
**Standard Terms and Conditions for the Use of the
Network of Eurex Clearing AG**

2 Feb. 2004

Page 1

**Standard Terms and Conditions for the Use of the Network of Eurex Clearing
AG****§ 1 Application of these Terms and Conditions and Scope of Performance**

- (1) These standard terms and conditions for the Use of the Network of Eurex Clearing AG ("Terms and Conditions of Use") in effect at the respective time shall apply to the technical connection of Subscribers' Systems to the Network of Eurex Clearing AG. Eurex Clearing AG may amend these Terms and Conditions of Use from time to time to be in line with current requirements as regards software updates or changed purchasing costs. These amendments will be announced to Subscribers at least three months in advance. Subscribers may object to each amended version of the Terms and Conditions of Use. Such objections must be received by Eurex Clearing AG no later than the date upon which the amendment comes into force, otherwise the amendment shall be deemed approved. Amendments and supplements to these Terms and Conditions of Use will be published by Eurex Clearing AG in a memorandum sent by e-mail.

- (2) An agreement for connection to the Network shall be formed when the Subscriber fully completes and sends to Eurex Clearing AG the "Order for Lines" together with the "System Configuration Questionnaire" (together known as the "Application"), and Eurex Clearing AG issues its written acceptance of the connection alternative requested after examining the system configuration presented (Acceptance). A new application is required for each change to the scope of performance, e.g. new or different connection alternative. The latest version of the Clearing Conditions valid at the time can be found on the Eurex website "www.eurexchange.com".

§ 2 Definitions

- (1) Network of Eurex Clearing AG

The Network of Eurex Clearing AG (in the following "Network") includes the entirety of all hardware elements combined in each network node as well as all necessary components for the connection of the network nodes (Software, dedicated lines for telecommunications, etc.). The Network is constructed in a radial form and contains as network nodes in particular the central host computers of Eurex Clearing AG, the access points and the Subscribers' Systems. The Internet does not form part of the Network of Eurex Clearing AG. It is the responsibility of the Subscriber to select an Internet provider and to establish the connection on the side of the Subscriber.

**Standard Terms and Conditions for the Use of the
Network of Eurex Clearing AG**

2 Feb. 2004

Page 3

same bandwidth. The connection of workstations to a Multi-Member Front End System is the sole responsibility of the Subscriber. If a Multi Member Front-end System is not operated by Eurex Clearing AG, Eurex Clearing AG does not assume responsibility for the availability and performance of the Multi-Member Front End System.

(6) Logical Network

The Logical Network of Eurex Clearing AG includes, in addition to the Network of Eurex Clearing AG, all Subscribers' components which are connected for technical reasons to the network, provided that they are located in a network area reserved for Eurex Clearing AG.

(7) Data Transmission Equipment

Telecommunication within the Network of Eurex Clearing AG occurs by means of data transmission equipment, consisting of access points, routers and dedicated lines. The connection of a Subscriber Front End System or a Multi-Member Front End System shall always be made via an access point. The option for duplicated installation of the lines is unaffected hereby.

(8) Network Parameters

Network parameters are values, dependent on the network software and its underlying operating system software, which regulate the communication between computers within a network, which may consist of dedicated lines and/or the Internet. The network parameters are typically installed with standard settings prescribed by Eurex Clearing AG upon the initial installation of the software relating to network functions.

(9) Third Party Software

Third party software is software which is not provided by Eurex Clearing AG and connected by a Subscriber to the programmable interface of the Subscriber System.

(10) Location

Location within the meaning of this provision means the entirety of all business premises occupied by a Subscriber within a building in which Subscribers' Systems have been installed for the purpose of active participation in the functionalities of Eurex Clearing AG. Business premises in which Subscribers' Systems are only employed in emergencies or for the purpose of engaging in technical simulated tests are not deemed to constitute a location within the meaning of this provision.

