

## **GENERAL TERMS AND CONDITIONS**

of the

### **PCH INNOVATIONS GMBH**

Swinemünder Straße 121

10435 Berlin, Germany

The PCH INNOVATIONS GMBH (hereinafter referred to as "PCH") offers a cross-sector provision of services in the form of development, conception, design, planning, implementation and support of business, design, product and marketing strategies or concepts, in the form of consultancy services for companies and entrepreneurs regarding the development of such strategies and policies, as well as in the form of the development, design and programming of application software, especially for cellular devices. This range of services offered by PCH is aimed at entrepreneurs and companies.

#### **1. Validity of these General Terms and Conditions**

- 1.1 PCH shall provide its services exclusively on the basis of the following general terms and conditions (hereinafter "TERMS") connected with the respective offer from PCH and, if applicable, with the (detailed) concept and / or specification of services developed regarding the respective order. If, in an offer from PCH on the basis of which PCH is commissioned, obligations or conditions are specified that are contrary to provisions in these TERMS, then such clauses in the relevant offer shall, in case of doubt, take precedence over said contrary provisions in these TERMS. Furthermore, any agreements resulting in a deviation from the provisions of these TERMS are valid in written form only.
- 1.2 These TERMS apply to the entire business relationship between PCH and its business and contractual partners provided that said partners (hereinafter: "CLIENT") act as entrepreneurs within the meaning of § 14 BGB (German Civil Code) and that the subject of this business relationship are the above-mentioned services of PCH. In this respect, these TERMS, in their current version, also apply to future orders the CLIENT may place with PCH, even if PCH does not explicitly refer to said TERMS again and they are not explicitly included in the contractual relationship established by the placing of the order. This also applies particularly to further such orders that the CLIENT may place with PCH as part of such a business relationship, whether verbally / by telephone, in writing, by fax, electronically or by e-mail, as well as to changes and additions to an existing order and to the renewal of existing orders.
- 1.3 Any contrary or deviating general terms and conditions from the CLIENT shall be included in a contract between PCH and the CLIENT only if PCH has explicitly confirmed this in writing. If the general terms and conditions of the CLIENT are effectively included in this way, this does not affect the continued validity of these TERMS. If provisions from effectively included

general terms and conditions of the CLIENT are contrary to provisions of these TERMS, the provisions of these TERMS shall apply in case of doubt.

In all other cases, general business conditions of the CLIENT are not binding for PCH even if PCH does not explicitly deny their validity or the CLIENT states that it is willing to execute a contract only upon the inclusion of its general terms and conditions.

- 1.4 PCH reserves the right to change or complement these TERMS with effect for the future. The current version of the TERMS is downloadable at any time from the PCH website via the domain: [www.pch-innovations.com](http://www.pch-innovations.com).

## **2. Conclusion of Contract**

- 2.1. Unless PCH explicitly states otherwise when making an offer, the offers of PCH are not binding and simply invite the CLIENT to offer PCH the conclusion of a corresponding contract by placing the proposed order. Subject to such an expressly deviating statement, a contract with the CLIENT therefore becomes effective only when PCH confirms an order the CLIENT has placed.
- 2.2 If there is no written confirmation of order by PCH, a contract regarding the services offered to and ordered by the CLIENT become effective when PCH starts to provide these services. As long as it is not apparent to the CLIENT, in this case, that PCH has accepted to provide services, it is entitled to demand a declaration from PCH within a reasonable grace period as to whether PCH confirms the order the CLIENT has placed. Following the fruitless expiry of such a grace period for declaration, the CLIENT is no longer bound to the relevant placing of an order.

