

LICENSE AND SUBSCRIPTION TERMS

1. DEFINITIONS.

1.1. "Affiliate" means with respect to a party, any person or entity that controls, is controlled by, or is under common control with such party, where "control" means ownership of fifty percent (50%) or more of the outstanding voting securities (but only as long as such person or entity meets these requirements).

1.2. "Agreement" means the Order Form (including the Schedules thereto) together with these License and Subscription Terms.

1.3. The term "**Confidential Information**" is defined in Section 9 (Confidential Information).

1.4. "Cores" means for the purposes of the Agreement and the Order Form the number of physical cores per CPU that Customer uses for worker nodes.

1.5. "Documentation" means the feature descriptions and help text for a Program made available to Customer by Kubermatic and updated from time to time, electronically or otherwise.

1.6. "Enterprise Edition" means the Kubermatic Kubernetes Platform Enterprise Edition (EE) of Kubermatic Kubernetes Platform that includes certain premium features beyond the features of the Community Edition, and which is licensed under the Agreement, specifically Section 3.1 to 3.3 of these Terms.

1.7. "Fees" means the fees to be paid by Customer for the license of the Enterprise Edition, and/or, as the case may be, for Support and/or other services ordered, for the duration of any Subscription Term as further described in the applicable Order Form.

1.8. "Internal Business Purposes" means Customer's internal use of the Program(s) for its ordinary course of business, including using the Program(s) to provide managed services for customers of Customer through IT Systems owned by Customer, but excluding, *inter alia*, an installation and use of the Program(s) on or for IT systems licensed/owned by third parties, regardless of whether such IT systems are operated for or at such third parties or are housed, hosted or otherwise operated by Customer for such third parties.

1.9. "Community Edition" means the Kubermatic Kubernetes Platform Community Edition (CE) of Kubermatic Kubernetes Platform that is freely available and licensed under the Apache License, Version 2.0.

1.10. "Order Form" means an order form executed by the parties by which Customer licenses a Program and purchases the corresponding subscription pursuant to the terms of the Agreement.

1.11. "Program" or "Programs" means a machine-readable version of the Community Edition and/or, where ordered, the Enterprise Edition as set forth in the applicable Order Form, including all Updates provided to Customer by Kubermatic. "Program" does not include any application programming interfaces unless specifically included in an Order.

1.12. "RAM" means for the purposes of the Agreement and the Order Form the random access memory of the worker nodes.

1.13. "Subscription Fee Report" means the report sent by Customer to Kubermatic that provides a detailed overview of the usage of the licensed Enterprise Edition over the then passed 12 months, in particular the scope of Customer's deployment of the Enterprise Edition (how many vCPUs, how much RAM etc.).

1.14. "Subscription Term" means each term set forth in the applicable Order Form during which Customer is entitled to use the Enterprise Edition and/or, as the case may be, the term during which the Customer receives Support and/or other services ordered under an Order Form.

1.15. "Support" means the support services described in Section 4 (Customer Support).

1.16. "Support Plan" means the then-current document "Commercial Support Descriptions and Service Levels" or a replacement thereof.

1.17. "Terms" means these License and Subscription Terms

1.18. “Update” means corrections, fixes and other updates to a Program, as well as any new version or release of a Program, if and when made generally available by Kubermatic to its customers.

1.19. “vCPUs” means for the purposes of the Agreement and the Order Form the physical central processing units (CPUs) that are assigned to the virtual machine(s) of Customer that Customer uses for worker nodes.

2. PROGRAM ORDERS.

2.1. Ordering. Each order of the Enterprise Edition and/or Support and/or other services will be set forth in an Order Form, which will be binding on both parties upon acceptance and execution by authorized representatives of the parties. Each Order Form will be governed by the Agreement, and, upon execution by both parties, the terms of the Agreement will be incorporated therein. In the event of any conflict between the terms of the Agreement and the terms of an Order Form, the terms of the Order Form will prevail to the extent of such conflict. Additional or different terms in any purchase order, invoice, or similar document will not modify or add to the terms of the Agreement or any Order Form, even if not expressly rejected by Kubermatic.

