General Terms and Conditions of Hoffrogge GmbH

§ 1 Subject of Agreement, Conclusion of Agreement, Modifications

1. These General Terms and Conditions (hereinafter referred to as "T&C") apply to support and IT services which Hoffrogge provides to the Customer on the basis of separate individual orders for the purpose of implementing category management and sales management. Consequently, these T&C apply exclusively to business transactions with entrepreneurs, i.e. natural or legal persons or partnerships with legal capacity who act in the exercise of their commercial or independent activity when concluding the agreement (Section 14 para. 1 BGB), as well as to legal persons under public law and special funds under public law. They do not apply to consumers in the sense of Section 13 BGB.
2. The services to be performed by Hoffrogge are thoroughly aimed to support the Customer in analysing adequate optimization possibilities and to implement corresponding results through existing IT systems and the Customer's existing IT-systems and/or, if applicable, system components to be procured by the Customer. In principle, success relating to the contract for work is not owed by Hoffrogge; the Customer takes responsibility for the project and the success, as far as not expressly otherwise agreed in an individual agreement. Consequently, Hoffrogge principally owes services. The provision of software to be installed by the Customer as well as the making available of web applications including the provision of any storage/data centre capacities of Hoffrogge which may be associated therewith shall in principle take place on basis of a leasing contract.
3. The order placed by the Customer is a binding offer. Hoffrogge is entitled to accept this offer within three weeks by sending an order confirmation or providing the ordered services.
4. Any agreements deviating from these T&C shall only be effective if they are specifically confirmed in writing by Hoffrogge.
5. The Customer shall be notified of any modifications to these T&Cs in writing or in text form (e.g. by e-mail) at least six weeks before they come into effect. The modifications shall become effective if the Customer does not object in writing or by e-mail within a period of six weeks after receipt of the notification of modification and Hoffrogge has informed the Customer of the legal consequence in the notification of the modification.

§ 2 Cooperation

1. Within the framework of a co-operation on the basis of trust, Hoffrogge and Customer shall inform each other about any and all significant events and matters in a timely and comprehensive manner which are or which may be relevant in order to achieve the purpose of this Agreement. This shall in particular include the timely provision of information about any factual, organizational, structural or personnel changes in the future to the extent to which such information may affect the fulfilment of the tasks by Hoffrogge.
2. During the entire term of this Agreement, Customer shall provide Hoffrogge with required specialist and organizational support for the provision of the services agreed upon through qualified personnel, and Customer shall in particular provide Hoffrogge with any information, data and documents requested in writing which are necessary for rendering the services.
3. If required, Customer shall also hold any premises and other infrastructure installation in readiness, grant all employees of Hoffrogge unfettered access to these premises and installations and to any other areas to the extent to which this is required (including those on the markets of Customer's commercial markets) and provide them with possibly required approvals and/or authorizations, such as passwords, access rights etc. To the extent to which these services are rendered at the premises of Customer, Customer shall be obligated to take all reasonable and customary data protection measures and he shall ensure that data is kept in a machine-readable form to the required extent and that they can be recovered with reasonable efforts.
4. For the purpose of a smooth execution of this mutual co-operation, the parties shall appoint individuals as contact partners who shall be authorized to make all relevant decisions which shall then be binding for the Parties and they shall make such binding decisions within a short period of time. In the case where any such contact partner is exchanged, the Party exchanging its contact partner shall be obligated to immediately appoint another contact partner. Should any contact partner be absent, a representative must be appointed.
5. Within the scope of his obligation to cooperate, the Customer shall in particular be obliged to provide the services owed by Hoffrogge to the extent necessary,
   a) to provide, at the expense of Customer, any electronic data, spreadsheets, graphics and information to be included, assessed and/or used for rendering the services by Hoffrogge in the form to be determined by

Hoffrogge at their exclusive discretion (any market research data must be generally provided in the Flat file format);

b) to submit to Hoffrogge any and all required article image files and any and all article dimensions for the purpose of creating planograms as well as any and all reference data with respect to the individual retailers for the purpose of collecting shelf reference data and preparing surface plans in an electronic form. In deviation from contrary provisions under section 3, Customer shall grant Hoffrogge a non-exclusive right of use with respect to the article image data which is not restricted as to the time, territory or content, in particular for the purpose of exploiting such article image data for any projects of Customer; and

c) to actively support Hoffrogge with the analysis and the interpretation of any data and information, with deriving of any action recommendations from this, as well as, in particular, with the determination of product portfolio recommendations, placing regulations and promotion optimization.