§ 3 Connection Alternatives

Subscribers may choose between the following alternatives for connecting to the Network of Eurex Clearing AG:

Connections via dedicated lines:

The Subscriber is connected via dedicated lines. Subscribers may choose between two bandwidths, namely 128 kbps and 64 kbps. For connections via dedicated lines, an additional connection must always be used as a backup. The backup connection (via a dedicated line or Internet-based) must have the same bandwidth. Eurex Clearing AG shall have authority over the dedicated lines for the entire physical Network. Eurex Clearing AG or a third party engaged by it shall install and operate the dedicated lines for telecommunications, which are necessary for connecting Subscribers to the System. Eurex Clearing AG shall provide a line running to the system of the Subscriber. This is conditional on the transmission paths and connection types supported by the System for the Subscriber being available and able to be installed and operated under normal conditions and without unreasonable effort, while ensuring that the security and quality standards stipulated by Eurex Clearing AG are maintained. Where the connection to the Network is via a dedicated line, Eurex Clearing AG shall decide on the access point at which a Subscriber's System should be connected.

Internet-based connection:

The Subscriber is connected via the Internet. Subscribers may select between two bandwidths, namely 128 kbps and 64 kbps. The Internet connection required for this connection alternative is the responsibility of the respective Subscriber. The Subscriber is responsible for choosing the Internet provider and establishing the connection to the Network. Eurex Clearing AG assumes no warranties with respect to the security, availability and performance of the internet-based connection alternatives. Subscribers shall choose an Internet provider that establishes a suitable connection at the Subscriber's end to the Network via the Internet. Where the Subscriber is connected to the Network via the Internet, Eurex Clearing AG shall decide which access point should be used for the connection.

Subscribers may combine the various connection components in accordance with their individual requirements. Data from the Eurex back end shall be transmitted at a maximum speed of 64 kbps.

§ 4 Further Services provided by Eurex Clearing AG

- (1) Eurex Clearing AG shall operate and maintain the Network. It will provide to the Subscriber the latest version of the front-end software in each case, and connect the Subscriber to the access points of its Network. Via its technical helpdesk, Eurex Clearing AG shall offer to the Subscriber initial technical advice and support over the telephone during the connection process. Eurex Clearing AG shall also classify the Subscriber's configuration in accordance with the technical

**Standard Terms and Conditions for the Use of the
Network of Eurex Clearing AG**

2 Feb. 2004

Page 5

requirements published on its website "www.eurexchange.com" (e.g. sizing guidelines), which correspond with the most recent technical developments.

- (2) Eurex Clearing AG's technical helpdesk shall provide support in the following areas after connecting the Subscriber to the Network:
- solutions to technical problems that occur in the daily operation of the Member Integrated System Servers (MISSs) and problems relating to the technical connection to the System;
 - error diagnosis within the Network;
 - solutions to problems where data lines between the Subscriber and the access points are disrupted;
 - answering questions relating to the VALUES API interface;
 - answering further technical questions in connection with the Network.

§ 5 Connection to the System

(1) Requirements

Subscribers' access to the Network shall take place after the delivery of the ordered line/connection(s) in accordance with the estimated delivery dates communicated during the procedure described in § 1 paragraph (2), which depend on the delivery of the ordered line/connection(s) by the telecommunications provider.

To the extent that a Subscriber chooses a connection alternative using the Internet, connection to the Network will only be possible when an Internet provider has realized the connection over the Internet and has provided the additional necessary lines. Prerequisite for all connection alternatives to the System is that the technical requirements of these Terms and Conditions of Use with respect to the hardware, software and the network and their configuration have been satisfied and that the System will not be compromised by the connection, be it on the basis of location or any technical grounds. Each Subscriber undertakes to ensure that its institution, according to the national laws and regulations effective in the country of its location, is entitled to connect a Subscriber System at its location to the System of Eurex Clearing AG and to execute settlement at Eurex Clearing AG.

(2) Installation of Subscriber Systems

All Subscriber Systems, if not employed in emergencies or for the purpose of participating in technical simulated tests, must in principle be installed at the Locations of the Subscriber and should be configured redundantly in order to increase failsafe mechanisms. Eurex Clearing AG

**Standard Terms and Conditions for the Use of the
Network of Eurex Clearing AG**

2 Feb. 2004

Page 6

shall be entitled to monitor at any time in the Subscriber's business premises compliance with the prerequisites for installation and operation of the Subscriber System.

Upon receipt of prior notification from a Subscriber, Eurex Clearing AG may permit the installation and operation of a Subscriber System at the business premises of a third party engaged by the Subscriber, to operate such Subscriber's System, if the application of and compliance with the provisions of these Terms and Conditions of Use, in particular with respect to such third party, are guaranteed. By means of appropriate agreements concluded with the third party, the Subscriber shall ensure that the third party grants to Eurex Clearing AG the right to inspect its business premises at all times for the purpose of determining compliance with the requirements for the installation and operation of a Subscriber System.

