

## General Terms and Conditions – Consulting, as of: 09/2008

(2008-09-16)

of Sterling Commerce GmbH, Uerdinger Straße 90, D-40474 Düsseldorf  
(hereinafter: Sterling Commerce)

Translation from German. Only the German text is authoritative.

These General Terms and Conditions govern the provision of B2B consulting services, which Sterling Commerce undertakes to provide to the customer by means of a separate contractual document (hereinafter: "**Service Schedule**"; the B2B consulting services hereinafter: "**Services**"; each Service Schedule and these General Terms and Conditions hereinafter jointly an "**Agreement**").

### 1. SERVICES AND DELIVERABLES

1.1. Sterling Commerce undertakes to provide Services professionally and properly in accordance with established knowledge and rules. Content and scope of the Services shall be determined by the respective Service Schedule. Sterling Commerce is generally not obliged to prepare a documentation or to provide documents, drawings or models.

1.2. If and to the extent not explicitly agreed otherwise in the Service Schedule, the contractually agreed Services are provided as mere services within the meaning of Sections 611 et seq. of the German Civil Code (BGB).

1.3. If Deliverables are created during the provision of the Services, which Sterling Commerce delivers to the customer or provides to it in a different manner, the customer will receive non-exclusive, non-transferable, not sub-licensable, and perpetual usage rights. The customer has the right to use the Deliverables only for the following purposes: (a) in order to exchange information within the scope of its business relationships, (b) for internal use, and (c) in connection with services which the customer provides to its parent company or subsidiaries that are entirely under its control, provided that the employees of these companies do not have access to the Deliverables. "**Deliverables**" within the meaning of these General Terms and Conditions are all analysis, planning documents, software tools, maps, related documentation, reports, drawings, and other records or materials, which Sterling Commerce prepares based on the provision of Services and delivers to the customer in written, machine-readable, or other form of presentation (in object code) or otherwise transfers to it.

1.4. Beyond the scope permitted by law pursuant to Sections 69 e, 69 g of the German Copyright Act (UrhG), the customer will not commercially exploit, distribute, reproduce, edit, or transfer the Deliverables in part or in full, or otherwise grant rights to them to third parties.

1.5. The customer is obligated to collaborate and participate to the extent this is necessary for the proper provision of the Services. In particular, the customer shall

- a) provide Sterling Commerce with all required information and make relevant documents or other materials available and carry out any specific participation measures determined in the Service Schedule;
- b) notify Sterling Commerce in time about all events and circumstances which are important for the planning, any plan changes that may become necessary and the implementation of the Services;
- c) name a contact person, who will be authorized to make decisions in connection with any issues arising from the provision of the Services;
- d) follow recognized principles of information security (e.g. BSI basic security manual) and particularly keep confidential any passwords and addresses assigned and/or otherwise disclosed to it or, as the case may be, inform Sterling Commerce without undue delay in case it is suspected that third parties may have obtained unauthorized knowledge thereof;

e) ensure compliance with relevant legal provisions and observation of requirements imposed by public authorities as well as obtain all permits which are required at the time the Agreement for the Services is concluded or which are or, as the case may be, become necessary later;

f) ensure that its technical equipment works without errors and is suitable for communicating with the infrastructure made available by Sterling Commerce.

1.6. Sterling Commerce shall not be liable for delays or losses that are a result of the customer's failure to meet or to fully meet its cooperation obligation. The customer is obligated to reimburse Sterling Commerce for all additional costs arising as a consequence of the non-fulfillment of cooperation obligations.

1.7. Sterling Commerce shall not be liable for disturbances, malfunctions or delays which do not originate from the sphere of responsibility of Sterling Commerce, but are caused e.g. by the technical equipment or network infrastructure of the customer, its trading partners or third parties.

1.8. Sterling Commerce provides the Services based on the customer data, receiver addresses, and/or transfer ways provided by the customer and is not obligated to check their correctness prior to use.

