back up the applicable data** in accordance with the more detailed provisions of these Terms and on his or her own responsibility.
- 2.6. The USER is in principle able to alter the extent to which he or she is able to use BRODOS.NET and individual features thereof by altering the tariff model he or she has chosen (cf. section 2.3). An alteration of this nature is made by amending the tariff model which has applied to date in the USER's user account. A notice period of two months to the end of a month must be complied with in all instances. If the USER is obliged to make a one-off payment in order to be able to use a certain feature for a certain period of time, the USER can only alter the extent to which he or she is entitled to use such a feature by amending the tariff model for a period of time following the expiry of the initial period.
- 2.7. Web-based POS function with integrated ERP ("**BRODOS ERP system**")
- a) One of the features offered by BRODOS.NET is a web-based POS function with integrated ERP system. The USER can use this feature in return for paying a charge.
- b) The BRODOS ERP system includes the following functions:
- retail POS system, allowing prices, discounts and payment conditions to be managed,
  - managing customers, suppliers, employees and other business partners and business relationships,
  - creating and designing records / writing invoices,
  - general inventory management (in particular automatically booking incoming and outgoing goods when drawing up documentation),
  - stock taking,
  - drawing up analyses on the basis of articles, customers, suppliers, records and stocks,
  - managing several branches and warehouses,
  - drawing up objectives, in particular for employees and branches, and monitoring the extent to which objectives have been met,
  - connection to POS hardware (cf. section 1.2.16) and to other standard POS hardware listed individually by the PROVIDER from time to time at [www.brodos.net](http://www.brodos.net),
  - direct connection to following accounting programmes: "Betriebliches Rechnungswesen" from Davev eG, Nuremberg and "Topix" from TOPIX Informationsysteme AG, Ottobrunn, as well as other accounting programmes listed individually by the PROVIDER from time to time at [www.brodos.net](http://www.brodos.net). This accounting interface can be used to import records such as e.g. invoices, credit notes and receipts into the USER's accounts automatically on a daily or monthly basis. It is also possible for the relevant files which have to be transferred to be sent directly from BRODOS.NET to the USER's tax consultant.
- c) If the USER uses BRODOS ERP to keep track of stocks, these stocks shall be available for viewing by other USERS together with any selling prices entered by the USER for individual goods and together with details of the USER's name or company name and the USER's address. In addition, the USER can have these stocks shown to third parties, for example via other (trading) platforms or internet search machines. Showing stock levels in this manner is made possible against the background of BRODOS.NET as a so-called multi-sided Internet platform for the purpose of allowing the USER's stocks to be marketed and distributed via the BRODOS Marketplace (see section 2.10). The decision as to which third parties should be shown stocks and to what extent the stocks entered by the USER in the BRODOS ERP system should be shown to third parties is at the discretion of the PROVIDER. The USER is not entitled to demand from the PROVIDER that stocks should be made available for viewing to any particular extent by any particular group of people and /or third parties. Insofar as USER's stocks are to be made available for viewing by third parties in the manner described above, the PROVIDER is only responsible for ensuring that the relevant data is transferred correctly to the relevant service provider responsible for displaying the USER's stocks elsewhere. The PROVIDER is not responsible for the way in which the USER's stocks are displayed by third parties, in particular in search machines.
- d) In order for the function of BRODOS ERP described in c) above to be used by the USER, the USER must list stocks correctly, allocated to the branches or stores in which the goods in question are in stock. If the USER fails to comply with this prerequisite, the PROVIDER is entitled to prevent the USER from using the function of BRODOS ERP described in c) above.
- 2.8. HOME-AREA
- a) In the so-called "**HOME AREA**" of BRODOS.NET, the PROVIDER offers USERS and third parties the option of forwarding various forms of advertising material to USERS of BRODOS.NET. For this purpose, BRODOS.NET circulates at certain intervals and at its own discretion a **BRODOS.NET newsletter** containing the relevant advertising information. The BRODOS.NET newsletter is sent both by email to the respective USERS of BRODOS.NET and to their personal postboxes available in BRODOS.NET.
- b) A prerequisite for using the HOME area is that the USER must give the information relating to his company stated at [www.brodos.net](http://www.brodos.net) (own company data) before using this area for the first time.

- c) The USER has the option of restricting the contents of the BRODOS.NET newsletter made available to him in the HOME area by the PROVIDER according to various product categories. Excluding product categories which the USER has booked to use in the BRODOS product catalogue (cf. section I.2.9) means that these product categories are no longer available for use in the BRODOS product catalogue. Cancelling the entire BRODOS.NET newsletter means that the USER is no longer able to use the BRODOS item catalogue (cf. section I.2.9) from this time on.
- d) The initiating of a BRODOS.NET newsletter by the USER or, respectively, the manner in which a USER's advertising information is included in this newsletter and circulated in this manner is not the object of BRODOS.NET or these Terms. Instead, the USER must contact the PROVIDER directly and separately for this purpose, in order to coordinate in particular the scope and conditions for circulating the USER's advertising material via a BRODOS.NET newsletter.
- e) The design, structure and thematic composition of the BRODOS.NET newsletter and the determining of potential addressees for this newsletter is solely and exclusively the responsibility of the PROVIDER.

#### 2.9. BRODOS Product Catalogue

- a) BRODOS.NET gives USERS the option of using an electronic product catalogue ("**BRODOS product catalogue**") created by the PROVIDER and added to if applicable by USERS in accordance with these Terms. The BRODOS.NET product catalogue also includes digital ContentCard products. During the term of the User Agreement, the USER is only permitted to use this product catalogue within the context and for the purpose of using BRODOS.NET or individual features thereof as stipulated.
- b) The BRODOS product catalogue can include but is not restricted to the following for individual products from various categories: product descriptions, photos, EAN codes, manufacturer's data, price lists including recommended retail prices and links to matching accessories. The USER is not, however, entitled to demand from the PROVIDER that the BRODOS product catalogue has any specific contents, scope, composition or structure and/or that the products in the BRODOS product catalogue are managed or added to in any way.
- c) The PROVIDER is entitled - with no restrictions as to time or substance and without being under any obligation to provide a counter service - *either* to make an extended product database provided by a USER for the BRODOS product catalogue in accordance with section III.3.1 of the Special Terms and Conditions of Use available for use by other USERS within BRODOS.NET *or* to use this extended database in any other way. The USER grants the PROVIDER a right of use to any amendments or additions the USER may make to the BRODOS product database, which is also in this respect the property of the PROVIDER. Other USERS are entitled, at the discretion of the PROVIDER, to make additions to the BRODOS product database which has been added to by a USER within the meaning of the above, in accordance with the provisions stipulated in this section 2.9. lit. c).

#### 2.10. Web-based trading platform for trading between companies ("**BRODOS Marketplace**")

- a) BRODOS.NET also includes a web-based electronic trading platform which makes it possible for USERS acting in accordance with these Terms and Conditions *firstly* to sell and distribute all types of goods, both physical and digital products, and services ("**GOODS**") and to offer these for acquisition or purchase to other users and *secondly* to acquire or purchase GOODS from other USERS. The BRODOS Marketplace is not an auction platform. No persons other than the respective USERS are entitled to access or use the BRODOS Marketplace.
- b) The PROVIDER offers USERS the technical and organisational platform for using the BRODOS Marketplace online. Accordingly, the PROVIDER itself does not offer USERS any GOODS for acquisition or purchase at this Marketplace, unless the PROVIDER expressly acts as an offeror of GOODS. Likewise, the PROVIDER does not offer USERS any GOODS for purchase or acquisition within the framework of the general operation of BRODOS.NET and the BRODOS Marketplace, unless an offer of this nature is expressly made by the PROVIDER.
- c) The BRODOS Marketplace is only available for use as a trading platform by entrepreneurs ( cf. §14 BGB), legal entities under public law and special funds under public law. Consumers are not entitled to use this marketplace.
- d) The PROVIDER markets and advertises the BRODOS Marketplace. For this purpose the PROVIDER can at its own discretion grant third parties access to information published in the Marketplace by USERS and to GOODS marketed there by USERS. This access is granted subject to the proviso that these third parties can market these GOODS themselves, in particular on their websites.
- e) Use of the BRODOS Marketplace by the USER is governed in addition to the general part of these TERMS (cf. section I.) the "Special Terms of Use for BRODOS Marketplace" stipulated in section II below.

#### 2.11. Processing of Repairs

- a) Under the heading "**Processing of Repairs**" BRODOS.NET offers a platform which makes it easier for USERS to have faulty or defective products repaired. Under this heading, USERS are *firstly* offered the possibility of sharing with other USERS their experiences and/or recommendations regarding those companies which have carried out repairs on defective or faulty products on their behalf. *Secondly*, under the heading "Processing of Repairs", BRODOS.NET offers USERS the possibility of offering other USERS their services for carrying out repairs on faulty or defective products.
- b) The PROVIDER itself does not offer any services for carrying out repairs under BRODOS.NET and in particular not under the heading Processing of Repairs. Nei-

ther does the PROVIDER act as an intermediary for arranging repair services or organising a service provider of this nature for a USER or for any third party. Finally, USERS are responsible for contacting each other directly when it comes to processing repairs and concluding the relevant contracts or initiating the concluding of a contract of this nature. The PROVIDER is not involved in the relevant legal relations.

#### 2.12. Purchasing, selling and processing virtual products ("BRODOS.NET ContentCard")

- a) BRODOS.NET includes a technical platform which can be used to offer USERS the option of purchasing, selling and processing virtual or digital products using internet technology. The services offered and performance rendered by the PROVIDER in this respect via BRODOS.NET shall be referred to collectively hereinafter as "**BRODOS.NET ContentCard**".

Virtual or digital products (hereinafter also "**CONTENT**") are predominantly to be understood as products which can only be used or applied with the help of the internet, data processing or other electronic means. This includes in particular (i) credit for mobile telecommunications or other prepaid balance, (ii) software licences for various applications, in particular on computers, navigation or mobile devices, (iii) apps, music, films, audio books or e-books and (iv) virtual credit and vouchers which can be used for acquiring or purchasing (virtual) goods or services, for example on online platforms or in retail stores.

Processing of digital products (referred to hereinafter as "**PROCESSING**" or "**ContentCard**") refers to services on the part of the PROVIDER which allow CONTENT to be sold, distributed and delivered to third parties by the USER via BRODOS.NET.

- b) The PROVIDER itself does not purchase or sell CONTENT via BRODOS.NET, nor does the PROVIDER market or distribute CONTENT via this channel itself. Rather, in BRODOS.NET the PROVIDER offers USERS the basic possibility of opting to use BRODOS.NET processing. The PROVIDER is under no obligation to provide certain services under BRODOS.NET Processing and / or offer a certain scope of services. Rather, the USER must clarify and agree with the PROVIDER in each individual instance whether, to what extent, in compliance with which requirements and regulations stipulated by the PROVIDER and under which commercial terms the USER is entitled to make use of the BRODOS services and performance offered by BRODOS.NET ContentCard.

#### 2.13. Settling accounts for and administering intermediary services (BRODOS.NET sales administration)

- a) BRODOS.NET offers the USER the option of settling accounts and administering intermediary services or having accounts settled and intermediary services administered (settling of accounts and administration referred to collectively hereinafter as "**BRODOS.NET sales administration**") via BRODOS.NET.

"**Intermediary services**" are to be understood as all services and measures in the widest sense subject to a charge or commission payment which a person or a

company provides or carries out for a third party for the purpose of marketing and/or selling the goods and services of the latter (hereinafter "**sales agent**").

The services and features of BRODOS.NET sales administration are addressed to those USERS who provide intermediary services as well as to those USERS who make use of intermediary services for selling their own goods and services and/or the goods and services of a third person.

- b) BRODOS.NET sales administration basically comprises the following services and provides a technical platform for this purpose:
- Working out commission and remuneration for sales agents ("**sales commission**"), in particular regarding complex commission and remuneration structures, and determining due dates. These services are as a rule rendered on the basis of settlement, commission and remuneration models provided by the USER.
  - Invoicing and settling accounts for sales commission. In this instance the USER must provide information on BRODOS.NET concerning the due date and amount due for payment for each of the relevant sales commission payments.
  - Creating accounting records and electronic accounting entries which are needed for the above services.

The following services are available to the USER in accordance with the provisions stipulated under lit. c) both in his function as a sales agent and in his function as the party commissioning a sales agent.