## **3. Subject Matter of the Contract**

- 3.1 The subject matter of the contract are the services specified in the relevant offer of PCH. These service provisions are complemented, if appropriate, by a (detailed) concept that PCH develops in the course of the execution of the order and that then becomes part of the relevant contract. In case of doubt, the service provisions made in such a detailed concept take precedence over the specification of services in the relevant offer.
- 3.2 If necessary, these TERMS make a distinction between different order categories, especially with regard to any concession of rights to the results of service. This distinction is made according to the kind of service that is to be provided by PCH, based on the order. A contract between PCH and the CLIENT may involve different types of service (e.g. development and implementation) and thus also consist of a combination of such order categories. The type of service affected in a given case and the purpose for which the CLIENT charged PCH with the provision of the relevant service are decisive factors for the applicability of a provision which refers to a particular order category.

A distinction is made between the following order categories:

- a. "Consulting orders" are orders that exclusively involve services that consist of providing the CLIENT with advice on business, design, product and marketing strategies or concepts developed by the CLIENT and especially through an implementation and execution of methods, concepts and processes developed by PCH in this regard, without the participation of PCH in a development of such strategies and concepts.
- b. "Development orders" are orders that exclusively involve services of PCH in the form of the development of business, design, product and marketing strategies or concepts for the CLIENT.
- c. "Implementation orders" are orders that involve services in the form of the implementation of a concept, design or prototype through the production of a specific end product, especially of software, by PCH.

#### **4. Service Provision by PCH**

- 4.1 The type and manner of service provision by PCH is determined by the offer of PCH underlying the relevant order and by a (detailed) concept that may be developed after placing the order. If no detailed provisions have been made, it is at the discretion of PCH to choose the type and manner of provision of service best suited to providing the services ordered by the CLIENT and achieving the objective pursued by the CLIENT when placing the order. This applies particularly to the execution of development orders.
- 4.2 Unless PCH expressly states otherwise, any dates mentioned by PCH are non-binding target dates that are subject, in particular, to the proper cooperation of the CLIENT, its employees and / or its agents as well as to an as-planned and undisturbed execution of the order. Fixed-date orders, meaning a commitment from PCH to provide service at predetermined times or dates, require an explicit written agreement.
- 4.3 If software development services are the subject-matter of the order, the delivery of related manuals and / or documentation is not part of the contract, unless otherwise agreed in a given case. Briefing / training of the CLIENT by PCH regarding the use of developed software is the subject-matter of the order only if expressly agreed in writing.
- 4.4 In cases of force majeure or other unforeseeable events whose effects on the performance of the contract are not attributable to PCH (such as strikes, power failure, civil unrest or government action, general disturbance of the telecommunication networks, etc.), PCH is exempted from its duty to perform for the duration of the resulting interference plus a reasonable start-up period. This also applies to the period of time during which PCH is prevented from providing service due to lack of CLIENT cooperation, provided that PCH had asked the CLIENT to carry out such cooperative efforts.

- 4.5 PCH is entitled to the use of third party companies and entrepreneurs as well as service providers ("subcontractors") to execute an order. PCH shall oblige such subcontractors to protect the legitimate interests of the CLIENT, in particular, to protect its intellectual property rights and company and trade secrets as well as data privacy. PCH shall only allow its subcontractors access to company and trade secrets as well as to confidential CLIENT data, if and to the extent that this is required in each case in order to provide the service assigned to the subcontractor.

## **5. CLIENT Cooperation, Warranty and Indemnity**

- 5.1 The CLIENT is obliged to support PCH by cooperating in the provision of the contractual services of PCH, if and to the extent to which this is conducive to the execution of the respective order, especially to the achievement of the targeted service results. The execution of consulting and development orders requires a lasting cooperation on the part of the CLIENT and in particular the inclusion of its expert staff and specialist departments.

The CLIENT shall always designate a knowledgeable employee who shall be available to PCH during normal working hours and is authorized to make binding declarations on behalf of the CLIENT, particularly with respect to (partial) acceptance as well as defects and changes in the content, scope and form of service provision. If the CLIENT'S designated employee is tied up, the CLIENT will immediately designate an accordingly knowledgeable and authorized representative.

- 5.2 The CLIENT provides PCH, free of charge, with all information, materials and data (hereinafter collectively, "materials") at its disposal and which are required for the execution of the order.