§ 6 Technical Requirements

The technical requirements presented in the context of these Terms and Conditions of Use are binding on all Subscribers; deviations from such regulations have as a consequence that Eurex Clearing AG may at any time examine the configurations and network parameters of the Subscribers and require the correction of divergent values. In the event that changes become necessary, the Subscriber is required to update its Subscriber System within any timeframe and according to any instructions imposed by Eurex Clearing AG. Upon prior request from Eurex Clearing AG, the Subscriber is obliged to grant Eurex Clearing AG, during usual business hours, access to the technical infrastructure employed by it for establishing a connection with the System to facilitate the conduct of technical inspections. Such access and/or any right of inspection shall not extend to customer-related data.

§ 7 Hardware

(1) Requirements

Subscribers must provide EDP equipment which permits Eurex Clearing AG to render its services in an orderly manner.

(2) Permitted Hardware Platforms

Only the hardware platforms shown in the respective valid (Preliminary) Sizing Guidelines, which can be obtained from the web-site "www.eurexchange.com", may be used for equipping the Subscriber Front End Installation connected to the System.

(3) Approval of Hardware Configurations

All hardware configurations planned by a Subscriber must be approved by Eurex Clearing AG – by submitting the System Configuration Questionnaire to be supplied by Eurex Clearing AG and filled

**Standard Terms and Conditions for the Use of the
Network of Eurex Clearing AG**

2 Feb. 2004

Page 7

in by the Subscriber – prior to their installation; the same shall apply to later modifications in the configuration of the Subscriber.

(4) Responsibility for Operation

The operation of the Subscriber's Systems is the sole responsibility of the Subscriber. By the orderly operation of its Subscriber's System, the Subscriber shall guarantee that the operation and functionality of the System shall not be compromised.

§ 8 Software

(1) Software

Eurex Clearing AG shall make the application software available to the Subscriber without source code and grant therein a non-exclusive lasting right to use the software for the Subscriber's own purposes as described in these Conditions of Use and any associated manuals. A Subscriber or a third party engaged by it may only use the current version of the application software as made available by Eurex Clearing AG and may neither alter nor copy such software without the consent of Eurex Clearing AG. The foregoing shall not apply to the production of copies of the application software if such copies are produced solely for data storage purposes. Each Subscriber is responsible for the installation of the application software on the components of its Subscriber's System. The renting out, lending, distribution, or use of the software in a computer center service is not permitted without the written consent of Eurex Clearing AG.

(2) Subscriber's Operating System Software

Eurex Clearing AG shall specify the respective versions, valid at that time, of the operating system software, including all necessary components, used for operation of the Subscriber's System.

(3) Registration of Third Party Software

If Subscribers intend to connect third party software to the programmable interface of the System, such Subscribers may be required by Eurex Clearing AG to assign an electronic identifier to this third party software before connecting it to the programmable interface, observing Eurex Clearing AG's instructions as to the systematic composition of such identifier and to have the third party software registered at Eurex Clearing AG.

The Subscribers shall ensure that the individual identifier assigned to third party software will be sent to the System when the registered third party software communicates with the System of Eurex Clearing AG via the programmable interface. In case the System is impaired by the third party software connected to the programmable interface of the System, Eurex Clearing AG may prohibit the connection of such third party software with immediate effect.

(4) Responsibility for the Use of Third Party Software

The application software made available by Eurex Clearing AG shall include a programmable interface for back-office systems. The Subscriber itself is responsible for the software which uses these interfaces (Third Party Software).

§ 9 Network Parameters for the Connection Alternatives

(1) Effecting Exchange Participation

The software for the Subscriber's System made available or supplied by Eurex Clearing AG and properly installed by the Subscriber contains all necessary connections to effect participation.

(2) Specification of Network Parameters for the Use of Dedicated Lines

Eurex Clearing AG specifies network parameters to guarantee the security of the network and to protect the Subscriber's System. In particular, Eurex Clearing AG guarantees that

- a Subscriber's computers which are not components of the Subscriber's System may only access the System of that particular Subscriber and may not reach other computers on the Network;
- only the computers of the Subscriber's System may be accessed from the Network;
- unauthorised access by a Subscriber's System to the computers of the Network is not possible,
- communication between different Subscribers by means of the Network is not possible.