- c) The USER is as a rule given the option in BRODOS.NET of choosing to use BRODOS.NET sales administration. The PROVIDER is under no obligation to provide specific services under BRODOS.NET sales administration and / or a specific scope of services. Rather, the USER must clarify and agree with the PROVIDER in each individual instance whether, to what extent, in compliance with which requirements and regulations stipulated by the PROVIDER and under which commercial terms the USER is entitled to make use of the BRODOS services and performance offered by BRODOS.NET sales administration.

#### 2.14. Services rendered by the "BRODOS Mail Centre"

- a) Under the heading "**BRODOS Mail Centre**", BRODOS.NET offers the USER the possibility, acting in accordance with these Terms, to send SMS messages as well as to purchase and create postage paid parcel labels.
- b) The USER is entitled to send SMS messages to business partners via the BRODOS Mail Centre for the purpose of carrying out business correspondence. In order to make it possible for USERS to send SMS messages in this way, BRODOS.NET provides the applicable technical framework in accordance with these Terms. The PROVIDER does not actually operate the sending of the SMS messages itself. Rather, the PROVIDER uses another company within the BRODOS

Group or an external telecommunications company for processing the SMS service.

- c) The PROVIDER also offers the USER via the BRODOS Mail Centre and in accordance with the provisions of these Terms the possibility of purchasing postage paid parcel labels from various dispatch companies or postal operators. After the relevant ordering process is completed these parcel labels are printed out from the USER's printer with the franking required by the USER.
- d) The PROVIDER does not accept in connection with the BRODOS Mail Centre any obligation to dispatch or insure parcels or packages. Rather, these services are rendered by the dispatch company selected via the BRODOS Mail Centre by the USER as the provider of parcel labels.
- e) Use of the BRODOS Mail Centre by the USER is governed in addition to the general part of these TERMS (cf. section I.) by the "Special Terms of Use for BRODOS Mail Centre" stipulated in section VI below.

#### 2.15. BRODOS Document Management System (BRODOS-DMS)

- a) The PROVIDER also offers the USER via BRODOS.NET pursuant to these Terms the option to use a document management system integrated in BRODOS.NET in return for a charge ("**BRODOS-DMS**").
- b) BRODOS-DMS offers the USER the possibility to save and manage electronic documents and files (hereinafter "**E-documents**"). E-documents are saved pursuant to these Terms in BRODOS.NET in a memory area within the cloud which is allocated to the USER for his own exclusive use. The E-documents are saved in BRODOS.NET as stipulated in section 2.18 below (**Optional BRODOS.NET data saving**).
- c) BRODOS-DMS is not revision-proof. At present, BRODOS-DMS does not provide workflow management or OCR recognition for the documents saved in this system, meaning that a full text search cannot be carried out through all archived documents. Furthermore, BRODOS-DMS does not provide the USER with the option to search for e-documents using attributes such as file name, file ending, file size or date of amendment.
- d) The documents saved by the USER in BRODOS-DMS are not at present encrypted.
- e) The PROVIDER is in principle willing to provide the USER with varying amounts of memory space in the cloud via BRODOS.NET for using BRODOS-DMS, providing there is sufficient availability on the relevant servers. The USER is not entitled to claim any specific amount of capacity for saving E-documents. Subject to the conditions stipulated above, the USER also has the option of extending the memory space he uses via BRODOS.NET in return for an additional payment.
- f) Use of the BRODOS DMS by the USER is governed in addition to the general part of these TERMS (cf. section I.) the "Special Terms of Use for BRODOS DMS" stipulated in section VII below.

#### 2.16. POS Hardware

- a) As an additional option for the use of BRODOS.NET in addition to the features described above, the USER also has the possibility of renting hardware for the POS system integrated in BRODOS.NET ("**POS hardware**") from the PROVIDER in return for a charge.
- b) The POS hardware consists of a receipt printer, a goods scanner, a customer display, a ContentKiosk, a Hardwarekiosk, a Minikiosk and a cash drawer as well as possible further components which are listed under the description of this hardware in [▪]. The POS hardware can be connected to standard computers using USB, in particular as an extension of the BRODOS ERP system.
- c) Use of the POS hardware by the USER is governed in addition to the general part of these TERMS (cf. section I.) by the "Special Terms of Use for POS hardware" stipulated in section VIII. below.

#### 2.17. BRODOS.NET Hotline

- a) The PROVIDER also provides the USER pursuant to these Terms with the option of using the BRODOS.NET service and support hotline ("**BRODOS.NET hotline**"). The hotline serves *firstly* to answer any general questions concerning the use of BRODOS.NET. *Secondly*, the hotline serves to assist the USER in analysing and remedying disruptions to the use of BRODOS.NET. In this context, the PROVIDER provides the USER with the BRODOS.NET hotline during the service times defined in IX.3.3. The aim of this hotline is to react to disruptions to the use of BRODOS.NET pursuant to these Terms within certain deadlines and to remedy the disruption within certain deadlines or to give USERS tips on how to solve the problem.
- b) The BRODOS.NET hotline only renders the above services for those components of BRODOS.NET for which software is used. In particular, the hotline is not responsible for analysing or remedying disruptions relating to hardware in any shape or form.
- c) Using the BRODOS.NET hotline incurs a charge for the USER. The charges incurred by the USER are determined in accordance with the price list published by the PROVIDER at [I] and valid at the time the Contract of Use (cf. section 1.2.1.2) is concluded.
- d) Use of the BRODOS.NET hotline by the USER is governed in addition to the general part of these TERMS (cf. section I.) by the "Special Terms of Use for BRODOS.NET hotline" stipulated in section VIII below (cf. section IX of the Terms).

#### 2.18. Optional BRODOS.NET data backup

- a) BRODOS.NET offers USERS various options for saving the data and documents (in particular e-documents) entered into BRODOS.NET by the USER which the USER is obliged to remove from the system after the User Agreement has been terminated (cf. section 2.7.b) and 28.1). **The basic version of BRODOS.NET does not include any data backup for these files and documents.** Accordingly, if this basic version is used, the USER must ensure in his own interests and on his own

responsibility that the **said data and documents are saved regularly on his own data carriers and storage media** in order to **avoid the risk of losing data**.

- b) Alternatively, the PROVIDER offers USERS the **option of using "BRODOS.NET data backup"** via BRODOS.NET. This data backup service saves the data and documents (in particular e-documents) entered into BRODOS.NET by the USER - which the USER is obliged to remove from the system after the User Agreement has been terminated - once a day.
- c) The **option to use the BRODOS.NET data backup service hotline incurs a charge for the USER**. The charges incurred by the USER vary according to the volume of data to be backed up and are determined in accordance with the price list published by the PROVIDER at I and valid at the time the User Agreement (cf. section 1.2.1.2) is concluded.
- d) The USER must conclude an additional agreement in order to activate the optional BRODOS.NET data backup service. This agreement can be requested from the BRODOS.NET hotline.
- e) **Subject of the User Agreement**

2.19. The USER receives from the PROVIDER in accordance with these Terms a simple, non-exclusive and non-transferrable right to use BRODOS.NET valid only for the duration of the User Agreement (cf. section 1.1.2). The USER is entitled to access BRODOS.NET using means of telecommunications within the framework provided by the PROVIDER and to use the range of services offered by BRODOS.NET as stipulated in section 2 via a browser. The USER does not have any further rights, in particular to BRODOS.NET or individual features thereof.

2.20. The PROVIDER is entitled to make use of BRODOS.NET or, respectively, certain features thereof, and/or the extent to which BRODOS.NET or individual features thereof are used dependent on certain prerequisites being met, for example by stipulating that a USER must register correctly (cf. section 5) or comply with the obligations for the USER stipulated in section 8.

2.21. If the selected BRODOS.NET features include the possibility of using software, the PROVIDER shall not provide the USER with this software for installation on computers, servers or other media belonging to the USER. The USER is provided with the possibility of using the respective software via BRODOS.NET using means of telecommunication and via Internet technology using a browser. The respective software as well as BRODOS.NET and all individual features thereof remain the property of the PROVIDER. Accordingly, using BRODOS.NET does not constitute either a purchase of software licences by the USER or a claim on the part of the USER to be provided with software.

2.22. The USER is only entitled to use BRODOS.NET within the framework of current technical standards. Notwithstanding the above, the USER has no claim vis-à-vis the PROVIDER for BRODOS.NET to be developed, improved or extended from a technical point of view.

2.23. The right of the USER to use BRODOS.NET is restricted to the USER himself, and in accordance with the provisions stipulated in section 7, his employees. Subject to this proviso, the USER is not entitled to grant or allow unauthorised third parties the possibility of USING BRODOS.NET.

### 3. Availability of BRODOS.NET

The PROVIDER shall provide the USER with the possibility of using BRODOS.NET 24 hours a day, 365 days a year for an annual average of 98% of the time, excluding maintenance work.

Maintenance work relates to periods in which the services offered by the PROVIDER are restricted for a limited period of time *on the one hand* due to issues relating to capacity limits, security or integrity of the server or in order to carry out technical measures *or on the other hand* in order to ensure the correct or improved rendering of services.

The PROVIDER shall take the legitimate interests of the USER into account when planning necessary maintenance work. Accordingly, the PROVIDER shall inform the USER as far as possible about any planned maintenance work.

### 4. PROVIDER's entitlement to make amendments

4.1. The PROVIDER is entitled to alter, remove or replace individual features of BRODOS.NET. The basic features of BRODOS.NET ought, however, to remain intact as far as possible.

4.2. The PROVIDER is entitled to amend the scope of services of BRODOS.NET described in section 2 in the following instances:

- a) Products from other manufacturers which are included in BRODOS.NET are not available, no longer available, or only available in an amended form and the disruption to the availability of such products is not due to circumstances for which the PROVIDER is responsible.
- b) New or amended statutory and/or official requirements make it necessary for BRODOS.NET or individual features or functions thereof to be altered.
- c) The PROVIDER exchanges individual features or functions of BRODOS.NET for services, functions or features which are of an equivalent or higher value under the prerequisite *firstly* that the agreed properties of this feature basically remain the same and *secondly* that this exchange can reasonably be expected of the USER.
- d) BRODOS.NET or any feature thereof no longer complies with standard security requirements, current technological standards or pertinent data protection provisions.
- e) The ability of BRODOS.NET or individual features or functions thereof to run correctly can no longer be guaranteed.

### 5. System requirements, necessary security measures on the part of the USER, USER's obligation to follow technical instructions issued by the PROVIDER

- 5.1. The USER can only use BRODOS.NET and the individual features thereof if the USER complies with the system requirements and provisions for use stipulated by the PROVIDER at [www.brodos.net](http://www.brodos.net).
- 5.2. The USER is obliged to take the necessary precautions for securing the IT system he uses for BRODOS.NET with necessary prudence and in consideration of current technological standards. In particular, the USER shall use the standard security settings of his browser, regularly back up data saved in BRODOS.NET and use protection software complying with current technological standards in order to protect against computer viruses and similar malware. When using BRODOS.NET the USER shall in particular comply with the security and protection measures referred to by the PROVIDER.
- 5.3. The USER is obliged to observe technical instructions given by the PROVIDER concerning using and undertaking system settings and/or updates of BRODOS.NET or software components thereof and to implement such instructions to the extent that this is possible for and can reasonably be expected of the USER. The above shall also apply to the extent that the PROVIDER instructs the USER which settings to use for the equipment or the Internet technology which the USER uses for BRODOS.NET or to access BRODOS.NET via the Internet or if the PROVIDER instructs the USER which requirements this equipment or this Internet technology must conform with in order for BRODOS.NET to be used appropriately. The PROVIDER shall pass on such instructions to the USER in good time by email. The PROVIDER shall inform the USER which negative consequences there will or could be for the USER if the USER fails to comply with the PROVIDER's instructions for using BRODOS.NET
- 6. Accessing BRODOS.NET by the USER, registering of USER, User account, liability of USER**
- 6.1. Before BRODOS.NET can be used, the USER has to register correctly in accordance with and in recognition of these [Terms](#) at <https://www.brodos.net/epos/de/registrierung> and set up a user account accordingly. BRODOS.NET can only be used by entrepreneurs, legal entities under public law or special funds under public law within the meaning of §310 (1) German Civil Code.
- 6.2. No charge is incurred for registering to use BRODOS.NET and setting up a user account. The right to register and use BRODOS.NET remains at the discretion of the PROVIDER. A USER may only register several times for using BRODOS.NET after first obtaining the explicit prior consent of the PROVIDER.
- 6.3. A USER may only register and set up a user account in his own name and on his own account. The customer account set up by a USER and/or any claims on the part of the USER arising therefrom may not be assigned to a third party.
- 6.4. The USER agrees to give all data requested when registering or setting up a user account accurately and in full. The USER is in particular required to give details of his name, current address, company name including legal form and the person authorised to represent the USER. A permanently valid email address must be given in order for permission to USE BRODOS.NET to be granted. The USER's address may not include a postal box number. Before data is entered finally, the USER still has the possibility to check over the data one more time and correct or add additional information as and when necessary.
- 6.5. The PROVIDER is entitled to delete the USER's user account if the USER fails to register fully and correctly within a reasonable period of time.
- 6.6. If the USER is a legal entity, it may only be registered by an authorised representative who is a natural person designated by name.
- 6.7. As and when any information given by the USER when setting up the user account changes, the USER is obliged to make the relevant changes to the applicable user account.
- 6.8. The USER shall determine a user name and a password for accessing BRODOS.NET when registering. The user name and password (hereinafter "**log-in credentials**") must not infringe any rights of third parties, in particular not the right of a third party to a name or designation and must be suitable for being used in conjunction with BRODOS.NET. The PROVIDER recommends that the USER utilises a token, i.e. a hardware component for identifying and authenticating the USER when using or accessing BRODOS.NET. The USER is as a rule able to hire a token of this nature from the PROVIDER for himself and for his employees who are registered to use BRODOS.NET. The hiring of a token of this nature shall be governed by the [Special Terms and Conditions of Use for POS Hardware](#) (cf. section VIII of these Terms).
- 6.9. The USER is obliged to treat the log-in credentials or other access codes for using BRODOS.NET or the customer account with the utmost confidentiality. The USER shall take appropriate measures to ensure that third parties cannot unlawfully access this data and these codes at his own expense. If the USER learns that his log-in credentials have been abused (see section 6.8), he is obliged to inform the PROVIDER immediately.
- 6.10. The USER shall be liable to the PROVIDER for all activities, declarations and actions submitted or carried out using his customer account. The above shall not apply if the USER has taken all necessary precautions and cannot be held responsible for his user account having been abused.
- 7. Access of BRODOS.NET by USER's employees**
- 7.1. Once registered correctly to use BRODOS.NET (see section 5) each USER has the option of allowing his employees to use BRODOS.NET in accordance with these Terms. The number of USER's employees entitled to use BRODOS.NET depends on the tariff selected by the USER.
- 7.2. BRODOS.NET is used in this manner by employees of the USER in the name, on the account and at the risk of the USER.