- 5.3 The CLIENT is solely responsible for ensuring that the materials it makes available to PCH, the contractual use by PCH of said materials, as well as the use of said materials in connection with the application by the CLIENT of the results of an order execution

a. do not violate any legally protected interests and rights of third parties, especially any contractual rights, nor any personal rights, copyrights and neighboring rights, nor any intellectual or industrial property rights

and

b. are not contrary to law for any other reason, particularly due to a breach of laws for protection of children and youth, data privacy, fair trade law or the penal code.

The CLIENT guarantees PCH the strict observance and protection of the above laws and regulations, irrespective of the party at fault. Should a third party make a claim against PCH for the violation of such laws and regulations resulting from the contractual use of the materials, the CLIENT is obliged, in this respect, to keep PCH indemnified against all liability and to reimburse all resulting damages and necessary costs, including any necessary legal fees.

- 5.4 Should the CLIENT not make the materials needed for the execution of an order available to PCH on time, despite a related request from PCH, or should the CLIENT not cooperate as requested by PCH and / or as agreed as defined by these TERMS, PCH is not liable for any disadvantages due to the resulting delay in execution of the order.

Such a delay entitles PCH to discontinue its services for the duration of the hindrance plus a reasonable period of grace or, with regard to the still unperformed part of the relevant order, to withdraw entirely or partially from the contract after the fruitless expiry of a reasonable deadline given to the CLIENT to carry out the relevant cooperative effort. For each case in which the delay in the execution of an order is attributable to the CLIENT, PCH may require the CLIENT to compensate any additional expense it may have incurred due to the delay. The amount of compensation for such an additional expense is determined by the remuneration that would be payable by the CLIENT for the execution of the order, based on the corresponding offer of PCH.

## **6. Delivery and acceptance of service results**

- 6.1 PCH delivers (partial) service results owed on the basis of an order by – depending on the nature and content of the service owed in each case – notifying the completion and, where appropriate, acceptability of the relevant services to the CLIENT and / or by handing over, forwarding or presenting the services to the CLIENT or by making them accessible through forwarding of access data.
- 6.2 PCH may deliver partial service results (e.g. concepts, designs, plans, test versions, models, modules, texts etc.), insofar as this is deemed acceptable to the CLIENT. Such partial services are deemed acceptable to the CLIENT, particularly if the further execution of an order, especially the further determination of service contents, is affected by the CLIENT'S evaluation and – if necessary - the acceptance of the respective partial service.
- 6.3 A CLIENT'S acceptance of services provided by PCH is only required if and to the extent that said services have been provided in fulfillment of an obligation to produce a specific product. Decisive factors for acceptability of such services are the properties of the relevant services specified in the respective offer of PCH and in a (detailed) concept possibly developed in the course of the execution of an order. In case there are major defects, the CLIENT may refuse acceptance until the defects have been completely removed. If there are only no major defects, the CLIENT shall accept the relevant services under reserve of such defects, and PCH shall rectify the relevant defects within a reasonable period of time.

Services of PCH whose acceptability has been notified to CLIENT and which are free of major defects shall be deemed as accepted if the CLIENT has not declared acceptance of these within two weeks after their delivery.