2.2. Program and Support. Kubermatic will deliver each ordered Program and the Support on the terms set forth in the Agreement and the applicable Order Form.

2.3. Updates. From time to time, Kubermatic will make Updates to each Program licensed and/or made available hereunder available to Customer and Customer will implement each such Update within reasonable time.

3. LICENSE GRANT FOR THE ENTERPRISE EDITION.

3.1. License. Subject to the terms and conditions of the Agreement and the applicable Order Form, Kubermatic hereby grants to Customer for the applicable Subscription Term a non-exclusive, non-transferable, non-sublicensable license to install and use the Enterprise Edition for Customer’s Internal Business Purposes, in accordance with the Documentation and as set forth in the applicable Order Form.

3.2. Scope of Use. The Order Form may set forth the permitted number of vCPUs, RAM and/or other metrics that are (initially) covered by the Order Form. Customer is not prevented from using the Enterprise Edition in excess of the scope of use set forth in the Order Form (e.g. on/with more vCPUs than initially anticipated); Customer will, however be charged for any such excess usage in accordance with the pricing that underlies the Fees as agreed between the parties in the applicable Order Form.

3.3. License Restrictions. The Subscription does not afford a perpetual license, and Customer has no right to retain or to use the Enterprise Edition for any reason after the end of the Subscription Term (whether through expiry or termination). Customer may make a reasonable number of copies of the Enterprise Edition exclusively for inactive back-up, disaster recovery, failover or archival purposes. Customer has no right to rent out, lease, assign, transfer, display or otherwise distribute or make the Enterprise Edition available to any third party. Unless otherwise expressly stated in the Agreement or the applicable Order Form, the Enterprise Edition may not be used in the performance of services for or on behalf of any third party or as a service bureau. Except as permitted by statutory law, Customer may not modify, disassemble, decompile or otherwise reverse-engineer the Enterprise Edition nor permit any third party to do so.

3.4. Community Edition. For the avoidance of doubt, the Community Edition is not licensed under the Agreement but under the terms of the Apache License, Version 2.0.

4. SUPPORT.

Customer Support. During the Subscription Term, Kubermatic will provide Support to Customer based on the support policy applicable to the product.. In no event will Kubermatic be obligated to provide Support for: (a) any version of a Program that Customer has modified or altered in any way, excluding the setting of parameters as permitted by the Program; or (b) any version of a Program other than the version specified in the support policy. Any services in addition to, or other than, the Support services requested by Customer will be set forth in a separate Order Form executed by Kubermatic and Customer, subject to the then-current Professional Services Terms.

5. OPERATIONAL DATA.

5.1. Operational Data; Compliance. The Programs may collect certain operational data, which may be used by Kubermatic for various business purposes that may include customer support, verifying the need for and providing Updates to the Programs, market research, product development and planning, verifying Customer's compliance with the terms and conditions of the Agreement, and protecting Kubermatic's intellectual property. Such operational data may be transmitted to Kubermatic automatically by the respective Program, if any inasmuch as documented in the Documentation. Operational data that is not collected and transmitted automatically through the Program, shall be provided by Customer upon Kubermatic's request.

5.2. Subscription Fee Report. On any anniversary of the Effective Date of Customer's original Order Form, Customer shall provide to Kubermatic a Subscription Fee Report that covers the previous 12 months and allows Kubermatic to ascertain that all Fees due for the license subscription in the Enterprise Edition have been invoiced and paid. If Fees are thus outstanding, Kubermatic will invoice them accordingly.