7.3. For BRODOS.NET to be used by one of the USER's employees this employee must register for using BRODOS.NET in accordance with these Terms, i.e. in particular recognising these TERMS for the use of BRODOS.NET. A further mandatory prerequisite is that a separate user account for the use of BRODOS.NET is either set up by the USER for each of his respective employees or by the individual employees themselves and that the respective employee treats his user account and login credentials in the same way as the USER is obliged to treat his own user account in accordance with these Terms. Accordingly, USER's employees are in particular not permitted to make the user account available to other employees of the USER or third parties or to provide them with access thereto.

7.4. BRODOS.NET is used by the USER's employees on the basis on a concurrent user model, i.e. the USER determines the maximum number of his employees who are permitted to use BRODOS.NET with the tariff he chooses, without the employees included in this maximum number of employees entitled to use BRODOS.NET having to be stated by name.

7.5. The USER shall ensure vis-à-vis the PROVIDER that each of the employees he has allowed to use BRODOS.NET shall observe and comply with these Terms. The USER shall be liable for any breaches of these Terms made by any or all of his employees. Any breaches of these Terms by one of the USER's employees shall be deemed equivalent to a breach of contract on the part of the USER himself.

## **8. Obligations of the USER concerning the use of BRODOS.NET**

8.1. The USER shall be responsible for ensuring that the technical requirements for accessing BRODOS.NET are met on his own account and that these requirements continue to be met during the term of the User Agreement (cf. section I.1.2.). This shall apply in particular to the hardware, system software, internet connection and current browser software used by the USER. The authoritative technical requirements are published by the PROVIDER at [www.brodos.net](http://www.brodos.net).

8.2. The USER is prohibited from taking measures or carrying out actions which are capable of jeopardizing the correct functioning of BRODOS.NET or individual features thereof. In particular, the USER is prohibited from using or making use of mechanisms (of any shape or form), software or programmes or scripts in connection with using BRODOS.NET which lead or could lead to the functioning of BRODOS.NET being jeopardized as stated above.

8.3. The USER shall refrain from using BRODOS.NET in any way capable of putting the BRODOS.NET system under unreasonable or excessive strain. The USER shall also refrain from interfering in the structure and/or functioning of BRODOS.NET in a disruptive manner or in any way capable of negatively influencing the functionality and/or security of BRODOS.NET or its features, contents and scope of services.

8.4. The USER is not entitled to use BRODOS.NET or any individual features thereof in any way going beyond the manner of use stipulated in these Terms. In particular, the USER is not entitled to reproduce, sell or provide to third parties for a limited period of time BRODOS.NET or any parts thereof or the contents, data and information provided to the USER via BRODOS.NET. In the event that the USER lets third parties use BRODOS.NET or parts thereof without first obtaining authorisation, the USER shall provide the PROVIDER immediately upon request with all information required in order to bring a claim against the unauthorised user, in particular his or her name and address.

8.5. The USER is strictly prohibited from copying, circulating or using or reproducing in any other way the contents saved on BRODOS.NET without first obtaining the prior explicit consent of the holder of the relevant rights. In particular, the USER shall not effect any such prohibited measures and actions using automatic mechanisms, for example copying contents from the brodos.net system with the assistance of so-called webcrawlers.

8.6. Each USER is strictly prohibited from taking the use of BRODOS.NET as an excuse for retrieving data and information from the BRODOS servers without due authorisation, or for interfering with the BRODOS servers and /or programmes operated by the PROVIDER.

## **9. General principles governing the use of BRODOS.NET**

9.1. When using BRODOS.NET, each USER shall be obliged to comply with laws and legislation, to act in keeping with honest practices and to comply with or protect existing rights of third parties. Each USER is obliged to refrain from making payments or offering privileges, rewards or other benefits to a member of the PROVIDER's management, one of the PROVIDER's employees and/or vicarious agents commissioned by the PROVIDER for implementing the User Agreement (cf. section I.1.2.). What is allowed, however, are sporadic advertising or courtesy gifts and invitations to business meals within the scope of normal customs, provided such benefits do not exceed a total of € 35 per annum for each individual recipient as stipulated above.

9.2. Each USER is solely and exclusively responsible for ensuring that the data and information he enters into BRODOS.NET - in particular regarding products and offers entered into the BRODOS product catalogue and the BRODOS Marketplace - is lawful and correct. Similarly, the USER shall ensure that the said data and information and products offered by the USER do not infringe any rights of third parties.

9.3. Goods and services may not be offered on BRODOS.NET if offering them violates laws, regulations or administrative provisions, official orders, rights of third parties, common decency and/or the principles governing the use of BRODOS.NET which have been drawn up by the PROVIDER and communicated to the USER.

9.4. The USER is prohibited from using BRODOS.NET in any improper manner which could damage the reputation

of BRODOS.NET and/or the PROVIDER. Furthermore, the USER shall refrain from using BRODOS.NET in any way constituting a criminal or administrative offence. If the USER fails to comply with this obligation, the USER shall be obliged to indemnify the PROVIDER in accordance with section 21.

- 9.5. Unless agreed otherwise in writing by the Parties, the PROVIDER does not assume any obligation to back up the contents, data and e-documents entered into BRODOS.NET by the USER.
- 9.6. The USER is obliged to comply with pertinent data protections provisions when using BRODOS.NET. In particular, the USER is obliged to only use addresses, contact data and email addresses received in connection with the use of BRODOS.NET for the purpose of using BRODOS.NET unless the other User of BRODOS.NET has explicitly granted consent for them to be used in any other way. The USER shall refrain from using addresses, contact data or email addresses obtained in this manner for any commercial purposes, refraining in particular from selling or using them for advertising purposes.
- 9.7. The PROVIDER can only check the data provided by each USER when registering to use BRODOS.NET and setting up his user account to a restricted extent, if at all. Accordingly, the PROVIDER shall not give any warranty or guarantee that the data and information entered by USERS is indeed correct. The PROVIDER cannot rule out the possibility that this data and information may be incorrect. Bearing this in mind, each USER is obliged to check at his own risk the identity of the respective other party to a contract when conducting business via BRODOS.NET

#### **10. Inadmissible goods and contents, BRODOS guidelines for inadmissible GOODS and the publishing of content, legal consequences in the event of a breach**

- 10.1. GOODS (cf. section 2.10.a) may not be entered into BRODOS.NET, in particular not into the BRODOS ERP system, in the BRODOS product catalogue and/or into the BRODOS Marketplace if offering, selling and/or purchasing such GOODS is inadmissible by law, ordinance, statute, court or official order.
- 10.2. GOODS may not be sold, distributed or marketed in any way via BRODOS.NET if the sale, distribution and/or marketing of such goods is not permitted under the terms of the contract, infringes the rights of third parties, violates common decency or is prohibited for any other legal reasons.
- 10.3. Furthermore, no GOODS for which a USER requires prior official approval or permission may be sold, distributed or marketed via BRODOS.NET in any way, shape or form.
- 10.4. Furthermore, no GOODS for which a particular form, in particular certification by a notary, is required in order for them to be sold or assigned may be sold, distributed or marketed via BRODOS.NET in any way, shape or form (e.g. real estate or shares in a limited company).

10.5. The PROVIDER expressly reserves the right to determine at its own discretion and if need be even more strictly than statutory provisions which GOODS are allowed to be used within the framework of BRODOS.NET.

10.6. Each USER is strictly prohibited from publishing contents on BRODOS.NET which violate these TERMS, statutory provisions, official orders, rights of third parties or common decency. If the USER fails to comply with the provisions stipulated in this section 10 governing the entering of goods and publishing of contents in BRODOS.NET, the PROVIDER shall be entitled to take the following measures, taking the USER's interests into account accordingly:

- a) deleting or removing the goods, items or information in question;
- b) restricting the use of BRODOS.NET or the feature used in violation of the terms of the contract;
- c) temporarily or permanently preventing the USER from using BRODOS.NET or the feature used in violation of the terms of the contract.

#### **11. Charges incurred for using BRODOS.NET; PROVIDER's ability to amend prices**

11.1. The charges incurred by the USER for using individual features in BRODOS.NET are determined in accordance with the price list valid at the time the User Agreement (cf. section I.1.2) is concluded or according to the other terms agreed by contract between the PROVIDER and the USER or between the USER and third parties (cf. section I.1.2. sentences 8 and 9). The special agreements shall take precedence in all instances.

11.2. If the PROVIDER offers various tariffs for the use of individual functions, the USER determines the price for the use of the function in question by selecting the relevant tariff.

11.3. The PROVIDER is entitled to alter prices for the use of individual functions by giving a notice period of three (3) months to the end of a calendar year, although prices may not be increased before twelve (12) months have passed since the commencement of the contract. The PROVIDER shall provide the USER with written notice of such price changes at least two (2) months before they are due to take effect. In the event of a price increase of more than 10% compared to the fees charged in the previous year, the USER shall be entitled to terminate the contract. Notice of termination shall be filed in writing and must be received by the PROVIDER within one (1) month of the USER being informed of the increase in price.

#### **12. Payment conditions, settlement of accounts by PROVIDER, objections brought by USER concerning invoices issued by PROVIDER**

12.1. Any one-off charges incurred by the USER for the use of BRODOS.NET shall be due for payment to the PROVIDER immediately upon the conclusion of the contract, as soon as the service is used or as soon as the PROVIDER performs the service.

12.2. Any one-off charges incurred by the USER shall be due immediately for payment by the USER once the corresponding feature is made available or the respective service is performed by the PROVIDER, unless the PROVIDER makes the use of the respective feature or the claiming of the respective services from the PROVIDER dependent on payment being made straightaway.

12.3. Monthly payments due from the USER to the PROVIDER shall be due pro rata for the rest of the month in which the service in question is first made available, starting on the date the services are made available for use. Thereafter, these charges shall be due for payment monthly in advance, on the first of the month. If a price is to be calculated for part of a month, it shall be calculated on the basis of 1/30 of the monthly charge for each day.

12.4. Payment shall be made by the USER without making any deduction from the invoiced amount. The day on which payment is credited to the PROVIDER's account is decisive for determining whether payment has been made in time.

12.5. The PROVIDER shall issue invoices to the USER at the beginning of each month, or as incurred for charges which are due on a one-off basis. Invoices shall be sent to the USER by email and to the USER's mailbox set up within his user account.