6. Hoffrogge does not assume any liability, warranty or guarantee whatsoever with respect to the authenticity, integrity and confidentiality of any data which must be obtained from and/or which are provided by third parties.
7. In performing the services assigned to Hoffrogge, its employees shall be subject solely to the instructions of Hoffrogge, in particular insofar as they are deployed in the Customer's company. Only Hoffrogge shall be entitled to determine their place of work, working hours and working procedures, but shall endeavour to ensure that the relevant employees take into account the circumstances prevailing at the Customer or other circumstances to the extent that the realisation of the overall objective of the respective agreement requires it.

§ 3 Rights of Use

1. Insofar as the services provided by Hoffrogge in accordance with the agreement may, in individual cases, enjoy copyrighted quality of work and/or establish co-authorship, Hoffrogge shall grant the Customer a simple (non-exclusive) right, unlimited in time, to use the corresponding service results in the Customer's company in accordance with the intended purpose, unless otherwise provided in the respective individual agreement.
2. The Customer's rights of use to pre-existing works processed by Hoffrogge shall in no case extend beyond those which Hoffrogge had granted to the Customer prior to the processing of the pre-existing work, the processing of which Hoffrogge owes under an agreement.
3. To the extent to which any services rendered by Hoffrogge turn out to be adaptions and/or transformations of works which had been provided by Customer and which are subject to any industrial property rights, copyrights, ancillary copyrights and/or any other third-party rights and/or to the extent to which Hoffrogge makes use of objects subject to such rights for rendering their own services which they were otherwise provided with by Customer, which Customer had access to and/or which Customer obtained in any other way (such as product images, data relating to products, businesses and product carriers, information and analyses), Customer shall grant Hoffrogge, already upon conclusion of the agreement, any and all rights of use which Hoffrogge needs to have for being able to render the services. These rights of use shall include any and all required rights to processing, copying, distribution and making the respective works accessible.
4. The Customer guarantees that the rights of use granted to Hoffrogge under para. 3 and the individual agreements covered hereunder do not infringe any rights of third parties. The Customer shall indemnify and hold Hoffrogge free and harmless from and against any third-party claims based on the infringement of corresponding rights and shall reimburse Hoffrogge for all damages and expenses incurred by Hoffrogge as a result of claims by third parties.
5. Rights of use to software provided by Hoffrogge and/or web applications made available for use by Hoffrogge shall in principle be governed by Hoffrogge's Software License Terms valid at the time of conclusion of the agreement, which can be downloaded from Hoffrogge's web pages at www.Hoffrogge.com. The provision and/or accessibility of software is not subject to these T&C.

§ 4 Remuneration

1. Unless otherwise agreed in individual cases, the remuneration for the respective service shall be based on Hoffrogge's general price lists in the version valid at the time of conclusion of the respective individual agreement. This shall also apply in principle to work performed; payments to be made thereafter prior to acceptance shall be regarded as advance payments.

2. Monthly payments shall be made in advance on the third working day of each calendar month; annual payments (in particular for the licensing of software) shall be made in advance on the third working day of each contractual year. The determination of the contract year depends on the respective individual agreement.
3. Travel expenses and travel times are to be reimbursed separately in the following amount:
   - Train journeys: 1. class;
   - Flight journeys: Economy class; flights longer than five hours' business class
   - Other travel and overnight stay costs within the framework of the respective maximum amounts on the basis of German tax law.
   - Travel times are to be paid in the amount of € 60,00 per hour.
4. All prices and lump sums shall not include the respective amount of value-added tax to be paid on the basis of the applicable statutory provisions.
5. Only if any counterclaims of Customer were legally and finally determined, if these are not disputed or if these were acknowledged by Hoffrogge, Customer shall have the right to set-off. Apart from that, Customer shall have the right to exercise a right of retention only to the extent to which their counterclaim is based on the same contractual relationship.
6. The claim for remuneration shall also exist in the case where the working results provided by Hoffrogge or created by the Customer by applying any licensed software programs provided by Hoffrogge can be used not at all or not in compliance with the intended purpose due to any defective data which were supplied by the Customer themselves or by third-parties on behalf of Customer.