1.9. If the Services are rendered in respect to software programs which the customer has licensed from Sterling Commerce, neither the execution of a Service Schedule nor the provision of the Services shall lead to a modification or cancellation of the rights and duties of the customer existing in respect to the software programs. The license agreement in place between Sterling Commerce and the customer shall remain unaffected.

### 2. INVOICES AND EXPENSES

2.1. In consideration of the Services to be rendered under the Agreement, Sterling Commerce receives the remuneration stated in the Service Schedule plus applicable value-added tax.

2.2. The remuneration is calculated on a time-and-material basis. In the event a fixed price was agreed, Sterling Commerce has the right to demand a reasonable additional remuneration if the performance scope was expanded by mutual agreement or in the case of an extraordinary increase of costs for materials or salary costs.

2.3. The customer is obligated to reimburse Sterling Commerce for all reasonable expenses, travel costs, lodging costs, and other expenses.

2.4. The settlement occurs generally through monthly invoices. All payments are due thirty (30) days after receipt of the invoice. The date on which the payment is received shall be decisive for the timeliness of the payment.

2.5. The customer may set off only with undisputed claims or those established by a final court decision and assert retention rights or other rights to refuse performance only based on undisputed claims or those established by a final court decision.

2.6. Sterling Commerce may update the prices during the term of the Agreement. The customer shall be informed about this in writing no later than three months before the new prices become effective. The customer may object to the new prices in writing within fourteen (14) days after receiving the notification. If the customer objects to the new prices, Sterling Commerce may terminate the respective Services in

writing upon a prior notice period of thirty (30) days to the date on which the new prices become effective.

### 3. CONFIDENTIAL INFORMATION

3.1. The customer will treat the content of the contractual relationship existing between itself and Sterling Commerce as well as all business and trade secrets, technical or other know-how, operating methods, business processes, financial information, concepts, strategies, development and research results, inventions, computer programs in object code or source code, market analyses, safety measures, internal guidelines, customer data, and sources for the procurement of goods as well as other documents or data that can be recognized as confidential – also and to the extent that they relate to third parties (including customers of Sterling Commerce) – that become known to the customer in connection with the fulfillment of its contractual duties (hereinafter jointly "**Confidential Information**") confidential and keep them secret from third parties. The customer is obligated to bind all of its employees and sub-contractors in accordance with the foregoing.

3.2. The confidentiality obligation pursuant to Clause 3.1 continues to exist for a period of two (2) years after the end of, rendering the Services unless the parties cancel it earlier in writing by mutual consent.

3.3. The confidentiality obligation pursuant to Clause 3.1 shall not apply to information which (i) was already known to the customer without violating a confidentiality obligation or becomes known to the customer irrespective of the contractual relationships existing between it and Sterling Commerce from a third party that is not under a confidentiality obligation, (ii) which is publicly available or becomes publicly available without any fault of the customer, (iii) which was or, as the case may be, is developed by the customer independently and autonomously on its own, i.e. without use or knowledge of similar Confidential Information of Sterling Commerce.

3.4. The confidentiality obligation pursuant to Clause 3.1 shall also not apply if and to the extent the customer is obligated by law, professional rules, a court or arbitration tribunal or a regulating authority to disclose confidential information or if the disclosure serves to protect its own legal interests.

### 4. ALLOCATED PERSONNEL

4.1. Sterling Commerce will allocate qualified and competent personnel for the provision of the Services. Sterling Commerce may also charge personnel of affiliated companies or of qualified sub-contractors. If the customer considers the personnel employed by Sterling Commerce as unsuitable for performing the Services, it shall notify Sterling Commerce thereof in writing, after which Sterling Commerce will endeavor to replace the personnel in justified cases.

4.2. During the term of the Agreement and for a period of six (6) months after its termination, the parties are obligated not to solicit or employ the employees of the other party involved with the Agreement except through general advertisements or with the written consent of the other party.

### 5. TERM, TERMINATION

5.1. Unless provided otherwise in the Service Schedule, the Agreement runs for an unspecified period of time and may be terminated in writing by either party upon a prior notice period of three (3) months to the end of a month.