12.6. Any objections against invoices issued by the PROVIDER shall be filed by the USER in writing to the PROVIDER within a limitation period of four (4) weeks. If the USER does not file any objection within this limitation period, then the invoice in question shall be deemed to have been accepted by the USER. Any claims the USER may have arising from §§ 812 ff. BGB shall not be affected by the above. The PROVIDER shall refer the USER in each invoice to the stated limitation period and the legal consequences of letting this period pass without taking any action.

### 13. Set-off and right of retention

13.1. The USER is only entitled to a right to set-off or a right of retention for those claims which have been recognised by the PROVIDER or recognised by a court of law.

13.2. Without prejudice to any other rights, in the event that the USER falls into arrears with payments, the PROVIDER is entitled to exert a right of retention over all services which have not yet been rendered after having sent repeated reminders and provided notice in writing or by email until such time as all outstanding payments have been made.

### 14. Reservation of title

In the event that the PROVIDER is obliged to transfer title to items as a result of the USER USING BRODOS.NET, all deliveries made by the PROVIDER shall remain without restriction the property of the PROVIDER until such time as the respective invoices plus all ancillary costs are paid in full. Reservation of title of this nature excludes the pledging and/or transferring title to the goods by way of security by the USER.

### 15. Transfer of risk

If when using BRODOS.NET (i) data and information flows between the USER and BRODOS.NET, (ii) the PROVIDER delivers GOODS or other items or rights to the USER or (iii) deliveries of goods to or from third parties are processed via BRODOS.NET the risk of accidental loss and accidental deterioration shall be transferred from the PROVIDER to the USER at the time the relevant object or GOODS pass the interface between the PROVIDER's network and the public internet

### 16. Material defects

16.1. BRODOS.NET and the individual features thereof have the properties agreed in the User Agreement (cf. Section I.1.2) and they are suitable for being used for the purpose stipulated in the contract, or if no contract has been concluded, for being used for the customary purpose. BRODOS.NET and individual functions thereof meet the requirements of practical feasibility and are of a quality which is common for software or functions of this nature. Any disruption to the functioning of BRODOS.NET caused by hardware defects, environmental conditions, false operation or the like shall not be deemed to be a material defect. A negligible material defect shall be deemed irrelevant.

16.2. If the User

- a) alters or modifies BRODOS.NET or one of the features thereof in any way, shape or form, or
- b) fails to use BRODOS.NET or one of the features thereof in the system environment stipulated in the User Agreement (cf. Section I.1.2) or uses BRODOS.NET or one of the features thereof in violation of the Terms of Use stipulated herein,

the USER shall not be entitled to any guarantee claims, unless the USER can prove that the reported defect is not caused by using BRODOS.NET or any of its features in this way.

16.3. The USER shall inform the PROVIDER in writing as soon as possible and at the latest five (5) working days after detecting any material defect, forwarding all information available to the USER which is necessary for recognising the defect. The USER is obliged to assist the PROVIDER as far as possible in remedying any defects. In particular, the USER shall forward the PROVIDER all information required for remedying the defect and, if necessary, provide error reports and take any other measures facilitating the recognising of defects and their causes.

16.4. The USER shall not be entitled to claim for material defects against the PROVIDER in the following instances:

- a) in the event of an insignificant deviation from the agreed scope of services and functions;
- b) in the event that BRODOS.NET or the relevant function thereof is used inappropriately by the USER;
- c) in the event of errors which cannot be repeated and which the USER cannot provide any other evidence for;

- d) in the event of errors and damage caused by the USER making any subsequent changes to BRODOS.NET or the relevant function thereof or by any unauthorised actions on the part of the USER.

16.5. In the event of a material defect, the USER shall be entitled to the following claims vis-à-vis the PROVIDER:

- a) if statutory requirements are met, the right to reduce payment of ongoing remuneration; the reference point for determining the right of reduction is the remuneration the USER has to pay the PROVIDER for the functions affected by the material defect;
- b) the PROVIDER decides at its own discretion whether supplementary performance shall consist of remedying the defect or making a new delivery, taking the USER's interests into account accordingly;
- c) if supplementary performance proves to be unsuccessful, the right to terminate the User Agreement (cf. Section I.1.2.) and/or claim damages;
- d) if the defective performance on the part of the PROVIDER is subject to purchase law or the law governing contracts for work and services and supplementary performance proves to be unsuccessful, the USER shall be entitled to reduce the relevant remuneration, to rescind the contract and/or demand damages.

Any claims to damages on the part of the USER pursuant to the above provisions shall be governed by the liability regulations pursuant to sections 18 and 19 of these Terms.

16.6. The USER is obliged to inform the PROVIDER in writing as soon as any defects are detected. The notice of defect filed by the USER shall give a clear and detailed description of the defect. It shall in particular include the exact circumstances and procedures which caused the defect, as well as a description of the appearance of the defect and the specific consequences.

16.7. Any claims the USER has on the basis of material defects shall become time-barred for purchased objects one year after the item is transferred.

## 17. Defects of title

17.1. If services rendered by the PROVIDER infringe rights of third parties, the PROVIDER undertakes at its own discretion and at its own expense

- a) to shape the services in question in such a way that the relevant third party rights are not infringed or
- b) to ensure that the relevant services can be used by the USER without infringing the rights of third parties.

If it should prove impossible to remedy the situation at reasonable cost and effort, the PROVIDER undertakes to take back the relevant performance, reimbursing the costs incurred by the USER. The PROVIDER shall ensure that the USER's interests are taken into account accordingly in all instances.

17.2. If a third person asserts a claim with the USER claiming that goods or services provided by the PROVIDER infringe his rights, the USER undertakes to report this immediately to the PROVIDER. In this instance, the

PROVIDER is entitled to defend unjustified claims at its own expense.

17.3. Any claims to damages based on a defect in title shall be governed by the liability regulations pursuant to sections 18 and 19 of these Terms.

17.4. Any claims the USER has on the basis of material defects shall become time-barred for purchased objects one year after the item is transferred.

## 18. Liability of PROVIDER

18.1. Except in the event of a breach of essential obligations of the PROVIDER, the PROVIDER shall only be liable vis-à-vis the USER if and to the extent that the PROVIDER, its legal representatives or vicarious agents have acted with intent or gross negligence. In the case of a breach of essential obligations, the PROVIDER shall be liable for all instances of culpable conduct on the part of its legal representatives or vicarious agents. "Essential obligations" in the meaning mentioned above are those obligations which must be fulfilled in order for the contract to be implemented, which would put the achieving of the contractual purpose at risk if they were not complied with and which the USER can reasonably rely on being complied with.

18.2. The liability of the PROVIDER is limited to the amount of foreseeable damage which could typically be incurred for a contract of this nature relating to the type of services provided, unless the PROVIDER, its legal representatives or vicarious agents have acted with intent or gross negligence.

18.3. In the case of damage arising from any delays to performance, the PROVIDER shall only be liable for intent and gross negligence. Any other rights to which the USER is entitled in the event of late performance shall not be affected by the above.

18.4. The PROVIDER hereby expressly rules out liability for any defects existing at the time the Contract is entered into and for which the PROVIDER is not responsible (cf. §536a (1) 1st alt. BGB).

18.5. The PROVIDER shall only be liable to provide compensation for indirect damage, in particular lost profits, additional expenditure or savings which have not been made, in the event that legal representatives or vicarious agents of the PROVIDER have acted with intent or gross negligence.

18.6. The provisions governing the exclusion and restriction of liability pursuant to this section 18 shall not apply if and insofar as the PROVIDER has explicitly provided the USER with a guarantee aimed at protecting the USER from the damages which are being claimed for. They shall also not apply to damage arising from harm to life, limb or health or in the event of mandatory statutory regulations to the contrary, for example pursuant to the Product Liability Act.

## 19. Liability of PROVIDER for loss of data

If the USER does not use the optional data backup service offered by BRODOS.NET (cf. section 2.18), the liability of the PROVIDER for any data loss is restricted to the amount it would cost to restore the data if the data had been duly

backed up by the USER. This liability shall only apply in the case of slight negligence on the part of the PROVIDER, however, if, with the action which has caused the data to be lost, the PROVIDER simultaneously violates a fundamental contractual obligation (cf. section 18.1 final sentence). The previous two sentences shall not apply if the PROVIDER has explicitly undertaken vis-à-vis the USER to back up data as a result of the USER having booked the BRODOS.NET data backup service.

## 20. Force majeure

20.1. During the term of the user relationship between the Parties concerning the use of BRODOS.NET, the PROVIDER shall be freed from the obligation to perform in accordance with the terms of this user relationship if and in so far as failure to perform is due to circumstances of force majeure arising after the Contract is concluded.

20.2. "Force Majeure" within the meaning of the above provision applies, for example, to war, strikes, unrest, fundamental changes to the law, flooding, power cuts and failure or destruction of data-carrying cables, storm, floods and other natural disasters, hacker attacks and other unforeseeable, unavoidable and extraordinary events beyond the control of the PROVIDER.

20.3. The Parties agree to inform each other immediately should circumstances constituting force majeure arise.

## 21. USER's indemnity obligation

21.1. The USER undertakes to indemnify the PROVIDER from all claims brought by third parties - including other USERS - asserted by such parties against the PROVIDER on the basis of an infringement of their rights caused by the USE of BRODOS.NET by the USER. The indemnity obligation shall not apply if and to the extent that the USER is not responsible for the infringement of rights. In the event that the indemnity obligation stipulated above applies, the USER shall also be responsible for bearing costs for appropriate legal defence.

21.2. In the event that a claim is brought against the PROVIDER within the meaning of the above provision, the USER undertakes to provide the PROVIDER immediately with all information and documentation required to carry out an appropriate investigation into the entitlement to the claim and for appropriate legal defence. The USER shall take care to ensure that such information is complete and accurate.

## 22. Assignment of claims, transferability of Contract of Use, commissioning sub-contractors

22.1. Claims against the PROVIDER to which the USER is entitled arising from and in connection with the User Agreement (cf. section I.1.2) cannot be assigned to third parties.

22.2. The PROVIDER may at its discretion transfer the User Agreement to companies affiliated to the PROVIDER within the meaning of §§15 ff. AktG (German Stock Corporation Act). The PROVIDER shall inform the USER immediately if it intends transferring the contract in this manner.

22.3. The PROVIDER may at its discretion commission third parties as sub-contractors for performing the obligations stipulated in the User Agreement. The PROVIDER shall, however, still be liable for ensuring that the terms of the Contract are duly performed even if third parties are involved in this way.

22.4. The USER may not transfer the User Agreement to a third party without first obtaining prior written consent from the PROVIDER. This applies irrespective of the nature of the planned transfer.

## 23. Copyright and other rights to BRODOS.NET, decompilation

23.1. The USER is not entitled to rework, amend or redesign BRODOS.NET in any way, or to reproduce, circulate or subject BRODOS.NET to reverse engineering or decompilation.

23.2. The USER undertakes vis-à-vis the PROVIDER to refrain from anything which is capable of jeopardising the PROVIDER's rights to BRODOS.NET or one of the functions of BRODOS.NET.

23.3. The USER shall be liable to the PROVIDER if rights are infringed by third parties who USER has allowed to access BRODOS.NET. Such liability shall not apply if the USER can prove that he is not responsible for the violation.

23.4. Notwithstanding the provisions stipulated in § 69 e Copyright Act, the USER is not allowed to transform BRODOS.NET or individual functions thereof from the object code to the source code in any way going beyond the right of use stipulated in the User Agreement (cf. section I.1.2).

23.5. In the event that the USER breaches the obligations pursuant to this section 22.1, the PROVIDER is entitled to terminate the User Agreement (cf. section I.1.2) with immediate effect if the USER fails to respond to a previous warning. The above shall not affect the PROVIDER's right to assert claims for damages, unless the USER is not responsible for the damage caused.

## 24. Property and copyright rights to objects and software belonging to PROVIDER, rights to data saved by USER

24.1. The USER does not acquire any property rights for the objects and software provided for his use during the term of the User Agreement (cf. section I. 1.2.), or any rights going beyond use on the basis of this User Agreement, in particular no rights under copyright law.

24.2. Trademarks, company logos, other means of identification or proprietary notices, copyright notices or any other features serving to identify the PROVIDER or BRODOS.NET may *neither* be removed by the USER from BRODOS.NET *nor* altered in any way *nor* used by the USER without first obtaining the prior explicit consent of the PROVIDER.

24.3. If when using BRODOS.NET the USER saves data in BRODOS.NET, such data shall remain at the disposition of the USER. The PROVIDER is not entitled to any rights to such data.