5.3. Audit Right. Sections 5.1 and 5.2 notwithstanding, during the Subscription Term and for a period of no less than five (5) years after the termination or expiration of Subscription Term, Customer shall maintain complete, clear and accurate records of its activities conducted under the Agreement, including of the data and information underlying and supporting the Subscription Fee Reports submitted to Kubermatic. During the term of the Agreement and for five (5) years after termination or expiration hereof, Kubermatic (or its designee) shall have the right to conduct an inspection and audit of all the relevant books and records of Customer to verify Kubermatic's compliance with the terms and conditions of the Agreement, including those terms related to Fee payments and protection of Kubermatic's intellectual property. Such audit will be subject to the confidentiality obligations set forth in Section 9 hereof and conducted during regular business hours at Customer's offices, in such a manner as not to unreasonably interfere with Customer's normal business activities. In no event shall audits be made hereunder more frequently than once every twelve (12) months. If such inspections should disclose any missing reporting or underreporting, Customer shall promptly pay Kubermatic such amount together with interest thereon at the rate of 9% p.a. above the base rate from the date on which such amount became due. In addition, if such inspections should disclose any missing reporting or underreporting of usage and therefore payments owed to Kubermatic (as determined by such inspections) in an amount greater than five percent (5%) of the Fees due for the relevant twelve (12) months Subscription Term, the Customer shall promptly pay Kubermatic any and all costs associated with the audit.

6. FEES AND PAYMENT TERMS.

6.1. Fees and Payment Terms. The Customer shall pay the Fees and Support fees (if any) in the currency specified in the relevant Order Form. Customer is required to pay the Fees applicable to the entire Subscription Term as an advance payment per month or contract year as specified in the relevant Order Form, whether or not Customer actually uses the Program and even if less than the amount specified in the relevant Order Form is used during the relevant month or contract year. Unless otherwise set forth in an Order Form, Fees are due within 14 days from the date of invoice.

6.1.1 Subject as set out below, Kubermatic may at its discretion adjust the Fees with effect from the start of a Renewal Term by giving two months' notice of the fee adjustment to Customer ("Fee Adjustment Notice"):

6.1.2 Any change ("Discretionary Applicable Change") applied to the Fees is determined by the index of gross monthly salaries of full-time employees in Germany in the information technology services sector (currently published in the quarterly figures by the German Federal Statistics Office at "Fachserie 16, 2.2, J 62"). The Discretionary Applicable Change must not be greater than the change in the index. If that index is discontinued, the applicable index will be the index published that most closely reflects changes in average gross monthly earnings in that sector.

6.1.3 For the first fee adjustment under the Order Form, the Discretionary Applicable Change shall be the change in the index published at the time of entering into the Order Form from the index as last published at the time of the Fee Adjustment Notice. If the Fee has already been adjusted in the past, the Discretionary Applicable Change is the change from the index that had been most recently published when the previous Fee Adjustment Notice was given to the index that had most recently been published when the new Fee Adjustment Notice was

given.

6.1.4 The fee change is deemed to be agreed by the parties if the Order Form is renewed for the renewal period (under section 11) unless Customer, by giving written notice 90 days prior to the expiration date of the preceding Subscription Term, terminates the Order Form with effect from the expiration of the relevant Subscription Term.

6.2. Extension of Subscription Scope. If Customer extends its Subscription by ordering additional vCPUs, RAM and/or other metrics as the case may be, Kubermatic will charge Customer accordingly, such extension of scope, however, not affecting the regular cycle of Customer's Subscription Term.