(3) Specification of Network Parameters for the Use of the Internet

Eurex Clearing AG specifies network parameters to guarantee the security of the Network and to protect the Subscriber's System. In particular, the Eurex Clearing AG shall safeguard that

- a Subscriber's computers which are not components of the Subscriber's System may only access Subscriber's System and may not reach other computers on the Network;
- unauthorised access by a Subscriber's System to the computers of Eurex Clearing AG is not possible.

(4) Compliance with Network Parameters

Upon installation of the Subscriber Front End Systems and network components, the Subscriber shall set the respective network parameters selected by the Eurex Clearing AG for the respective connection alternative.

**Standard Terms and Conditions for the Use of the
Network of Eurex Clearing AG**

2 Feb. 2004

Page 9

(5) Reserving of Network Areas

Eurex Clearing AG reserves network areas for its Logical Network. The network areas defined by Eurex Clearing AG must be used for participation in the functionalities of Eurex Clearing AG. Within its own network, each Subscriber may use any network areas that are not reserved for the System.

(6) Node Numbers/Node Names

Eurex Clearing AG shall assign node numbers and node names for the entire Logical Network. Within the network of the System, only the nodes authorised by Eurex Clearing AG by assignment of node numbers may communicate with the System.

No computer that has not received a corresponding node number from Eurex Clearing AG may be connected by the Subscribers in the network areas reserved by Eurex Clearing AG. The transfer of the assigned node number and the related node name to a computer with a function other than that as applied for is not permitted.

§ 10 Fees

- (1) The Subscriber shall pay a fee for the provision, use and maintenance of the Network, connection thereto and for other services, the amount of which and due date is set forth in Eurex Clearing AG's price list valid at that time. The price list is an integral part of these Terms and Conditions of Use.
- (2) Subject to giving three months' notice, Eurex Clearing AG may amend the price list to reflect modified purchasing costs. If the price list prices are increased by more than 10 percent within a one-year period, the Subscriber may, within the notice period – however, no later than one calendar month before the amendment takes effect – terminate the agreement in writing to the date upon which the notice period expires.
- (3) Eurex Clearing AG shall charge the fees to be paid pursuant to the agreement exclusive of VAT, and such fees shall be payable immediately upon receipt of the invoice.
- (4) Eurex Clearing AG may demand interest due upon maturity (*Fälligkeitszinsen*) at a rate that is five percent higher and default interest at a rate that is eight percent higher than the applicable reference interest rate set by the European Central Bank. Eurex Clearing AG shall remain entitled to prove and demand a greater quantum of damages.
- (5) Eurex Clearing AG may engage third parties to issue invoices.
- (6) The Subscriber shall bear the costs of purchasing, installing and maintaining all hardware and software used by the Subscriber. The Internet does not form part of the System Network. The

Subscriber is responsible for selecting an Internet provider and establishing an Internet connection. Accordingly, the Subscriber shall bear all costs arising in connection with the Internet.

- (7) The Subscriber may only offset its claims against those of Eurex Clearing AG if its claims have been acknowledged by Eurex Clearing AG or confirmed by a final and absolute judgment.

§ 11 Warranties

- (1) Where the performance owed under the agreement consists of services (e.g. initial and ongoing support from the technical helpdesk), the parties agree that these services are not provided with the objective of achieving a specific result.
- (2) Eurex Clearing AG does not assume any guarantee beyond the statutory obligations that its Network will operate without interruption or the occurrence of errors.
- (3) The Subscriber will take sufficient precautions against interruptions and errors that may arise in the Network of Eurex Clearing AG. In particular, the Subscriber must make backup copies before transmitting its files, data, etc. via the Network in order to avoid loss of data. In addition, the Subscriber undertakes to set up a backup connection for the Network connection to Eurex Clearing AG.
- (4) Should the Subscriber incur a loss as a result of interruption or errors occurring in the Network of Eurex Clearing AG and has contributed to the occurrence of the loss through culpable behaviour, the extent to which the Subscriber and Eurex Clearing AG must cover the loss will be determined in accordance with the principle of contributory fault.