## 25. Data privacy and data processing, USER's indemnity obligation

25.1. The PROVIDER undertakes to take all necessary precautions concerning data privacy and data backup stipulated in current data privacy provisions, in particular in accordance with the Data Privacy Statement which the USER can access at all times at [www.brodos.net](http://www.brodos.net) and which can be saved in the working memory of the USER's computer and/or printed out. Furthermore, the PROVIDER undertakes when operating BRODOS.NET and allowing it to be used by the USER to comply with all organisational and technical measures for backing up data stipulated by law.

25.2. If the PROVIDER collects, processes or uses personal data by order of the USER, such measures shall be carried out in accordance with the scope of the instructions given by the USER ("commissioned data processing"). The USER remains the owner of the data and is accordingly the only party with rights of disposal and ownership over all user-specific data. The USER commissions the PROVIDER with taking all organisational and technical measures necessary for rational data processing and for securing the data stipulated in sentence 1 against loss, unauthorised alterations or unauthorised access. The PROVIDER shall take the technical and organisational security precautions and measures stipulated in the Annex to §9 German Data Protection Act (BDSG).

25.3. Unless stipulated otherwise, the USER is not entitled to obtain access to the PROVIDER's premises where the system components and storage media used for operating BRODOS.NET are located. The above shall not affect the right of the USER's data protection officer to check to a reasonable extent and after having provided prior written notice that, when operating BRODOS.NET, the PROVIDER treats personal data in accordance with the requirements stipulated in the Annex to §9 BDSG and other terms and conditions stipulated by law or in contracts.

25.4. The PROVIDER shall ensure that personal data of the type mentioned above shall be treated confidentially and shall not be passed on to third parties without authorisation.

25.5. The PROVIDER shall place all employees involved in implementing the User Agreement under an obligation to act in accordance with the data privacy provisions stipulated in §5 BDSG, unless they are already obliged to comply with comparable provisions.

## 26. Non-disclosure

The Parties undertake to treat all information relating to the other Party which they learn of whilst implementing the Contract of Use (cf. section I. 1.2) with the utmost confidentiality.

## 27. Commencement, duration and termination of User Agreement

27.1. A User Agreement is concluded between the Parties once the USER has registered to USE BRODOS.NET and has accepted these Terms (cf. section I.1.2.).

27.2. Unless agreed otherwise between the Parties in writing the User Agreement is concluded for an indefinite period. It can be terminated by either party to the end of a month, but no earlier than three (3) months after the contract is concluded. The notice period is two (2) months for the USER and three (3) months for the PROVIDER.

27.3. The right to terminate the contract without notice shall not be affected by the above.

27.4. The PROVIDER shall be entitled to terminate the User Agreement for cause (cf. section I.1.2.) if the USER

a) falls into arrears with payment of charges or a not inconsiderable part of charges

or

b) falls into arrears with payment of an amount equivalent to the charges due to be paid by the USER for a period of two months for a period longer than two (2) months

.

27.5. Each Party may also terminate the User Agreement for cause if

a) an application for insolvency proceedings to be commenced against the assets of the other Party is filed and a proceeding of this nature is declined for lack of assets;

b) debt enforcement measures taken against one of the Parties are unsuccessful or such measures are not rescinded within the period of one month;

c) a significant deterioration arises in the financial circumstances of one of the Parties or there is a serious indication that the same is imminent, jeopardising the execution of the Contract;

d) one of the Parties has breached essential provisions stipulated in the User Agreement or

e) one of the Parties fails to comply with one of the obligations in the User Agreement and, provided it is possible to remedy or cease the breach, fails to do so within ten (10) days of being requested to do so by the other Party.

27.6. Notice of termination of the User Agreement must be given in writing in order to be effective.

## 28. Obligations of Parties upon termination of contract

28.1. The USER undertakes to copy and remove from BRODOS.NET all data, information and documents stated at the end of section 2.7.b), and all e-documents (cf. section 2.15.b), in particular customer, supplier and accounting documents at his own expense and at his own risk in good time before the termination of the User Agreement concluded between the Parties (cf. section I. 1.2.) The PROVIDER undertakes to provide the USER with a corresponding data copying or download function in BRODOS.NET. The USER can find a more detailed description of this data copying or download function in the Brodos Workbook or at [www.brodos.net](http://www.brodos.net).

28.2. The PROVIDER undertakes to delete all data in BRODOS.NET belonging to the USER upon termination of the User Agreement concluded between the Parties (cf. section 1.1.2.) in accordance with the written instructions given by the USER, but at the latest three (3) months after termination of the contractual relationship.

28.3. If so requested by the USER, once the Contract has been terminated, the PROVIDER shall provide the USER a backup copy of the data entered in BRODOS.NET at that time in return for payment in advance. The PROVIDER shall provide the USER with this backup copy on a standard data carrier which shall be sent to the address given in writing by the USER to the PROVIDER in advance. This service rendered by the PROVIDER shall be charged for in accordance with the current price list published at [www.brodos.net](http://www.brodos.net).

28.4. The USER undertakes to return all objects obtained from the PROVIDER during the term of the contract immediately upon termination of the contract. Any BRODOS.NET applications saved on the USER's server or computer shall be deleted or de-installed immediately thereafter.

## **29. Written form, communication between PROVIDER and USER**

29.1. All declarations to be submitted by the Parties in connection with the User Agreement (cf. section 1.1.2.) shall be given in writing or by email. Whenever "written form" or "in writing" is used in these Terms, it is sufficient for the respective documentation to be sent by email.

29.2. Declarations which the PROVIDER has to give to the USER shall be sent both to the postal address and the email address entered by the USER in his user account. The USER has sole responsibility for ensuring that the respective information in the user account is up to date.

## **30. Applicable law**

These Terms and the contractual relations between the Parties relating to the use of BRODOS.NET as well as the interpretation thereof are subject to the non-unified laws of the Federal Republic of Germany. The provisions stipulated in the UN Convention on the International Sale of Goods of 11 April 1980 (CISG) shall not apply.

## **31. Place of Performance and Jurisdiction**

31.1. If the USER is an entrepreneur, a legal entity under public law or a special fund under public law, or if the USER does not have a regular domicile in Germany, the place of jurisdiction for all legal disputes arising from or in connection with the use by the USER of BRODOS.NET shall be Baiersdorf, Germany.

31.2. The place of performance is Baiersdorf.

## **32. Amendments to Terms**

32.1. The PROVIDER reserves the right to amend these Terms at all times and without stating the reason. The PROVIDER shall send the amended Terms to the USER by email not later than one month before they are due to come into effect. If the USER does not object to

the amended Terms coming into effect within two (2) weeks of receiving them, the new Terms shall be deemed to have been accepted. The PROVIDER shall draw the USER's attention to the significance of the period stated above in the email containing the amended Terms.

32.2. If the USER objects to the amendment to the Terms in accordance with the above section 32.1 within the stated period, the PROVIDER shall be entitled to terminate the User Agreement pursuant to section 27.2.

## **33. Saving clause**

In the event that one or several of the clauses in these Terms is or are invalid, this shall not affect the validity of the remaining provisions.

## **II. SPECIAL TERMS OF USE FOR HOME AREA**

### **1. Area of Validity**

Use of the HOME AREA by the USER is governed in addition to the general part of these TERMS (cf. section I.) and in accordance to section I.1.3 of the General Part by the following “**Special Terms of Use for HOME AREA**”.

### **2. Consent for receiving BRODOS.NET newsletter**

The USER hereby grants his consent for the PROVIDER to send him the BRODOS.NET newsletter for information purposes in accordance with the provisions of both the general part of these Terms (cf. section I.2.8) and the Special Terms of Use for the HOME Area (cf. section II.). The USER can restrict the contents of the newsletter addressed to the USER to certain product categories at his own discretion (cf. section I.2.8.c)).

### **3. Rights and obligations of the USER**

- 3.1. The USER is not entitled to demand a certain number of BRODOS.NET newsletters from the PROVIDER nor to demand that the newsletter is sent at a certain frequency. The USER is also not entitled to demand that the PROVIDER provides him with a BRODOS.NET newsletter for the products or product categories for which the USER has activated the HOME area.
- 3.2. If a USER advertises his products and/or services in a BRODOS.NET newsletter, he shall be solely responsible vis-à-vis the PROVIDER for ensuring that the applicable advertising material is correct and complete. The USER shall also be solely responsible for ensuring that this advertising material does not infringe any rights of third parties.
- 3.3. The USER shall release the PROVIDER at its first request from all claims of third parties brought against the PROVIDER on the basis of the contents in the BRODOS.NET newsletter for which the USER is responsible pursuant to section 3.2 above.

### **4. Obligations of PROVIDER**

- 4.1. In the HOME area, the PROVIDER only distributes advertising information and material from USERS and third parties. The USER or, respectively, third parties who place the advertisements are solely responsible for the contents of the advertising material in question and for ensuring that it is correct and complete. The PROVIDER accepts no responsibility or liability in this respect vis-à-vis the USER except in the case of intentional conduct.
- 4.2. The PROVIDER is under no obligation to the USER to check the contents of a BRODOS.NET newsletter to ensure that they are correct, complete, comply with legal provisions or safeguard the rights of third parties.

### III. SPECIAL TERMS OF USE FOR BRODOS PRODUCT CATALOGUE

#### 1. Area of validity

Use of the BRODOS product catalogue by the USER is governed in addition to the general part of these TERMS (cf. section I.) and pursuant to section I.1.3 of the General Part above by the “**Special Terms of Use for the BRODOS product catalogue**”.

#### 2. Price comparison function

The PROVIDER continually compares prices and makes calculations online in order to be able to recommend prices for the USER at present and in the future (price comparison function).

#### 3. Rights and obligations of the USER; Consent

3.1. The USER is entitled to incorporate additional items into the BRODOS product catalogue and to add to entries already made in the catalogue relating to the products. Such additions must, however, only be made in accordance with the following proviso:

- a) New products must be entered into the correct product category in the BRODOS product catalogue. If there are any doubts as to which product category a new product should be allocated to, the USER shall consult with the PROVIDER in advance before entering the product into the product catalogue.
- b) New items shall not be entered into the product catalogue or existing entries added to by the USER if this would have a negative effect on the informativeness and usefulness of the BRODOS product catalogue.
- c) New items must fulfill without any doubt the conditions stipulated in section I.10 of the General Part of these Terms regarding inadmissible GOODS and in particular the “BRODOS Guidelines for Inadmissible Goods” contained therein.

3.2. If a USER makes any alterations of the nature described in section 3.1 above to the BRODOS product catalogue, he shall be solely responsible vis-à-vis the PROVIDER for ensuring that the respective alteration is correct and complete. The USER shall also be solely responsible for ensuring that the data and information entered into the BRODOS product databank by the USER does not infringe any rights of third parties.

3.3. The USER shall release the PROVIDER at its first request from all claims of third parties brought against the PROVIDER on the basis of the alteration to the BRODOS product catalogue for which the USER is responsible pursuant to section 3.2 above.

3.4. The BRODOS product catalogue may only be used by the USER within the framework and for the purpose of using BRODOS.NET and individual functions thereof. Unless agreed otherwise in writing with the PROVIDER, the USER is not entitled to copy and /or export the contents of the BRODOS product catalogue from BRODOS.NET or to take any technical measures which allow contents to be copied or exported in this manner for himself or on behalf of third parties.

3.5. In order to be able to guarantee the price comparison function described in section 2 above, it is necessary for the PROVIDER to use the USER’s connection between POS hardware and the internet (POS-hardware-internet connection). The USER hereby agrees that the PROVIDER may use these internet connection for the purposes described in section III.2.

#### IV. SPECIAL TERMS OF USE FOR BRODOS MARKETPLACE

##### 1. Area of validity

Use of the BRODOS MARKETPLACE by the USER is governed in addition to the general part of these TERMS (cf. section I.) and pursuant to section I.1.3 of the General Part above by the following “**Special Terms of Use for the BRODOS MARKETPLACE**”.