## **7. Remuneration of PCH**

- 7.1 The amount of the remuneration to be paid to PCH by the CLIENT for the provision of service is determined in each case according to the offer of PCH, on the basis of which the CLIENT charged PCH with said provision of service. All prices are quoted exclusive of the sales tax applicable on the day the invoice is issued. If the remuneration of PCH is not agreed in individual cases, PCH is due a time-dependent remuneration in the amount of the hourly and / or daily rates of PCH applicable at the time of conclusion of the contract. The CLIENT shall reimburse PCH separately for actual and reasonable expenditures that PCH makes to execute an order.
- 7.2 The CLIENT shall reimburse PCH separately for any extension of an order at the request of the CLIENT resulting in additional expenses, especially in the form of modification, new planning, reorganization and extension of an already placed order. Unless otherwise agreed in individual cases, additional expenses are considered to be such an order extension at the request of the CLIENT, even if such expenses are incurred by PCH for the agreed service provision and clearly did not form part of PCH's offer underlying the relevant order, provided that PCH points this out to the CLIENT before generating such additional expenses and the CLIENT then requests the continued execution of the order.
- 7.3 The remuneration due to PCH is payable in each case after PCH has issued the invoice to the CLIENT. PCH is entitled to require the CLIENT to make progress payments depending on the status of service provision, especially after the completion of individual service stages specified in the underlying offer and / or detailed concept.
- 7.4 The CLIENT shall be in default each time that a remuneration amount that is due and invoiced has not been credited to the account of PCH specified on the invoice within 14 (fourteen) days after proper invoicing. Should the CLIENT be in default with payment of an invoiced remuneration for more than 14 (fourteen) days, PCH is entitled to suspend further order execution and retain all services and service results until all amounts owed to PCH by the CLIENT, including any delay damages and interest resulting from the default, have been fully compensated.
- 7.5 The CLIENT may, in principle, offset claims of its own against claims of PCH, only if its claims are undisputed or legally established. The only case in which this does not apply is if the CLIENT'S claims are payment claims to which it is entitled, based on the same order on the basis of which PCH is asserting its claims against the CLIENT, because of a deficiency (attributable to PCH) in the services provided by PCH.

## **8. Rights and Concession of Rights**

- 8.1. PCH is entitled to the exclusive rights to use and exploit all the results of order execution as well as its own methods, concepts and processes applied in the course of the execution. In particular, all concepts, strategies, designs, prototypes and the like, which are developed -

even as interim or transitional results - in the course of an order execution, are considered as service results, regardless of whether and, if so, in what form they are materialized. PCH's exclusive entitlement to the service results applies in particular, even if the CLIENT or its employees or third parties it commissioned for this have contributed to the execution by PCH of the order and the provision of services covered by the contract. A CLIENT'S contractual cooperation shall no more constitute grounds for sharing rights, in particular a CLIENT'S right to exploit the results of order execution, than would mere suggestions and instructions from the CLIENT.

Any existing rights with respect to materials provided by the CLIENT remain unaffected hereby.

8.2. Unless and to the extent otherwise expressly agreed in writing, PCH grants the CLIENT the right to use the results of an order execution in accordance with the following stipulations:

a. With the execution of a "consulting order", in particular with the successful implementation and execution by PCH, in the course of this order, of methods, concepts and processes developed by PCH, the CLIENT alone acquires a non-exclusive, non-transferable, temporally and spatially unlimited right to use the methods, concepts and processes developed by PCH and implemented for the CLIENT, right of use that is limited, in terms of content, to the purpose of internal use by the CLIENT for the development of business, design, product and marketing strategies or concepts. In particular, the CLIENT is not permitted to make such methods, concepts and processes of PCH available to third parties nor otherwise allow them to be used by third parties. PCH's entitlement to unrestricted use of these methods, concepts and processes, especially to grant third parties rights to use them remains unaffected.

b. Results of "pure development orders"

Upon completion of order execution and delivery of service results, the CLIENT receives the option to use these results exclusively for itself, notably to implement, realize and produce them. To this end, PCH grants the CLIENT, upon exercise of the option and subject to its actual use, the exclusive, non-transferable, spatially and temporally unlimited right to use the relevant service results for itself in any form whatsoever. The entitlement to use service results for ones own purposes does not include the right to exploit the relevant service results exclusively by transferring acquired rights of use or by granting additional rights of use, notably in the form of pure "license trading".

The CLIENT may exercise the option by express notice to PCH and / or by commencing use of the relevant service results. PCH is entitled, within a reasonable period of time, to require a declaration from the CLIENT as to whether and if so to what extent it would like to exercise the option, notably whether and if so which service results it would like to use for itself.