5.2. The breach of a material contractual obligation, particularly of Clauses 1.3 through 1.5; 2.1 through 2.5; 3; 4.2; 6; 11.2 and 11.3, shall entitle either party to terminate the Agreement with immediate effect.

5.3. The provisions of Clauses 3, 6, 7 and 8 shall continue to apply also after the termination of the Agreement. Notwithstanding any further-reaching claims, Sterling Commerce shall in the case of termination be at any rate entitled to assert a pro-rata remuneration for the already rendered services.

### 6. OWNERSHIP AND PROPRIETARY RIGHTS

6.1. The Deliverables contain trade secrets of Sterling Commerce Inc., companies affiliated with it, or its licensors (hereinafter jointly "**Rights Holders**"). The Rights Holders are and remain holders of all rights to the Deliverables including all related intellectual property and copyrights. The customer does not receive any rights to the Deliverables beyond the grant of the license under the Agreement.

6.2. Beyond the scope permitted by law pursuant to Sections 69 e, 69 g of the German Copyright Act (UrhG), the customer will not carry out any reverse-engineering, disassembling or de-compilation or apply other methods in order to determine or derive the source code of the Deliverables. The customer may, however, decompile to the extent that this is necessary in order to establish the interoperability of the Deliverables with a computer program created independently by the customer and if the de-compilation is limited to parts of the Deliverables, provided, however, that this shall only apply after Sterling Commerce has first refused in writing to provide the required information upon request of the customer.

6.3. The customer will permit Sterling Commerce or an independent third party contracted by Sterling Commerce after reasonable prior notification to enter its business premises during regular business hours in order to examine the use of the Deliverables and compliance with the provisions of the Agreement. Beyond this, the customer will reply without undue delay to inquiries from Sterling Commerce or from an independent third party contracted by Sterling Commerce, which relate to the nature and scope of the use of the Deliverables.

6.4. Certain Deliverables may contain asset protection features which restrict the installation of the Deliverables if used without authorization or improperly. The customer acknowledges that such features do not affect or prevent the use of the Deliverables according to contract.

### 7. WARRANTY

7.1. For Services which constitute services within the meaning of Sections 611 et seq. of the German Civil Code (BGB), and any Deliverables created in the course of their provision, Sterling Commerce shall not be liable for defects in the Deliverables or for defects in title. For defective performance during the provision of services, Sterling Commerce shall be liable in accordance with Clause 8 (Liability).

7.2. In the event Sterling Commerce owes the creation of a work product within the meaning of Sections 631 et seq. of the German Civil Code (BGB) in deviation from Clause 1.2, the following rules in Clause 7.3 through 7.10 shall apply additionally. This shall also apply to an individual part of a Service Schedule, if it can be distinguished from the other parts of the Service Schedule and contains a work product within the meaning of Sections 631 et seq. BGB.

7.3. All claims arising from any defects in the Deliverables or defects in title ("**Defects**") become statute-barred after twelve (12) months from the statutory commencement of the limitation period.

7.4. Sterling Commerce warrants that at the time of passage of risk, the Deliverables do not differ materially from the contractual quality, i.e. the quality described in the Service Schedule. It is not warranted that all combinations contained in the work products or, as the case may be, the Deliverables and selected by the customer will always run without interruption and free from Defects. In order to maintain its claims for Defects, the customer is obligated to notify Sterling Commerce without undue delay in writing about all Defects upon their detection. Sterling Commerce will, at its sole discretion, either remedy Defects or deliver fault-free Deliverables instead of the defective ones (subsequent performance). If the subsequent performance by Sterling Commerce should fail, be impossible, or unreasonable, the customer has the right to rebate the related remuneration by a pro-rata fee or rescind the Agreement. Rescission is excluded in the case of unsubstantial Defects. The customer is obligated to support Sterling Commerce when Defects are remedied and particularly provide Sterling Commerce with written protocols about the nature and time of occurrence of the Defects.