##### 2. General principles governing the use of BRODOS Marketplace

- 2.1. The PROVIDER provides the technical framework and the organisational parameters for trading in (both selling and purchasing) GOODS (cf. section I.2.10.a) via the BRODOS Marketplace in accordance with these Terms. The PROVIDER reserves the right to alter this framework and the organisational parameters at its own discretion. The PROVIDER shall take the interests of the USERS into account if and when any such alterations are made.
- 2.2. A prerequisite for using the BRODOS Marketplace is that the distribution, marketing and selling of GOODS and offering such GOODS does not violate any statutory and/or official provisions, orders and prohibitions, these Terms or any other requirements which the PROVIDER stipulates must be complied with in order for the BRODOS Marketplace or BRODOS.NET to be used.
- 2.3. If USERS trade via the BRODOS Marketplace, in particular offering GOODS for sale and concluding contracts for purchasing, acquiring and delivering GOODS, the PROVIDER shall not become party to these legal relations and contracts. The relevant legal relationships and contracts are exclusively concluded between the respective USERS, without involving the PROVIDER. Performance of the above-mentioned contracts and handling of any disruptions to services which may occur during performance of the contract also exclusively concerns the respective USERS without involving the PROVIDER.
- 2.4. Any publications made by a USER shall not be checked by the PROVIDER. In particular, the PROVIDER shall not as a rule check whether such publications are indeed legitimate, correct and complete. Publications made by a USER explicitly do not reflect the opinion of the PROVIDER.
- 2.5. Each USER is responsible for the contents and legality of the contracts concluded between him and another USER concerning the selling of GOODS. The PROVIDER does not accept, neither explicitly nor implicitly, any warranty, guarantee or liability for
  - a) ensuring that statements and declarations made by a USER when concluding a contract are accurate and complete,
  - b) the goods and services offered on BRODOS.NET, in particular as regards their properties,
  - c) actions and declarations made by a USER relating to the use of the BRODOS Marketplace, in particular regarding the purchasing and selling of GOODS and

- d) the actual and commercial ability of a USER to perform and execute the contracts he concludes via the BRODOS Marketplace.

- 2.6. If necessary, the PROVIDER shall provide USERS with special programmes and/or software applications for using the BRODOS Marketplace. Use thereof depends on the USER agreeing to the special terms and conditions of use and/or licensing requirements.

##### 3. Rights and obligations of the USER

- 3.1. The USER is entitled to publish certain contents on the BRODOS Marketplace in accordance with these Terms for the purpose of marketing and distributing his GOODS. He is solely responsible for ensuring that such contents and the GOODS he offers for sale on the BRODOS Marketplace are legal. The USER is also responsible for ensuring that all contents he enters and GOODS he offers do not infringe any rights of third parties. The PROVIDER shall stipulate the framework for such publications at its own discretion.
- 3.2. The USER shall release the PROVIDER at its first request from all claims of third parties brought against the PROVIDER on the basis of the contents on the BRODOS Marketplace for which the USER is responsible pursuant to section II.3.2 above or the GOODS he markets and sells via the BRODOS Marketplace.
- 3.3. The USER is not entitled to USE the BRODOS Marketplace for any purpose other than marketing, distributing and offering GOODS for sale and purchasing and acquiring GOODS.
- 3.4. Before entering into a contract with another USER via the BRODOS marketplace, each USER is responsible for checking the identity and creditworthiness of the other USER, taking the General Principles for the use of BRODOS.NET (cf. section I.9, and in particular section I.9.7) into account.
- 3.5. When using the BRODOS Marketplace and in particular when marketing and selling GOODS, the USER shall strictly observe and comply with the provisions stipulated in section I.10 of the General Part of these Terms concerning inadmissible GOODS and the BRODOS Guidelines for Inadmissible Goods and the Publishing of Contents.
- 3.6. The USER undertakes to provide an accurate and detailed description of all GOODS he markets and offers for sale via the BRODOS marketplace and not to enter any misleading images of the relevant GOODS in the BRODOS marketplace.
- 3.7. Furthermore, the USER undertakes to keep all GOODS he offers via the BRODOS Marketplace ready for dispatching and transferring to the USER who has ordered them immediately upon the conclusion of the contract (see section IV.5. below), unless the USER states a different delivery deadline in the relevant offer.

##### 4. Rights of PROVIDER

- 4.1. If products offered for sale by a USER on the BRODOS marketplace fail to comply with the provisions stipulated in section I.10 of the General Part of these

Terms governing the entering of goods and publishing of contents in BRODOS.NET, the PROVIDER shall be entitled to remove the relevant product offered for sale by the USER from the BRODOS Marketplace. In this instance, the PROVIDER shall also be entitled to the rights stipulated in section I.10.6.

- 4.2. If the PROVIDER intends offering the possibility of having GOODS offered by USERS in the BRODOS Marketplace displayed to other USERS using mobile devices, the PROVIDER shall be entitled to edit the relevant offers accordingly in order to ensure that they can be displayed in this manner.

## 5. Concluding a contract between USERS via BRODOS Marketplace, contractual conditions, execution of contract

- 5.1. By entering GOODS in the BRODOS Marketplace, the relevant USER is deemed to have made an undefined group of people a binding offer to conclude a contract concerning the purchase and/or acquisition of the GOODS.
- 5.2. The conditions for purchasing and acquiring the GOODS are governed *in the first instance* by the conditions cited by the USER in the offer he makes, provided these are legally permissible. *In the second instance*, these conditions are also governed by applicable statutory provisions.
- 5.3. An offer made by a USER within the meaning of section 5.1 above is accepted by another USER by this USER pressing the button "sales offer" and thereafter once more explicitly confirming the purchase and acquisition by pressing the relevant button.
- 5.4. The purchase price given by a USER for the GOODS he has offered for sale is given as the net price excluding statutory VAT, unless explicitly stated otherwise by the USER.
- 5.5. Unless explicitly stated otherwise by the USER, the purchase price offered by a USER for any particular GOODS does not include postage and packaging costs. The USER selling the GOODS shall only be able to claim payment for such costs and any additional price components from the USER making the purchase if the USER explicitly states when offering the relevant GOODS for sale that these components and costs are to be paid in addition to the net price by the USER making the purchase.
- 5.6. The USER is only entitled to take back a binding offer for the sale of GOODS to the extent that this is permitted in accordance with pertinent statutory provisions.
- 5.7. Unless explicitly agreed otherwise with the USER making the purchase, the USER is obliged to transfer the GOODS which are the subject of the contract concluded between two USERS (cf. section 5.3 above) without encumbrance to the other USER immediately following the conclusion of the contract.

## V. SPECIAL TERMS OF USE FOR REPAIRS SERVICE

### 1. Area of validity

Use of the repairs service (cf. section I.2.11 of the General Part of these Terms) by the USER is governed in addition to the General Part of these Terms (cf. section I.) and pur-

suant to section I.1.3 of the General Part above by the following *Special Terms of Use for Repairs Service*.

### 2. General principles governing the use of repairs service

- 2.1. The PROVIDER provides the technical framework and the organisational parameters for using the repairs service in accordance with these Terms. He reserves the right to alter this framework and the organisational parameters at his own discretion. The PROVIDER shall take the interests of the USER into account if and when any such alterations are made.
- 2.2. The repairs function itself does not offer USERS a platform for initiating and concluding contracts concerning the repair of faulty and defective products. Instead, it assists USERS in having repairs of this nature done by allowing the experiences other USERS of BRODOS.NET have made with the relevant companies to be exchanged over BRODOS.NET and giving relevant companies the option of offering services in this area via BRODOS.NET.
- 2.3. Taking the basic structure of the repairs function pursuant to section I.2.11.a) of the General Part of these Terms into account, the information provided by this function stems from the statements and information provided by USERS in this area of BRODOS.NET. The PROVIDER does not check details and information entered by USERS, which can also be misleading or inaccurate. The PROVIDER is not responsible for ensuring that the given details and information are lawful, correct and complete. The PROVIDER does not accept any liability or guarantees vis-à-vis the USER in this respect.

### 3. Rights and obligations of the USER

- 3.1. The USER is entitled pursuant to these Terms to advertise himself or his company under the repair processing function in BRODOS.NET as a provider of repair services. The USER may not use this feature to advertise or market himself in any other way.
- 3.2. If a USER gives and spreads any details or information relating to himself, other USERS or third parties, such information must *both* comply with pertinent legal provisions *and* be completely true. When giving details or information, the USER shall remain objective and shall refrain from making any derisive comments about any other person and from crossing the boundary from giving objective criticism to becoming abusive. Such information and details shall not infringe the rights of third parties.
- 3.3. If the USER promotes and advertises his services in the repair processing function, he shall do so at his own responsibility. He shall be solely responsible vis-à-vis the PROVIDER for ensuring that all claims made in his promotion and advertising are correct, complete and lawful. The USER shall in particular be responsible for ensuring at his own responsibility that the pertinent legal provisions, in particular those stipulated in the Act against Unfair Competition (UWG), are complied with.
- 3.4. The USER shall indemnify the PROVIDER at its first request from all claims of third parties asserted by third

parties against the PROVIDER on the basis of a failure of the USER to comply with the obligations and instructions pursuant to sections 3.1 - 3.3 above.

- 3.5. If the USER enters information concerning experiences made with repair companies in BRODOS.NET, such information shall be based on the USER's own perception.
- 3.6. The USER is strictly forbidden from abusing the repair processing function.

#### **4. Rights of PROVIDER**

Irrespective of the provisions stipulated in section I.10.6 of the General Part of these Terms, the PROVIDER is entitled *either* to remove or revise any entries or statements published by a USER in the repair processing function itself *or* to demand that the USER responsible for the entry removes or revises the entry if there is good cause for such action to be taken. There is deemed to be good cause for such action if the USER fails to comply with the obligations and instructions pursuant to sections 3.1- 3.3 above. The PROVIDER retains the right to publish reasons constituting good cause at [www.brodos.net](http://www.brodos.net) even once these Terms have come into effect.

## VI. SPECIAL TERMS OF USE FOR BRODOS MAIL CENTRE

### 1. Area of validity

Use of the BRODOS mail centre by the USER is governed in addition to the General Part of these Terms (cf. section I.) and pursuant to section I.1.3 of the General Part above by the following *Special Terms of Use for BRODOS mail centre*.

### 2. Sending SMS

The following provisions shall apply for the USER sending SMS via the BRODOS mail centre:

#### 2.1. General Provisions

The capacity available to the USER for sending SMS messages via the BRODOS mail centre is not unlimited, but rather restricted according to the technical and material scope for sending SMS messages guaranteed to the PROVIDER by the companies used by the PROVIDER for processing the SMS service.

#### 2.2. Rights and obligations of the USER

- a) The USER shall be responsible for the contents of his SMS messages and for ensuring that the recipient of the SMS messages agrees with receiving messages of this nature. If it is not entirely clear that the recipient has granted his consent for receiving messages of this nature, the SMS message may not be sent via the BRODOS mail centre. The USER shall refrain from sending spam via the BRODOS mail centre.
- b) The USER is expressly not permitted to send via the BRODOS mail centre any messages or SMS with contents which are unlawful, criminal, harassing, libellous, discriminatory, vulgar, obscene, unauthorised or questionable in any other way.
- c) The USER is not permitted to send premium rate numbers or premium SMS numbers via the BRODOS mail centre.
- d) The USER shall indemnify the PROVIDER from all claims brought against the PROVIDER on the basis of an SMS message sent by the USER via the BRODOS mail centre.

#### 2.3. Rights and obligations of the PROVIDER

- a) The PROVIDER shall save SMS messages sent via the BRODOS mail centre by the USER and certain data incurred when sending messages of this like insofar as the PROVIDER is under a legal obligation to do so, in particular in accordance with the provisions of the Federal Telecommunications Act.
- b) The PROVIDER does not provide the services needed to send SMS messages via the BRODOS mail centre itself. These services are provided by an external telecommunications service provider selected by the PROVIDER at its own discretion.

### 3. Parcel labels

The following additional provisions shall apply to the selling of parcel labels to the USER by the PROVIDER via the BRODOS mail centre:

#### 3.1. General Provisions

- a) The USER shall not be entitled to expect the PROVIDER to make a certain number of parcel labels available at any given time nor to demand that postage-paid labels from any particular dispatch and postal companies are available.
- b) A postage-paid parcel label shall be sold to the USER and the USER's parcel dispatched in the name and on the account of the PROVIDER, but exclusively according to the pertinent General Terms and Conditions of Business or Terms and Conditions of Postage of the dispatch company selected by the USER for dispatching his parcel or package. The USER can check the contents of these Terms and Conditions of Business and Postage via a corresponding link within the BRODOS mail centre. Accordingly, the USER shall comply with these conditions when creating and using the parcel label purchased via the BRODOS mail centre and dispatching the parcel via the corresponding dispatch company.
- c) In accordance with the provisions stipulated in lit. 3.1 above, after a parcel label has been purchased via the BRODOS mail centre by the USER, the dispatch and postage contract is exclusively and directly concluded between the USER and the dispatch company he has selected. The PROVIDER is neither directly nor legally involved in sending and transporting the USER's post, parcels and packages.