If PCH cannot, within a reasonable period, establish that the CLIENT is using service results despite having made a related declaration of intention to do so, PCH is entitled to revoke the relevant rights of use by unilateral written notice to the CLIENT. In so doing, PCH gives the CLIENT the opportunity, within a reasonable grace period, to demonstrate that it is using the relevant service results. The relevant rights revert to PCH after fruitless expiry of the period of grace and the option granted in this respect, for the use and for the acquisition of rights required to this end, expires. A grace period is not required if the contractual use of the relevant service results is either not possible for the CLIENT or is refused by CLIENT.

The rights to all the service results not used by the CLIENT shall remain entirely with PCH for unrestricted use or revert to PCH to the same extent, in case they are revoked.

A disclosure or transfer of service results by the CLIENT to third parties requires the express consent of PCH in all cases, even in the event that the CLIENT has effectively acquired the right to use the relevant service results, unless the third party is acting on behalf of the CLIENT in the course of an authorized use of service results on the part of the CLIENT.

- c. Results of development orders for the preparation of a CLIENT'S decision about placing an implementation order:

If the purpose of ordering development services is to determine the possibilities of implementation of development results by PCH and the associated expenditure, any concessions of rights to the CLIENT concerning the development results are exclusively the subject of a referring implementation order to be separately placed with PCH. A presentation or other making available of such development results alone does not involve any related concession or transfer of rights. Without the express, written consent in advance by PCH the CLIENT is therefore prohibited from any use of the results of the development order, especially their disclosure to third parties and their implementation by the CLIENT itself or by third parties it may have charged with this.

- d. Results of "integrative development and implementation orders" and "pure implementation orders":

If the service to be provided, due to a commissioning of PCH, also includes at least the implementation of a concept, design or prototype by producing a specific end product, especially software, PCH shall to this extent grant the CLIENT the rights of use required for the designated use of the relevant service result by the CLIENT. This right to use shall be granted the CLIENT irrevocably in each case, as an exclusive, non-transferable, spatially and temporally unlimited right to use the relevant service result in its entirety.



Should PCH assemble script, machinery and / or source codes in the course of order execution, these shall remain the property of PCH, to the extent that these services were not provided using open-source modules. Insofar as, in the course of order execution, software development services are provided using open source modules, the related concession of rights is carried out in accordance with the applicable free software licenses and PCH shall present the CLIENT with the related source code upon delivery of the relevant service.

Any application of service results going beyond the above-specified use shall require the prior written consent of PCH. The CLIENT is in particular not entitled to release or distribute edited versions of the service results, nor to grant rights to such versions without such consent.

Any concession of rights of use by PCH to the CLIENT is always subject to the condition precedent of complete fulfillment of all payment claims the CLIENT owes PCH on the basis of the relevant order.

- 8.3 Even after granting related rights of use to the CLIENT, PCH remains regularly entitled to use all its service results and their materialization for reference purposes. The only case in which this shall not apply is if, as a result, business or trade secrets of the CLIENT, who is using or intends to use the service results on the basis of the corresponding entitlement, would be infringed.
- 8.4 If the CLIENT publishes materialized results of (partial) services provided by PCH on his behalf, including those in the form of presentations, concepts, designs, plans, prototypes, etc., PCH shall be identified as the creator of the relevant service results in each case at the customary place as follows:

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The only exception to the foregoing CLIENT obligation to refer to PCH in connection with the services of PCH is if compliance with said obligation is unreasonable in a given case and taking into account the legitimate interests of PCH and those of the CLIENT.

## **9. Warranty**

- 9.1. PCH is responsible for the provision of services in accordance with the stipulations made in the respective order that has been confirmed by PCH and in any detailed concept that may have been developed.

Unless otherwise agreed in individual cases, PCH assumes no warranty for the functionality and properties of any third-party software used.

Insofar as PCH does not expressly guarantee this in writing, PCH is not responsible for the achievement of a particular economic success on the part of the CLIENT as a result of the use service results arising in the course of order execution, including the rights granted in this regard.