6.3. Overusage of the Enterprise Edition. The Parties agree that a usage of the Enterprise Edition by the Customer beyond the scope licensed under the applicable Order Form – whether in the form of using the Enterprise Edition beyond the agreed vCPUs limits, in excess of the RAM limits or by exceeding any other agreed usage limitation agreed in the Order Form – (each such usage an “Overusage”) shall not, as such, constitute a breach of the Agreement or Kubermatic’s intellectual property right in the Enterprise Edition, but shall automatically give rise to an obligation of the Customer to compensate Kubermatic for the Overusage in accordance with the following provisions:

(a) The Customer shall notify Kubermatic in writing (email to suffice) of any Overusage by the end of each calendar quarter of the Subscription. Further, the Customer shall, in any event and regardless of whether an Overusage has occurred, notify Kubermatic in writing (email to suffice) by the end of each Subscription Term or, where the Subscription exceeds a duration of 12 months, by the end of each 12 months portion of the Subscription Term, of the actual usage of the Enterprise Edition over the previous 12 months in terms of the license metrics agreed in the Order Form.

(b) In the event of an Overusage having occurred, the Customer shall pay to Kubermatic the amounts due for the Overusage in accordance with Kubermatic’s then-current price list, as per the following.

aa) If the Customer notifies Kubermatic of an Overusage in accordance with its obligation under Section 6.3. a) but does not wish to extend its licensed usage of the Enterprise Edition through a new Order Form, the Customer shall pay to Kubermatic the Fees that would have arisen for the usage of the Enterprise Edition as it actually occurred (i.e. including the Overusage,) to be calculated on the basis of Kubermatic’s then-current price list, for the entire time as from the day on which during the (initial, as the case may be) Overusage first occurred, minus the Fees that the Customer has already paid for the subscription of the Enterprise Edition under the applicable Order (if any). In this case, however, discounts that Kubermatic may have granted to the Customer on the price list under the Order shall apply.

bb) If the Customer notifies Kubermatic of an Overusage in accordance with its obligation under Section 6.3. a) and does with to extend its licensed usage of the Enterprise Edition to as least to the level of the Overusage that has occurred, a new Order Form will be made accordingly, the Subscription Term to then begin anew. If the new Order Form effectively leads to an overpayment that the Customer has already made for the original Subscription Term, such overpayments will be credited against the Fees paid under the new Order Form. Under this Section 6.3. c), the Customer is not obliged to pay for the Overusage retroactively. Also, discounts that Kubermatic may have granted to the Customer on the price list under the Order shall apply.

cc) If the Customer has not notified Kubermatic of the Overusage at the latest by the beginning of the calendar quarter of the Subscription that follows the calendar quarter of the Subscription during the (initial, as the case may be) Overusage first occurred, the Customer shall pay to Kubermatic the Fees that would have arisen for the usage of the Enterprise Edition as it actually occurred (i.e. including the Overusage) in accordance with Kubermatic’s then-current price list for the entire time as from the day on which during the (initial, as the case may be) Overusage first occurred, minus the Fees that the Customer has already paid for the subscription of the Enterprise Edition under the applicable Order (if any). In this case, discounts that Kubermatic may have granted to the Customer under the Order shall not apply.

If the Customer extends its licensed usage of the Enterprise Edition in agreement with Kubermatic, a new Order Form will be made. In this case, discounts that Kubermatic may have granted to the Customer under the original Order Form will be applied as from the effective date of the new Order Form, and the Subscription Term will begin anew in accordance with the new Order Form.

- (c) If the Customer is obliged to render additional payment to Kubermatic under this Section 6.3., Kubermatic will issue a corresponding invoice.

7. WARRANTY FOR THE ENTERPRISE EDITION.

7.1. Limited Warranty. The functions, performance etc. of the Program(s) as well as its suitability for the use for their intended purpose are set forth in the applicable product description, in particular the Documentation.

7.2. Application of the Statutory Provisions. Section 377 of the German Commercial Code (HGB) shall apply accordingly. In all other respects, the provision of the German Civil Code on rental contracts shall apply, subject, however, to this Section 7 and to Section 8.