§ 12 Subscriber's Duties of Co-operation

- (1) A Subscriber may not use the data transmission equipment serving settlement in the System (cf. § 2 paragraph (7)) for any other purposes without the prior written permission of Eurex Clearing AG. However, Eurex Clearing AG reserves the right to use its data transmission equipment also for provision of services to other institutions.
- (2) If the Subscriber provides services to third parties, the Subscriber shall be exclusively responsible for such services. This particularly applies in relation to the security and confidentiality of forwarding the relevant data. In such cases, the Subscriber shall indemnify Eurex Clearing AG against third party claims that arise as a result of forwarding data.
- (3) The Subscriber agrees to comply with the technical configuration set forth in the System Configuration Questionnaire and confirmed by Eurex Clearing AG.
- (4) The Subscriber is not permitted to connect foreign hardware to Eurex Clearing AG's Network, including network installations as defined under § 2, without the consent of Eurex Clearing AG.

**Standard Terms and Conditions for the Use of the
Network of Eurex Clearing AG**

2 Feb. 2004

Page 11

- (5) Eurex Clearing AG shall be the exclusive lessee of the lines of the relevant telecommunications provider that are necessary for providing the services.
- (6) The Subscriber shall bear any expenses incurred by Eurex Clearing AG as a result of configuration changes that were not previously agreed with Eurex Clearing AG.
- (7) A Subscriber is obligated to inform itself about technical requirements and changes through the media provided by Eurex Clearing AG. Eurex Clearing AG shall, to the extent possible, inform Subscribers without undue delay of any technical problems. In the case of technical problems with the System, the Subscriber is obligated to grant access for problem resolution to Eurex Clearing AG, or third parties engaged by Eurex Clearing AG, to his Locations in which Subscriber Systems are installed.
- (8) The Subscriber shall co-operate in the provision of services. It shall notify Eurex Clearing AG in good time of all information required in order to perform the agreement, and shall make all the necessary statements without undue delay. The Subscriber shall continuously update the documentation provided to it by Eurex Clearing AG as part of the service, archive such documentation and make it available to its own employees who use the System.
- (9) The Subscriber shall ensure the availability of current system program versions, as well as browser, network, database and other system or application-related software which are necessary for the services to be rendered by Eurex Clearing AG.
- (10) If the Subscriber fails to comply with its duty to co-operate, Eurex Clearing AG may withhold its services to the extent that a provision of its services is not possible without the Subscriber complying with its duties of co-operation. The foregoing does not preclude Eurex Clearing AG from asserting further rights/claims.
- (11) Each Subscriber is required to make available a sufficient number of technically qualified personnel at any time during the operating hours of the Network, and to ensure that such personnel may be contacted by telephone in order to guarantee the proper operation of the Network elements at the Subscriber's end, and particularly in order to be able to take the necessary steps as per the instructions of Eurex Clearing AG in the event of technical disruptions. In addition, the Subscriber must nominate a person to be contacted in the event of technical disruptions and inform Eurex Clearing AG of the nominee's identity, or the Subscriber must demonstrate that it has entered into a service agreement with a third party.

§ 13 Emergency Plan

- (1) Responsibility

**Standard Terms and Conditions for the Use of the
Network of Eurex Clearing AG**

2 Feb. 2004

Page 12

Each Subscriber is responsible within its area of responsibility for taking appropriate measures for emergency planning and management.

(2) Emergency Computer Center

It is optional for Subscribers to establish an inactive emergency computer center (computer failure center) and, if necessary, to connect this center with an inactive dedicated line to an access point. The costs incurred by Eurex Clearing AG in such cases shall be charged to the Subscriber.

(3) Connection between Two Locations

If a Subscriber operates at two or more locations, it may equip any two locations with a link in order to ensure breakdown protection in the event of a disruption of the connection between one of the locations and an access point.

§ 14 Liability

- (1) Eurex shall only be liable to the Subscriber, to the extent that damage was caused by gross negligence or intentional misconduct. Eurex shall only be liable for simple negligence if it violated essential obligations of the contract. In case Eurex Clearing AG can be held responsible for simple negligence according to the above regulations, its liability shall be limited to the typically foreseeable damage within the object of the contract.
- (2) Eurex Clearing AG shall not be liable for any circumstances which do not fall within its area of responsibility. This shall particularly apply to the technical requirements for orderly data transfer, to the extent that such requirements are to be fulfilled by the Subscriber.
- (3) Eurex Clearing AG shall not be liable for any losses incurred as a consequence of force majeure, riot, war, natural disasters or other events beyond their control (e.g. strike, lock-out, disruption of communications, acts of public authorities in Germany or abroad) or as a consequence of technical disruptions, such as problems in connection with the System, caused other than by negligence. Force majeure shall also encompass computer viruses or intentional attacks on the EDP Systems by hackers, provided that reasonable protective measures have been taken against the foregoing by Eurex Clearing AG.