This applies in particular to the services provided by PCH in the course of carrying out a development order. Unless otherwise expressly agreed in writing, PCH is, in this regard, responsible only for the provision of the development services specified in the order underlying the relevant contractual relationship and any detailed concepts. The results of these services regularly consist of only concepts, strategies, methods, designs, plans, prototypes and the like, and thus constitute suggestions and offers for the CLIENT to implement these results based on an independent entrepreneurial decision. PCH is no more responsible for a technical, economic and / or strategic feasibility of these results as it is for a specific expenditure or success associated with an implementation of the results.

A legal assessment or legal advice with regard to whether the CLIENT'S use of the service results is in accordance with applicable legal regulations shall under no circumstances be the subject of an order. Any liability of PCH for a possible illegality in the CLIENT'S use of service results is therefore excluded. The only exceptions to this are such defects of title based on the fact that rights to third-party services required for the contractual use of service results by the CLIENT were not granted or that the contractual use of the service results infringes on third party rights, if and to the extent that the non-granting of such rights or the infringement is attributable to PCH.

- 9.2 If and to the extent that PCH is obligated, on the basis of the relevant order, to deliver specific service achievements, in particular to produce specific products, the CLIENT shall examine them for any possible defects immediately after their delivery.

PCH shall be notified in writing of any obvious defects immediately after delivery of the relevant service. Defects that are noticeable upon careful examination are to be reported in writing within seven (7) business days after delivery of the services concerned. For defects that are not detectable in the course of a careful examination, PCH shall be notified in writing immediately after their detection. The notice of defects shall include as detailed as possible a description of the deficiencies detected.

Warranty claims asserted by means of late notification of defects are excluded, unless PCH was already aware of their defectiveness upon delivery of the relevant service. The timely receipt of a complaint by PCH in each case is decisive in determining its timeliness.

- 9.3 The CLIENT shall lose any rights arising from warranty for defects if it changes the relevant service or has the service changed without the consent of PCH and thereby makes the rectification of defects impossible or unreasonable for PCH. The CLIENT shall pay the resulting additional costs of rectifying defects for each case in which the relevant service has been changed.

9.4 Rectification claims for only minor deviations from the contractually agreed quality, for only minor impairment of usability, for damage resulting from faulty or negligent handling by the CLIENT, unsuitable equipment of the CLIENT or from particular external influences not assumed under the order, as well as claims for non-reproducible software errors shall be excluded.

9.5 Insofar as a service of PCH is defective according to the foregoing and the CLIENT is entitled to warranty claims in this regard, PCH shall rectify the relevant defects within a reasonable period of time by supplementary performance. Should this fail twice, the CLIENT is entitled to withdraw from the order, to proportionately reduce PCH's agreed remuneration regarding the relevant service or to claim compensation for damages under section 10 of these TERMS. The legal cases for the dispensability of a prior claim for supplementary performance shall remain unaffected hereby.

Expenditure-related payment claims of PCH already incurred by the date of the CLIENT'S withdrawal (e.g. hourly fees, material costs, travel costs) and remuneration claims for services already provided remain in place.

9.6 In case there are defects of title attributable to PCH, PCH shall, at its own discretion and expense, either modify or replace the service to such an extent that the contractual use of the relevant services by the CLIENT no longer infringes any third party rights or any third party rights are no longer an obstacle to such use (the service, however, still retains the contractually agreed properties), or provide the customer with the entitlement required for the contractual use of the service by concluding a license agreement. If PCH does not succeed in doing so within a reasonable period after appropriate written notice by the CLIENT or if this is disproportionately expensive or unreasonable, the CLIENT is entitled to withdraw from the order or reduce the price accordingly.

9.7 Warranty claims by the CLIENT due to a defect expire within one year as of the respective provision of service or, if acceptance is necessary, as of receipt of the relevant (partial)service. This does not apply to the claims for damages by the CLIENT due to a defect if PCH has acted with gross negligence or was aware of the defect upon provision or delivery of service or in case of injury to life, body or health as a result of such a defect.