#### 3.2. Rights and obligations of the USER

- a) The USER undertakes to provide all information required for purchasing a postage-paid parcel label, in particular weight, size and destination of the parcel or package, fully and accurately in the BRODOS mail centre.
- b) The USER shall be responsible for determining how his letters, parcels and packages are to be dispatched, in particular for ensuring that the correct postage is paid, the correct mode of dispatch is chosen, any dispatch restrictions stipulated in the dispatch company's terms and conditions are complied with and appropriate insurance is taken out.
- c) The USER shall be solely responsible for ensuring that the parcel label purchased via the BRODOS mail centre is attached correctly and his parcel or package is dropped off correctly at the parcel acceptance point of the relevant dispatch company.
- d) In the event that the USER violates the General Terms and Conditions of Business or Dispatch of the pertinent dispatch company, and a claim is brought against the PROVIDER by the dispatch company as a result of this violation, for example if inaccurate information is given concerning the weight of the USER's parcel / package, the USER undertakes to indemnify the PROVIDER completely from any claims of this nature at the first request.

#### 3.3. Rights of PROVIDER

If the USER fails to comply with these Terms and/or the General Terms and Conditions of Business or terms of dispatch of the relevant dispatch company and the price paid

by the USER for the parcel label purchased from the PROVIDER was too low, the PROVIDER is entitled to demand that the USER subsequently pays the price which the USER ought to have paid for the parcel label if he had complied correctly with the terms.

## **VII. SPECIAL TERMS OF USE FOR BRODOS-DMS**

### **1. Area of validity**

Use of the BRODOS DMS by the USER is governed in addition to the General Part of these TERMS (cf. section I.) and pursuant to section I.1.3 of the General Part above by the following *Special Terms of Use for BRODOS DMS*.

### **2. General principles governing the use of BRODOS DMS**

- 2.1. E-documents are saved and managed in a data server in the cloud. The server on which the USER's e-documents (cf. I.2.15.b) of the General Part of the Terms) are saved is located within the European Union.
- 2.2. BRODOS-DMS does not provide the USER with the option to search for E-documents using attributes such as file name, file ending, file size or date of amendment. It is not currently possible to carry out a full text search within these documents.

### **3. Rights and obligations of the USER**

- 3.1. The USER is solely responsible for all contents saved or created at BRODOS DMS, in particular e-documents. Such contents are classed as foreign contents for the PROVIDER within the meaning of the Telemedia Act.
- 3.2. The USER shall be solely responsible for ensuring that contents saved by the USER at BRODOS DMS are backed up correctly and regularly.
- 3.3. The USER shall be responsible for ensuring that the storage capacity rented at BRODOS.NET for saving his e-documents is sufficient for the required purpose. The USER shall contact the PROVIDER in good time should he require an extension to his storage capacities at BRODOS DMS.
- 3.4. In the event that third parties access or attempt to access without authorisation the storage capacities allocated to the USER by the PROVIDER or any of the contents stored therein, the USER is obliged to notify the PROVIDER immediately. The same shall apply in the event of contamination by a virus or similar disruptions.
- 3.5. Upon termination of the User Agreement (cf. section I.1.2 of the General Part of these Terms), the USER is obliged to copy and remove all contents saved in BRODOS-DMS, in particular his e-documents, before deleting them from the BRODOS.NET. The storage capacities rented by the USER from the PROVIDER shall be deleted in their entirety by the USER upon termination of the contract.

### **4. Rights and obligations of the PROVIDER**

- 4.1. Notwithstanding the provisions stipulated in section I.2.15.e) of the General Part of these Terms, the PROVIDER undertakes to allow the USER to use BRODOS DMS and to provide the USER with the storage capacities the USER has booked for the purpose of saving his e-documents in BRODOS DMS during the term stipulated in the contract between the Parties and in return for payment of the agreed fee.

## VIII. SPECIAL TERMS OF USE FOR POS HARDWARE

### 1. Area of validity

Use of the POS hardware by the USER is governed in addition to the General Part of these TERMS (cf. section I.) and pursuant to section I.1.3 of the General Part above by the following *Special Terms of Use for POS Hardware*.

### 2. General principles governing the use of POS hardware, duration, termination

- 2.1. If the USER chooses the option within BRODOS-NET of using POS hardware, the USER shall receive from the PROVIDER the right to use this hardware for a certain period of time in return for payment of a certain charge. The hardware shall be in a condition fit for use but not necessarily brand new.
- 2.2. The contract concerning the use of the POS hardware shall be agreed for the period of time stated by the USER when selecting the hardware. If the USER does not select any specific period of use, the contract shall be deemed to have been concluded for an indefinite period. In such a case, the rental agreement can be terminated by the USER by giving a notice period of one (1) month to the end of a calendar month and by the PROVIDER by giving a notice period of three (3) months to the end of a calendar month.
- 2.3. Before the USER can be granted the right to use the POS hardware and the PROVIDER can send the hardware to the USER, the USER must pay the one-off charge which the PROVIDER has stipulated as a prerequisite for sending the hardware to the USER pursuant to the BRODOS.NET price list published at [www.brodos.net](http://www.brodos.net). The PROVIDER shall retain this one-off payment permanently, no matter for how long the parties agree that the POS hardware can be used by the USER. The PROVIDER is not obliged to return this fee to the USER in whole or part upon termination of the contract for the use of POS hardware.

### 3. Rights and obligations of the USER

- 3.1. The USER may only use the POS hardware rented from the PROVIDER for the purpose of using BRODOS.NET.
- 3.2. With the exception of his employees, the USER is not entitled to allow third parties to use the POS hardware.
- 3.3. The USER is obliged to notify the PROVIDER immediately of any disruptions or damage to the rented POS hardware.

### 4. USER's guarantee claims

- 4.1. Guarantee claims the USER may have against the PROVIDER shall not apply if the fault is caused by improper use of the POS hardware, the USER uses accessories not approved by the PROVIDER or the POS hardware is not used in accordance with the agreed conditions. This shall not apply if the fault claimed for by the USER is not caused by any of the circumstances stipulated above.
- 4.2. Defects shall be corrected free of charge by repairing or correcting the POS hardware. The PROVIDER shall be granted an appropriate period of time for doing so.

The PROVIDER is entitled to exchange the POS hardware or certain components thereof for the purpose of remedying the defect. In this case, the USER shall be obliged to send the defective POS hardware or the defective components to the PROVIDER. The PROVIDER shall bear reasonable transport costs.

### 5. Liability of USER

- 5.1. The USER shall be liable for all damage caused by improper use of the rented POS hardware, in particular for damage caused by interfering with or changing the POS hardware in any way as well as for accidentally destroying or damaging the POS hardware.
- 5.2. In the event of a write-off or accidental destruction of the rented POS hardware, the USER shall reimburse the PROVIDER with the market value of this hardware. If a third party is responsible for causing the damage, the USER shall assign to the PROVIDER all claims to damages vis-à-vis the third party which are not already due directly to the PROVIDER.

### 6. Rights and obligations of the PROVIDER

The PROVIDER undertakes to allow the USER to use the POS hardware selected for using BRODOS.NET during the term stipulated in the contract between the Parties and in return for payment of the agreed fee.

### 7. Return of POS Hardware

- 7.1. Upon termination of the rental relationship, the USER shall return the entire POS hardware to the PROVIDER in a condition suitable to use according to the terms of the contract. The hardware shall be returned to the address published by the PROVIDER at [www.brodos.net](http://www.brodos.net). The USER shall bear the costs incurred for returning the goods, as well as the risk of damage, loss or destruction of the rented POS hardware during transport.
- 7.2. Any damage to the POS hardware ascertained upon return shall be noted and recorded. The USER shall bear all costs for repairing the damaged POS hardware, unless the damage which is caused falls within the scope of use according to the terms of the contract or the damage was caused by conduct for which the PROVIDER is responsible.
- 7.3. Unless agreed otherwise, the USER shall bear the costs for dismantling, packing and returning the POS hardware.
- 7.4. If the USER fails to return the rented POS hardware after termination of the rental agreement even after having been requested to do so by the PROVIDER, the PROVIDER shall be entitled to demand a charge for the period going beyond the period agreed in the contract at the rate of the previously agreed rental charge. This does not affect the PROVIDER's right to assert further claims for damages.

## IX. SPECIAL TERMS OF USE FOR BRODOS.NET HOTLINE

### 1. Area of validity

Use of the BRODOS.NET hotline by the USER is governed in addition to the General Part of these TERMS (cf. section I.) and pursuant to section I.1.3 of the General Part above by the following *Special Terms of Use for the BRODOS.NET hotline*.

### 2. General principles governing the use of BRODOS.NET hotline, software problems

- 2.1. To the extent that the purpose of the BRODOS.NET hotline is to answer general queries the USER may have concerning the use of BRODOS.NET, qualified employees are available to the USER during the service hours (cf. next section 3.3) who are in a position to answer technical, organisational and business-related questions concerning the use of BRODOS.NET pursuant to these Terms and in English.
- 2.2. In addition, in those cases where the PROVIDER makes software available via BRODOS.NET, the PROVIDER shall use this hotline pursuant to these TERMS and in particular these *Special Terms and Conditions for the Use of the BRODOS.NET hotline* to provide the USER with a framework for analysing and resolving disruptions and provide those services which are necessary for keeping BRODOS.NET up and running or reinstating BRODOS.NET after any disruption. Accordingly, the services of the BRODOS.NET hotline include finding solutions to software problems occurring in connection with the use of BRODOS.NET. **“Software problems”** refer solely to disruptions to the smooth running of the BRODOS.NET software or individual features thereof if such disruptions are capable of causing more than just an insignificant disruption to the use of BRODOS.NET.
- 2.3. Disruptions to the use of BRODOS.NET which are caused by a third party claiming that the software infringes his industrial property rights shall not be defined as software problems as described above; such disruptions shall exclusively be governed by the provisions stipulated in section II.17. of the General Part of the Terms. Disruptions to BRODOS.NET caused by one of the following actions on the part of the USER, one of his employees entitled to use BRODOS.NET or a third party commissioned by the USER shall not be classed as software problems:
  - a) infringing the system requirements for USING BRODOS.NET or the USER violating the security measures pursuant to section II.5 of the General Part of the Terms;
  - b) using BRODOS.NET for any purpose other than those stipulated in the Terms;
  - c) configuring BRODOS.NET incorrectly;
  - d) if the USER or one of his employees who is entitled to use BRODOS.NET makes changes to BRODOS.NET;
  - e) disruptions which are caused by the USER interfering with the programme code of the software components of BRODOS.NET;

- f) disruptions caused by using BRODOS.NET together with other computer programmes which are not the subject of the User Agreement (cf. section II.1.2 of the General Part of the Terms);
- g) disruptions caused by failing to use BRODOS.NET as agreed in the contract or caused by programming carried out by the USER or a third party on the software components of BRODOS.NET;
- h) disruptions caused by the servers or computers used by the USER in connection with BRODOS.NET;
- i) disruptions caused by technology and service providers for internet transmission used by the USER in connection with BRODOS.NET after the interface between the PROVIDER’s networks and the public Internet;

### 3. Type of services rendered by BRODOS.NET hotline, communication, service times, emergency hotline

- 3.1. The PROVIDER shall provide the services of the BRODOS.NET hotline in accordance with the latest technological standards. The PROVIDER shall use appropriately qualified staff for providing the BRODOS.NET hotline services and shall only use tried and tested procedures, tools and instruments the PROVIDER knows to be suitable and is skilled at using and which comply with current technological standards.
- 3.2. All communication between the Parties regarding the use of the BRODOS.NET hotline shall be carried out preferably using the BRODOS.NET ticket system and in English. Using his personal log-in credentials, the USER can access various ticket templates via the website [www.brodos.net](http://www.brodos.net) in the menu under TICKETS > CREATE TICKET in order to generate the relevant support request for the PROVIDER. BRODOS.NET allocates a unique ticket ID as a reference for the support request under which the progress of the query and the communication between the parties is documented. This ticket ID is given in all further communications regarding the query. A query is deemed to have been submitted to the BRODOS.NET hotline once a BRODOS.NET ticket ID has been generated for the query in question. The USER also has the option of contacting the hotline by email, telephone or fax. The BRODOS.NET hotline can be reached as follows:
 

Telephone: 0049 (0)9133 7770 800,  
 Fax: 0049 (0)9133 7770 148,  
 E-mail: [support@brodos.net](mailto:support@brodos.net)
- 3.3. Unless the additional option of the emergency hotline (see section 3.4 below) has been booked, the BRODOS.NET hotline shall be available to the USER for support during the following **“service times”**: Monday until and including Friday, between 09:00 and 18:00 (Central European Time).
- 3.4. As an additional service and in return for paying an additional charge, the USER can make use of an **“emergency hotline”** for solving software problems (see section 2.2 above). This is available to the USER outside the **“service times”** defined in 3.3 above, and is therefore available 24x7. The charges due by the

USER for using this emergency hotline and the scope of the services provided by this emergency hotline are stipulated in an SLA Agreement to be concluded in addition to the User Agreement. (Service Level Agreement)

#### 4. Technical requirements for using BRODOS.NET hotline

- 4.1. The USER undertakes to create the technical requirements required in order to use the BRODOS.NET hotline for analysing disruptions and having disruptions remedied by the same. In addition to the regulations stipulated in I.5 and the provisions stipulated in 6 above, this also entails providing the BRODOS.NET hotline and its employees the possibility of temporarily accessing the USER's computer or Kiosk using a suitable remote maintenance tool, making it easier to analyse and remedy software problems.