7.5. Sterling Commerce warrants that the Deliverables supplied by it are free from third-party rights, which prevent use of the Products in conformity with the Agreement. Subject to provisions to the contrary in this Agreement, Sterling Commerce will support the customer in the defense against all third-party claims, which are based on an infringement of copyrights or intellectual property rights by the Deliverables. If any such claim is asserted against the customer in court, the customer will let Sterling Commerce control the defense upon request of Sterling Commerce and, in this context, will take all reasonable efforts of defense against claims based on defects in title or, as the case may be, support Sterling Commerce through such efforts and – to the extent that the customer himself takes over the procedural defense – will not make any dispositions over the object in dispute (particularly acknowledgements, in- or out-of-court settlements, countersuits, and their withdrawal) without the prior written consent of Sterling Commerce. The customer has to notify Sterling Commerce in writing without undue delay after any such claim has been asserted. Sterling Commerce will indemnify the customer against any related liability, which is imposed on the customer through a final court decision.

7.6. If any Deliverables should become, or in Sterling Commerce's opinion be likely to become, the subject of an intellectual property rights dispute, Sterling Commerce may, in its sole discretion, either (a) procure for customer the right to continue using the Deliverables, or (b) modify the Deliverables accordingly, provided their functions are not adversely affected in a material manner. If none of these options are commercially reasonable according to the due discretion of Sterling Commerce, Sterling Commerce may rescind the Services Schedule in respect of the Deliverables concerned.

7.7. If the customer does not accept Deliverables offered by Sterling Commerce for acceptance for reasons other than a correct objection based on a material Defect of the Deliverables within two (2) calendar weeks after they were made available for acceptance according to contract, the Deliverables are deemed accepted.

7.8. Any commencement of the intended use of Deliverables by the customer not merely for testing purposes is deemed acceptance.

7.9. The provisions of Clause 8 (Liability) apply to any damage claims of the customer because of Defects.

7.10. Clause 7.5 sentence 3 applies also after expiration of the limitation period set forth in Clause 7.3.

## **8. LIABILITY**

8.1. Sterling Commerce shall be liable without limitation for damages caused intentionally or by gross negligence by legal representatives, managing employees, or other vicarious agents.

8.2. Sterling Commerce shall be liable for slight negligence only in the case of a breach of a material contractual duty, i.e. a contractual duty the fulfillment of which makes the proper implementation of the Agreement possible in the first place, the breach of which endangers the purpose of the contract and on the fulfillment of which the customer regularly relies. In this case, however, the liability of Sterling Commerce shall be limited to the loss typically foreseeable at the time the respective Service Schedule was concluded. Sterling Commerce shall not be liable for a slightly negligent breach of a non-material contractual duty.

8.3. The above limitation of liability shall apply to all claims of the customer for damages, irrespective of their legal basis with the exception of any liabilities arising from mandatory legal provisions (e.g. under Section 14 of the German Product Liability Act (ProdHG)) as well as liability for injury of life, body, or health.

8.4. The customer is obligated to take reasonable precautions to avert and/or mitigate damages. This includes in particular the duty to create regular backup copies (in temporal intervals, which are adequate considering the nature and proneness for errors of the area in which the Deliverables are used as well as the foreseeable scope of the damages in the case of data loss) as well as the adequate use of customary protection software against viruses and other malware.

8.5. Sterling Commerce's liability for data loss shall be limited to the typical restoration effort that would have occurred if the customer had regularly made backup copies pursuant to Clause 8.4.

## **9. CUSTOMER DATA**

Sterling Commerce will keep confidential any materials and data which relate to the customer's business activity and which are provided to Sterling Commerce under this Agreement and are designated as confidential in writing by the customer. Sterling Commerce will make such materials and data exclusively available to those employees and other vicarious agents which need to know them during the ordinary course of their employment at Sterling Commerce. The contracting parties do not intend a professional processing or use of personal data by Sterling Commerce. To the extent that Sterling Commerce receives personal data of the customer as a potential incidental consequence of the contractual performance, Sterling Commerce will use such data only for the purpose of fulfilling this Agreement.