Claims for damages by the CLIENT due to breach of contractual obligations, whose fulfillment makes the proper execution of the contract possible in the first place and on the compliance with which CLIENT regularly relies and should be able to rely ("essential contractual obligations"), expire independent of knowledge within five (5) years of their accrual.

## **10. Liability**

10.1. PCH is liable in contract and tort

a. for damages due to gross negligence or intent or resulting from injury to life, body and health;

- b. for damages resulting from breach of essential contractual obligations (see above under section 9.7); in this respect, liability shall be limited to the amount of foreseeable, typically occurring damages.

The amount of the respective order value is considered as the contract-typical, foreseeable damage. Additional liability claims are excluded in this respect; in particular, PCH is not liable for lost profits, lost savings or other indirect and direct consequential damages.

Mandatory statutory liability provisions shall remain unaffected by the above provisions.

The aforementioned liability restrictions shall also apply for the benefit of employees, vicarious agents and organs of PCH. PCH shall not be liable for the conduct of its vicarious agent if such an agent happens to be the CLIENT or an employee of the CLIENT or any other person that the CLIENT assigns for the purpose of cooperating in the execution of an order.

- 10.2 The CLIENT shall be solely responsible for securing its data, content and materials. PCH shall not be liable for any loss of data, content and materials made available by the CLIENT.

Furthermore, the CLIENT shall be solely responsible for the legality of its use of service results, in particular it is solely responsible for compliance with the legal regulations to be observed when using service results.

## **11. Secrecy**

PCH as well as the CLIENT shall observe the strictest silence toward everyone with respect to all information, data, records, details, experiences and insights of the other contractual party, which have been transferred or provided to them or become known to them in the course of the execution and preparation of an order, in whatever form and by whatever technical means (hereinafter collectively "data"). The only exception to this is data that

- a. was already public when it became known to the other contractual party;
- b. becomes public after becoming known to the other contractual party, provided the publication was not carried out in violation of contractual or legal regulations by that contractual party;
- c. was already known to the respective contractual party prior to disclosure by the other contractual party and the data was freely available to it;
- d. is communicated to the respective contractual party by a third party without any publication restrictions.

## **12. Advertising**

PCH is entitled, for the purpose of promoting PCH and the services offered by PCH in advertising media and other media, to refer to its existing business relationship with the CLIENT and to the order executed in the course of this relationship, for which purpose it is furthermore entitled to make use of the

name, brand, logo and other signs used to identify the CLIENT, if and to the extent to which the CLIENT'S legitimate interests, in particular the CLIENT'S company or trade secrets are not violated as a result.

### **13. Premature Termination of Orders**

- 13.1 Orders of the CLIENT that PCH has confirmed may be terminated prematurely by the CLIENT in part or entirely without good cause with only the written consent of PCH. The CLIENT'S right to terminate an order for good cause remains unaffected by this.
- 13.2 PCH may require remuneration in full by the CLIENT for services and expenditures that PCH has already provided or made in the execution of a prematurely terminated order. In addition, PCH is entitled to a cancellation compensation in the amount of 20% of the remuneration attributable to the portion of the order not yet provided at the time of premature termination, unless the CLIENT terminated the relevant order for good cause that is attributable to PCH, or the customer can demonstrate that the damage incurred by PCH due to the premature termination of contract is actually lower.

### **14. Miscellaneous**

- 14.1 The place of fulfillment for services and payments, unless otherwise agreed in individual cases, is the registered office of PCH. The contractual relationship between PCH and the CLIENT as well as any disputes arising in connection with this are subject exclusively to the law of the Federal Republic of Germany.
- 14.2 The sole place of jurisdiction for all disputes arising from the contractual relationship between PCH and the CLIENT is Berlin, Germany.
- 14.3 Should individual provisions of these TERMS be legally ineffective in whole or in part, or later lose their legal validity, this shall not affect the validity of the TERMS as a whole.

Berlin, January 2016