7.3. Performance of Warranty Obligations. During the Subscription Term, the following shall apply:

- (a) Kubermatic warrants (*gewährleistet*) that the Program is free of defects that reduce or hinder its suitability for the use as intended by the Agreement. A non-material reduction of such suitability shall not be taken into account, however.
- (b) Warranty claims shall be excluded if Customer has modified the Program or has not used it in accordance with the system requirements set forth in the Documentation, unless Customer can demonstrate that the modification(s) and/or the specific use have not caused the defect(s) in question.
- (c) For warranty claims to arise hereunder, the alleged defect must be reproducible.
- (d) If warranty claims are not excluded under Sections 7.3 (a), (b) and/or (c), the following shall apply:
 - (aa) Kubermatic may fix the defect by removing the defect from the Program, by circumventing the defect or by making a new version of the Program available to Customer that does not contain the defect in question.
 - (bb) If Customer receives an Update, Customer shall implement this Update except where this cannot be reasonably expected due to the circumstances of the individual case. Kubermatic may also fulfil its obligations hereunder by providing an Update for download, provided that Kubermatic shall inform Customer thereof and offers its assistance with any installation problems that Customer may experience.
 - (cc) If Kubermatic does not succeed in remedying the defect within a reasonable time, Customer may set a reasonable deadline; if the deadline runs out without Kubermatic having remedied the defect, Customer shall be entitled to reasonably reduce the Fees, or to terminate the Agreement for cause if the conditions set forth in section 314 of the German Civil Code have been met. If Customer raises damage claims instead of, or in addition to, the aforementioned rights, Section 10 shall apply.
- (e) Warranty claims that Customer may have hereunder shall always apply to the release of the Program in which, as per the Customer's report, the defect has first appeared. A defect that appears in an Update of the Software made available under the Agreement can therefore not give rise to warranty claims regarding the release originally delivered at the time of entering into the Agreement.
- (f) The first alternative of section 536a (1), as well as section 536a (2) of the German Civil Code shall not apply.
- (g) For the avoidance of doubt, this Section 7 shall only apply to the Enterprise Edition (for the Community Edition, cf. clause 7 of the Apache License, Version 2.0).

8. INTELLECTUAL PROPERTY INDEMNIFICATION.

8.1. Indemnification. At its sole expense, Kubermatic will defend and indemnify Customer against any third party claim arising out of any allegation that the Program infringes any copyright or trademark or misappropriates any trade secret of a third party. Subject to the conditions set forth Section 8.2 having been met, Kubermatic will pay damages finally awarded by a competent court as a result of such claim or agreed to in settlement of such claim.

8.2. Conditions. As conditions of Kubermatic's obligations under this Section 8, Customer must: (a) promptly notify Kubermatic in writing of such claim and furnish a copy of each communication or notice relating to the alleged infringement; (b) give Kubermatic sole control over the defense and negotiation of any settlement of such claim; and (c) give Kubermatic all reasonable assistance as requested by Kubermatic.

8.3. Exclusions. Kubermatic's obligations under this Section 8 do not apply to any Program to the extent that it (a) has been modified by persons or entities other than Kubermatic, if the alleged infringement relates to such modification, (b) has been combined with other products, processes or materials not supplied or recommended by Kubermatic, where the alleged infringement relates to such combination, (c) is the result of Kubermatic's compliance with Customer's direction to modify the Program or Documentation, or (d) continues to be used after Kubermatic has made available to Customer a non-infringing release of the Program.

8.4. Other Terms. In the event of any claim brought or threatened against any party that would enjoin or otherwise limit the use of the Program, then Kubermatic may, at its option in the event the Enterprise Edition is affected: (a) obtain for Customer the right to continue to use the Program; or (b) replace or modify the Program so it becomes non-infringing. If the resolutions described in sub-sections (a) and (b) are not reasonably available to Kubermatic, Kubermatic may terminate the applicable Order Form and refund a prorated amount of the Fees.

8.5. Other Claims. Payments made under this Section shall always be credited against other claims that Customer may be entitled to.