#### 5. Analysing and remedying disruptions, reporting disruptions by USER

- 5.1. The PROVIDER shall remedy disruptions reported by the USER within an appropriate period pursuant to sections 5.2 to 5.3 below. For this purpose, disruptions shall be categorised as follows:
- a) **"Category 1"**: the disruption concerns topping up ContentCard and prepaid products via the ContentCard top-up process and its interfaces (1 https interface currently primary PPU7 and secondary PPU6);
  - b) **"Category 2"**: the disruption concerns the brodos.net administration website ([www.brodos.net.de](http://www.brodos.net.de)), XML server for customers, users and changing limits, delivering PIN's and import interface;
  - c) **"Category 3"**: the disruption concerns all other services and functions of BRODOS.NET

The defects are allocated to one of the above categories at the discretion of the USER, paying due attention to the effects the disruption has to his business and the interests of the PROVIDER.

- 5.2. The PROVIDER shall react to any errors notified by the USER within the following **"reaction times"**:
- a) For category 1 errors, the BRODOS.NET hotline shall start analysing the disruption within 30 minutes of receiving notification of the disruption. Disruptions of this category shall be remedied as a rule within 4 hours of the disruption being reported. If the disruption has still not been remedied within this time period, the PROVIDER shall work without interruption and without regarding the service times to remedy the disruption (24 x 7).
  - b) For category 2 errors notified within the service times defined in 3.3, the BRODOS.NET hotline shall start analysing the disruption within 2 hours of receiving notification of the disruption. Disruptions of this category shall be remedied no later than 10 hours after the disruption is reported. For category 2 errors notified outside the service times defined in 3.3, the BRODOS.NET hotline shall start analysing and remedying the disruption when the next service time begins.

- c) For category 3 errors, the BRODOS.NET hotline shall start remedying the respective disruptions at their own discretion. The USER is not entitled to have the disruption remedied within a certain, appropriate period for errors of this nature.

- 5.3. If the disruption is reported outside the service times stipulated in 3.3 above, the reaction times for the BRODOS.NET hotline shall commence upon the commencement of service hours the next working day. If the disruption is reported during the service hours, any remaining reaction time left over at the end of the service hours of this working day shall be carried over to the beginning of the service hours the following day. The provisions stipulated in this paragraph shall not apply if the USER has opted to use the emergency hotline pursuant to section 3.4 above.
- 5.4. If when processing or analysing a reported disruption it becomes clear that the error category given by the USER or the disruption itself does not apply or has been created by circumstances beyond the control of the PROVIDER, the PROVIDER shall be entitled to invoice the customer for the effort or extra effort incurred for processing or analysing the reported disruption as a result of an incorrect error category being given at an appropriate hourly rate in accordance with the standard hourly rates charged by the PROVIDER. These hourly rates are in accordance with the PROVIDER's valid price list published at [www.brodos.net](http://www.brodos.net).
- 5.5. Disruptions can only be reported by the USER by the person responsible for the systems (authorised employee) appointed by him pursuant to section 6.1 below.

#### 6. Co-operation on the part of the USER

- 6.1. The customer shall appoint at least one and at most three employees (hereinafter **"authorised employees"**) as points of contact for all questions arising in connection with analysing and remedying software problems. The authorised employees must have the necessary technical and expert knowledge in order to be able to follow the instructions given and solutions proposed by the BRODOS.NET hotline when searching for and remedying errors; the actions they take regarding use of this hotline are taken for and against the USER.
- 6.2. The USER shall take all measures which can reasonably be expected of him to determine, localise and document disruptions and errors. He is obliged to report any defects without undue delay. The USER shall provide the BRODOS.NET hotline with system logs and snapshots, affected incoming and outgoing data, intermediary and test results and other documentation suitable for demonstrating the disruption or error.

#### 7. Guarantee

Any defects regarding the services of the BRODOS.NET hotline pursuant to these Special Terms and Conditions for Use of the BRODOS.NET Hotline (cf. section IX of these Terms) shall be remedied by the PROVIDER in accordance with the provisions stipulated in sections 2, 3 and 5 of these Special Terms and Conditions. Section I.16 (Material

Defects) of the General Part of the Terms shall apply accordingly.

**X. SPECIAL TERMS OF USE FOR CONTENTCARD****1. Area of validity**

- 1.1. Use of ContentCard (cf. section I.2.122 of the General Part of these Terms) by the USER is governed in addition to the General Part of these Terms and pursuant to section I.1.3 of the General Part above by the following *Special Terms of Use for ContentCard*.
- 1.2. The ContentCard function uses various other functions of BRODOS.NET. If these other functions described in section I.2.7 to I.2.17 are used whilst using ContentCard, the corresponding provisions of the General Part of these Terms (sections I.2.7 to I.2.17) and the respective Special Terms of Use for the functions which are used shall apply accordingly.

**2. Definitions**

- 2.1. The ContentCard system includes a technical platform which can be used to offer USERS the option of purchasing, selling and processing virtual or digital products using internet technology.
- 2.2. Multimedia-based works for data carriers are called digital products and codes for activating such encrypted contents are referred to as licence keys. Contents can be all prepaid services or other services which can be paid for in advance.
- 2.3. The ContentCard function connects the retailer to the USER (e.g. Distributor) and the stocks of voucher codes held by the USER.
- 2.4. ContentCard is also used to refer to a voucher with a serial number and a PIN to access licence keys for digital and virtual products. Digital and virtual products for data carriers are referred to as contents and codes for activating such encrypted contents are referred to as licence keys. In addition, ContentCard also refers to the purchasing and direct top-up and booking of both monetary credit and credit in the form of points, credits or similar virtual currencies to a user account or card account.

**3. General principles governing the use of ContentCard**

- 3.1. The PROVIDER provides the technical framework and the organisational parameters for trading in and/or distributing and selling and purchasing digital products via BRODOS.NET in accordance with these Terms. The PROVIDER reserves the right to alter this framework and the organisational parameters at its own discretion. The PROVIDER shall take the interests of the USERS into account if and when any such alterations are made.
- 3.2. A prerequisite for using ContentCard is that the distribution, marketing and selling of digital products and offering such products for sale does not violate any statutory and/or official provisions, orders and prohibitions, these Terms or any other requirements which the PROVIDER stipulates must be complied with in order for ContentCard or BRODOS.NET to be used.
- 3.3. If USERS trade via ContentCard, in particular offering digital products for sale and concluding contracts for purchasing, acquiring and delivering digital products, the PROVIDER shall not become party to these legal

relations and contracts. The relevant legal relationships and contracts are exclusively concluded between the respective USERS, without involving the PROVIDER. Performance of the above-mentioned contracts and handling of any disruptions to services which may occur during performance of the contract also exclusively concerns the respective USERS without involving the PROVIDER.

- 3.4. Any publications made by a USER shall not be checked by the PROVIDER. In particular, the PROVIDER shall not as a rule check whether such publications are indeed legitimate, correct and complete. Publications made by a USER explicitly do not reflect the opinion of the PROVIDER.
- 3.5. Each USER is responsible for the contents and legality of the contracts concluded between him and another USER concerning the selling of digital products. The PROVIDER does not accept, neither explicitly nor implicitly, any warranty, guarantee or liability for
  - a) ensuring that statements and declarations made by a USER when concluding a contract are accurate and complete,
  - b) the digital products offered on BRODOS.NET, in particular as regards their properties,
  - c) actions and declarations made by a USER relating to the use of ContentCard, in particular regarding the purchasing and selling of digital products and
  - d) the actual and commercial ability of a USER to perform and execute the contracts he concludes via ContentCard.
- 3.6. The services of PROVIDER concerning the ContentCard function do not cover a 100% availability of BRODOS.NET nor the technical availability of the direct purchase function, the HTTPS interface or access to the terminals and Kiosk. The PROVIDER shall, however, take all reasonable efforts to ensure that the websites, the technical possibility of making direct purchases, the HTTPS interface and access to the MiniKiosks are available without disruption as far as possible. Maintenance, security or capacity measures as well as events which are beyond the control of the PROVIDER - such as disruptions to communication networks, power outages etc. - may lead to a short term or temporary discontinuation of the available services.

**4. Rights and obligations of the USER**

- 4.0. If the USER is a distributor or wholesaler, he shall ensure that these BRODOS.NET Terms are accepted and incorporated by the respective retailers as well. The USER shall ensure that the obligations he is subject to pursuant to these Terms are also imposed on the retailers.
  - 4.1. The USER shall be entitled to contact the retailer directly regarding all questions relating to the use of BRODOS.NET.
  - 4.2. The USER is entitled to publish certain contents on BRODOS.NET in accordance with these Terms for the purpose of marketing and distributing his digital products. He is

solely responsible for ensuring that such contents and the digital products he offers for sale on BRODOS.NET are legal. The USER is also responsible for ensuring that all contents he enters and digital products he offers do not infringe any rights of third parties. The PROVIDER shall stipulate the framework for such publications at its own discretion.

- 4.3. The USER shall release the PROVIDER at its first request from all claims of third parties brought against the PROVIDER on the basis of the contents on BRODOS.NET for which the USER is responsible pursuant to section II.3.2 above or the digital products he markets and sells on BRODOS.NET.
- 4.4. The USER is not entitled to USE ContentCard for any purpose other than marketing, distributing and offering digital products for sale and purchasing and acquiring digital products.
- 4.5. Before entering into a contract with another USER, each USER is responsible for checking the identity and creditworthiness of the other USER, taking the General Principles for the use of BRODOS.NET (cf. section I.9, and in particular section I.9.7) into account.
- 4.6. When using ContentCard and in particular when marketing, purchasing and selling digital products, the USER shall strictly observe and comply with the provisions stipulated in section I.10 of the General Part of these Terms concerning inadmissible digital products and the BRODOS Guidelines for Inadmissible Digital Products and the Publishing of Contents.
- 4.7. The USER undertakes to provide an accurate and detailed description of all digital products he markets and offers for sale via BRODOS.NET and not to enter any misleading images of the relevant digital products on ContentCard or in BRODOS.NET.
- 4.8. Furthermore, the USER undertakes to keep all digital products he offers on ContentCard ready for dispatching and transferring to the USER who has ordered them immediately upon the conclusion of the contract (see section IV.IV.5.), unless the USER states a different delivery deadline in the relevant offer.

## **5. Rights of PROVIDER**

- 5.1. If products offered for sale by a USER fail to comply with the provisions stipulated in section I.10 of the General Part of these Terms governing the entering of digital products and publishing of contents in BRODOS.NET, the PROVIDER shall be entitled to remove the relevant product offered for sale by the USER. In this instance, the PROVIDER shall also be entitled to the rights stipulated in section I.10.6.

- 5.2. If the PROVIDER intends offering the possibility of having digital products offered by USERS in ContentCard displayed to other USERS using mobile devices, the PROVIDER shall be entitled to edit the relevant offers accordingly in order to ensure that they can be displayed in this manner.

## **6. Liability for Compromising Data**

- 6.1 The User can upload and save codes and licence numbers (PINs) in the data storage repositories (database) provided by BRODOS.NET. The PINs saved there are intended for sale and are delivered during the ContentCard process.
- 6.2 If and to the extent that these PINs are compromised by third parties, unlawfully and circumventing the safety measures implemented by the PROVIDER, the PROVIDER shall inform the USER immediately upon learning of this itself. Immediately upon being notified accordingly by the PROVIDER, the USER shall block, deactivate and remove the compromised PINs from the system.
- 6.3 If any damage is caused to the USER as a result of data being compromised in this way, the PROVIDER shall be liable up until the point that the USER was notified in accordance with the provisions stipulated in sections I.19, I.20 and I.21 of these Terms. Once the USER has been informed by the PROVIDER that data has been compromised, the PROVIDER shall cease to be liable to the USER for any damaged incurred.