## **10. MEDIATION**

10.1. For all disputes arising from or in connection with this Agreement or supplements or amendments thereto which the Parties cannot settle amongst themselves, the Parties agree to apply to the conciliation body of the *Schlichtungsstelle der Deutschen Gesellschaft für Recht und Informatik e.V.* ([www.dgri.de](http://www.dgri.de)) in order to settle the dispute wholly or partly, preliminarily or finally, according to the Rules of Conciliation of the above conciliation body in the version applicable at the time that a conciliation proceeding is initiated.

10.2. The limitation of all claims resulting from the matter that is subject to the conciliation is suspended from the application for conciliation until the end of the conciliation proceeding. Sec. 203 of the German Civil Code (BGB) shall apply analogously.

## **11. GENERAL PROVISIONS**

11.1. The Service Schedule(s) and the conditions defined herein constitute the entire agreement between Sterling Commerce and the customer and replace all previous written or oral agreements concerning the same contractual object as well as any confidentiality agreements concluded between Sterling Commerce and the customer. In the case of a conflict between the provisions of a Service Schedule and a provision of these General Terms and Conditions, the corresponding provision of the Service Schedule shall prevail. Any amendments or modifications of the Agreement, such as a waiver of the written-form requirement, require the written form to be effective. General terms and conditions of the customer shall not apply, even if the customer makes reference to them and/or if Sterling Commerce does not explicitly object to their application.

11.2. The customer may not assign or, as the case may be, transfer any rights under a Service Schedule or under these General Terms and Conditions without the prior written consent of Sterling Commerce. Sterling Commerce has the right to assign all or part of all rights and claims under the Agreement to a company affiliated with Sterling Commerce within the meaning of Sections 15 et seq. of the German Stock Corporation Act (AktG) (as listed under [www.sterlingcommerce.de/About/AGB/](http://www.sterlingcommerce.de/About/AGB/)). The transfer becomes binding for the customer upon receipt of a corresponding notice.

11.3. The customer acknowledges that the Deliverables are fully subject to export control provisions and export regulations, particularly the Export Administration Regulations issued by the U.S. Bureau of Industry and Security ("BIS"), ("Export Controls"). The customer undertakes to comply with the applicable export control provisions and will particularly not export or re-export the Deliverables, related technical data, or, as the case may be, products derived from these, into a country/to a company or natural person or legal entity, which is/are subject to the restrictions and prohibitions under the Export Controls or make them accessible to such countries/companies or person, or otherwise violate applicable law. The customer hereby declares that it is not such a company or person himself and that it is not affiliated with any such company or person within the meaning of Sections 15 et seq. of the German Stock Corporation Act. The Deliverables may contain encryption technologies which are the subject of special Export Controls

by the BIS, so that the latter supplement the usage rights of the customer. If the customer transfers the Deliverables to a place outside of the EU after prior written consent of Sterling Commerce, the customer alone shall be liable for compliance with the applicable export control provisions and indemnifies Sterling Commerce against any responsibility and/or liability which is based on such a breach.

11.4. If individual provisions are void or unenforceable, the legal effectiveness of the remaining provisions shall remain unaffected.

11.5. The parties undertake to replace a void or unenforceable provision with an effective provision which resembles the economic result of the void or unenforceable provision most closely and corresponds to the purpose of the Agreement in the best possible way. This shall apply accordingly in the event the Agreement is incomplete.

11.6. The Agreement is subject to German law excluding the UN Convention on the International Sale of Goods. The court at the seat of Sterling Commerce shall have exclusive jurisdiction for disputes arising from or in connection with these General Terms and Conditions or a Service Schedule, while Sterling Commerce shall have the right to sue the customer also at any other permitted place of venue.

11.7. This Agreement has originally been drafted in the German language. In the event of any conflict, incongruity or other inconsistency between the German language version available under [www.sterlingcommerce.de/About/AGB/](http://www.sterlingcommerce.de/About/AGB/) and this English language translation, the German language version shall prevail.