9. CONFIDENTIALITY.

9.1. Obligations. Each party agrees not to permit access to, nor to disclose or display, the other party's Confidential Information other than to its authorized employees, contractors and advisors who are bound by confidentiality agreements that are similarly restrictive and who need to use or have access to the other party's Confidential Information as permitted by the Agreement. Each party will use such Confidential Information solely in connection with the performance of the activities described in the Agreement. Each party will use at least the same degree of care in protecting the other party's Confidential Information as such party generally exercises in protecting its own similar proprietary information. Notwithstanding any provision to the contrary, either party may disclose the other party's Confidential Information as required by a court order or other legal demand; provided that such party gives reasonable notice to the other party of such request to allow the other party to seek a protective order or similar legal protection. Each party agrees that, in the event of a threatened or actual unauthorized disclosure of Confidential Information, the disclosing party will be entitled to such equitable or injunctive relief as may be deemed proper by a court of competent jurisdiction.

9.2. "Confidential Information" includes documents, data, software and information which, when provided by one party to the other, are clearly identified as "Confidential" or "Proprietary", or that a reasonable person would understand to be confidential or proprietary based on the content of the information and the circumstances of its disclosure. "Confidential information" does not include information that: (a) is already known to the receiving party at the time of disclosure; (b) is or subsequently becomes publicly available through no wrongful act of the receiving party; (c) is disclosed to or provided to the receiving party by a third party without restriction; or (d) is developed independently by the receiving party without use of or access to the disclosing party's Confidential Information. The requirements described in Section 9.1 (Obligations) notwithstanding, Kubermatic's Confidential Information includes the Enterprise Edition. In addition, in no event will suggestions for new or enhanced functionality for Kubermatic's products or services be considered confidential or proprietary to Customer.

10. LIMITATION OF LIABILITY.

10.1. Unlimited Liability. Kubermatic shall be liable in accordance with the applicable statutory provisions (whether in contract, tort or otherwise) for damages suffered by Customer that (i) have been caused as a result of Kubermatic, its legal representatives, its agents or auxiliaries having acted, or having failed to act where there was a duty for Kubermatic to act, in gross negligence or with willful or malicious intent; (ii) have occurred as a result of a breach of a guarantee (the term "guarantee" in accordance with the applicable statutory meaning); (iii) that are a result of a culpably caused injury to life, limb or health; and/or (iv) that are subject to product liability under the

German Product Liability Act.

10.2. Limitations. Other than in cases that fall under Section 10.1.,

- (a) Kubermatic shall only be liable for damages that result from breaches of material contractual obligations (whether in contract, tort or otherwise). “Material contractual obligations” are such contractual obligations the compliance with which the respective other party will reasonably expect and which, if breached, jeopardize the achievement of the aim(s) and purpose(s) of the contract.
- (b) Kubermatic’s liability shall be limited to damages that are typically foreseeable in the context of an agreement such as this Agreement.
- (c) Kubermatic shall not be liable for indirect, consequential or special damages.
- (d) Kubermatic’s liability shall also be limited to maximum amounts equivalent of the Fees paid by Customer for the three-month period immediately preceding the event that has given rise to the claim, and 500,000 Euros overall.

10.3. Exclusion of Liability. Any liability other or beyond the liability provided in Sections 10.1. and 10.2. is excluded.

10.4. Loss of Data. Customer is responsible for ensuring the routine and case-related backup of its data. Irrespective of Sections 10.1. to 10.3., if Customer suffers damages that result from the loss of data, Kubermatic shall in each case only be liable for the damages insofar as the damages could not have been avoided by Customer carrying out data backups of all relevant data in regular intervals or as a case reasonably demands according to good industry practice.