§ 15 Term and Termination

- (1) The agreement shall commence on the date of its execution (deemed the date of acceptance pursuant to § 1 (2)) and shall initially run until the end of the year during which the Agreement was executed, unless the Agreement was executed after 1 October, in which case the Agreement shall initially run until the end of the following year (first contract period). Afterwards, the agreement shall be automatically extended by twelve months each time.

**Standard Terms and Conditions for the Use of the
Network of Eurex Clearing AG**

2 Feb. 2004

Page 13

- (2) After the end of the first contract period, the agreement may be terminated subject to a period of notice of one month to the end of a quarter. A termination subject to the contractually agreed conditions by Eurex Clearing AG is particularly possible if the Subscriber objects to an amendment of the present Terms and Conditions of Use according to § 1 paragraph (1)
- (3) The right to terminate the agreement without notice for good cause remains unaffected. Eurex Clearing AG shall specifically be deemed to have good cause for termination if
- a) the Subscriber is in default with the payment of the fees or a substantial part thereof for two consecutive months;
 - b) the Subscriber fails to discontinue its breach of material contractual obligations under the agreement within fourteen calendar days after receiving a notice from Eurex Clearing AG requesting discontinuance of the breach; or
 - c) the Subscriber becomes insolvent, insolvency proceedings are commenced against the property of the Subscriber, or an application to commence insolvency is dismissed because the Subscriber has insufficient assets.

In cases a) and b) above, Eurex Clearing AG may demand compensatory damages for non-performance.

- (4) Notices of termination must be in writing.

§ 16 Data Protection

- (1) The parties agree to treat as confidential all information and documents containing business or trade secrets or designated as confidential, which they receive from the other party or become aware of during performance of this agreement, even after this agreement has ended. This particularly applies to the software supplied by Eurex Clearing AG and the copies thereof made by the Subscriber. The parties shall safeguard and secure these items so that third parties are precluded from accessing or gaining knowledge thereof.
- (2) Eurex Clearing AG shall comply with the relevant data protection regulations. Eurex Clearing AG agrees to advise those of its employees entrusted with processing personal data about data secrecy by means of a written notice pursuant to § 5 (2) of the Federal Data Protection Act (*Bundesdatenschutzgesetz*, or "BDSG").

§ 17 Miscellaneous

- (1) Amendments and supplements to these Terms and Conditions of Use must be identified as such and must be in writing in order to be valid. The foregoing shall also apply to any revocation of this

**Standard Terms and Conditions for the Use of the
Network of Eurex Clearing AG**

2 Feb. 2004

Page 14

written form requirement. The use of facsimile transmissions shall be deemed compliance with this written form requirement.

- (2) The German version of these Terms and Conditions of Use shall exclusively prevail, even if the Subscriber was provided with an English language version.
 - (3) The invalidity or unenforceability of individual provisions of the Terms and Conditions of Use or the discovery of an omission shall not result in the invalidity of the Terms and Conditions of Use as a whole. If a provision of this Terms and Conditions of Use is void or invalid, or if an omission is discovered, then an appropriate provision shall apply in the place of the invalid provision or to remedy the omission, which, to the extent possible, most closely reflects the commercial objective of the invalid provision, or in the case of an omission, corresponds with what the parties would have intended if they had considered the matter.
 - (4) The Subscriber may not assign any claims or rights under the agreement without the prior written consent of Eurex Clearing AG. Eurex Clearing AG may assign the agreement to any of its affiliates within the meaning of § 15 of the German Stock Corporation Act (*Aktiengesetz*, or "AktG").
 - (5) The Terms and Conditions of Use are exclusively governed by the laws of the Federal Republic of Germany. Without a mandatory statutory provision to the contrary, the exclusive judicial forum for all disputes arising out of or in connection with the Terms and Conditions of Use is Frankfurt am Main.
 - (6) The place of performance is Frankfurt am Main.
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