11. TERM; RENEWAL AND TERMINATION.

11.1. Term and Renewal. The Subscription Term will begin on the Effective Date agreed in the applicable Order Form and may be terminated as set forth in this Section 11 et seq. In the event that an Order Form does not state a Subscription Term, Effective Date or other similar term of permitted use, the Subscription Term will start on the date of Customer’s signature, the date of issuance of Customer’s Purchase Order or a comparable date. The standard Subscription Term is 12 months. Unless otherwise set forth in the applicable Order Form, the Subscription Term will automatically renew for consecutive periods of 12 months each unless the Subscription is terminated by giving 90 days written notice prior to the end of the then-current Subscription Term.

11.2. Termination for Program Discontinuation. In the event Kubermatic chooses to discontinue a particular Program (end of life), Kubermatic may terminate the Agreement and the all ongoing Subscriptions by giving 6 months prior written notice, provided, however, that the effective date of such termination will not occur before the end of Customer’s then-current Subscription Term(s). For the avoidance of doubt, the Customer may continue using the Community Edition under the terms and condition of the Apache License, Version 2.0.

11.3. Termination for Cause. In addition to any other termination rights provided in the Agreement, either party may terminate the Agreement and applicable Order Form immediately upon written notice if or to terminate the Agreement for cause if the conditions set forth in section 314 of the German Civil Code have been met, provided, however, that a termination by Kubermatic arising out of Customer’s culpable material breach of the Agreement shall not relieve Customer of paying any outstanding Fees.

11.4. Customer Obligations upon Termination. Upon termination of the Agreement or any Order Form, Customer will: (a) cease the use of the Enterprise Edition; and (b) return to Kubermatic or delete all complete or partial copies of the applicable Enterprise Edition; for the avoidance of doubt, the Customer may continue using the Community Edition under the terms and condition of the Apache License, Version 2.0. Kubermatic may request a certificate signed by an authorized representative of Customer confirming Customer’s compliance with the provisions of this Section 11.4.

12. GENERAL.

12.1 Conclusion of Contracts. Terms and conditions of the Customer shall not apply, even if the Customer refers to them in a standard order form or otherwise in connection with an order and even if Kubermatic has not objected

to them explicitly. In the event of a conflict, the following order of precedence will apply: the Kubermatic Order Form, the Kubermatic License and Subscription Terms, the Kubermatic Commercial Support Service Levels Guidelines.

12.2. Marketing Rights. Kubermatic may use Customer's trade names, trademarks, service marks, logos, domain names and other distinctive brand features in presentations, marketing materials, customer lists, financial reports and Web site listings (including links to its website) for the purpose of advertising or publicizing the use of the Programs. Customer may opt out of granting Kubermatic the foregoing license, or require that Kubermatic execute a separate agreement therefore, by providing written notice to Kubermatic within five (5) calendar days of the date Customer enters into the Agreement.

12.3. Severability. In the event that any provision of the Agreement is held by a court or other tribunal of competent jurisdiction to be unenforceable, such provision will be deemed modified to the minimum extent necessary to render the provision enforceable in a manner that most closely represents the original intent of the parties. In such an event, the remaining terms and conditions of the Agreement will remain in full force and effect.

12.4. Governing Law. The Agreement as well as all Order Forms shall be governed by, and construed in accordance with, the laws of the Federal Republic of Germany under exclusion of all German and European International Private Law as well as the UN Convention on the International Sale of Goods. If Customer is a merchant within the meaning of the German Commercial Code (HGB), section 1, or a public-law juristic person or special fund, the sole place of jurisdiction for all differences arising out of or in connection with the Agreement and/or an Order Form shall be Hamburg, Germany.

12.5. Assignment. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other party's prior written consent (not to be unreasonably withheld) except as provided in this Section 12.4. Notwithstanding the foregoing, either party may assign the Agreement in its entirety (including all Order Forms) to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets without the other party's consent, provided the assignee has agreed to be bound by all of the terms of the Agreement and all fees owed to the other party are paid in full. If a party is acquired by, sells substantially all its assets to, or undergoes a change of control in favor of, a direct competitor of the other party, then such other party may terminate the Agreement upon written notice.