§ 5 Acceptance of work services

The Customer is obliged to accept works produced in conformity with the agreement, except to the extent that, in view of the quality of the work, acceptance is excluded. Acceptance may not be refused by reason of trivial defects. It is equivalent to acceptance if the Customer does not accept the work within a reasonable period of time specified for him by Hoffrogge, although he is under a duty to do so. If the Customer accepts a defective work even though he knows of the defect, he shall only be entitled to warranty claims if he reserves his rights in respect of the defect at the time of acceptance.

§ 6 Customer's Rights in the Event of Services not provided in Accordance with the Agreement

The Customer's rights with respect to any services which were not rendered as agreed upon shall depend on statutory regulations under consideration of the below provisions:

1. In the event of Hoffrogge's breaches of duty in respect of services, the Customer shall be entitled, in accordance with the statutory provisions, to extraordinary termination of the respective individual agreement and may claim damages and reimbursement of expenses within the scope of Section 7.
2. If the services owed by Hoffrogge under an individual agreement exceptionally qualify as works, Hoffrogge shall be liable for material defects and defects of title in accordance with the statutory provisions, but subject to the following proviso:
   a) Any material defects indicated by Customer shall be remedied by Hoffrogge by way of subsequent performance after having received the respective notification of Customer (removal of the defects or replacement delivery);
   b) In the case where it is impossible to remedy any such material defect within a reasonable period of time or in the case where the removal of defects or the replacement delivery must be considered to have failed for any other reason, Customer shall have the right, in the case of any defects which cannot be deemed to be insignificant, at their own discretion to rescind from the Agreement, to reduce the remuneration or to claim damages or reimbursement of futile expenses within the scope of Section 7.
   c) Any rights to rescission shall be restricted to rescind the agreement with respect to the defective works. This shall not apply to the extent the Customer is, due to the defects of the respective works, unable to use other works in a profitable way or as otherwise intended. In this case, Customer may also rescind the agreement with respect to the respective other works;
   d) Removal of defects or substitute deliveries shall be considered to have failed only after Hoffrogge was granted a reasonable period of time for removal of such defects or for making replacement deliveries without achieving the owed success. Apart from this, it shall also be deemed to have failed if the removal of

defects or a replacement delivery is impossible, if Hoffrogge refuses to do so or if Hoffrogge delays this to an unreasonable extent;

e) Liability for defects shall not apply in the case where Customer changes or has third-parties change the works performed by Hoffrogge. However, this shall not apply in the case where Customer proves that the respective defect was not caused by the changes made by Customer or by third-parties;

f) During the limitation period, applicable for defects in title, Hoffrogge shall defend and hold Customer harmless from and against any and all claims which are asserted against him due to an infringement of industrial property rights or any copyrights by the contractual use of the works performed by Hoffrogge. Hoffrogge shall be liable for damage resulting from defects in title, in particular any costs and damages imposed on Customer by a court, only within the scope of Section 7 and only if Customer has immediately informed Hoffrogge about such claims in writing and only if Customer has reserved any and all defence actions and settlement negotiations to Hoffrogge;

g) In the case where any claims on the basis of lit. f) were asserted against Customer or in the case where this is to be expected, Hoffrogge shall have the right to change or substitute the works affected by the defect in title at its own costs to an extent which is reasonable for Customer. If this or the obtaining of a right of use is impossible by making reasonable efforts, the rights of Customer shall be determined in accordance with the provisions under lit. a) through lit. e) which shall apply accordingly. However, Hoffrogge shall not be subject to any obligations whatsoever if third-party claims on the basis of lit. f) are based on any software programs or data provided by Customer or on the fact that the works performed by Hoffrogge are used in a changed way and under conditions deviating from those which were agreed upon.

h) If Hoffrogge provides services of searching or rectifying any defects without being obligated to do so, remuneration must be paid for these services to the hourly amount of EUR 120,00 plus applicable VAT. This shall in particular apply in the case where evidence for defects cannot be provided or if such defects cannot be attributed to Hoffrogge. Apart from that, remuneration for additional efforts of Hoffrogge must also be paid if such efforts are caused by Customer not having ordinarily fulfilled his obligation to co-operate.

i) The limitation period for any claims for defects by the Customer is one year. In the event of intent or gross negligence on the part of Hoffrogge, fraudulent concealment of the defect (Section 444 BGB), claims from guarantees (Sections 276 Sub-Par. 1 BGB, 443 BGB), personal injury and defects of title, the statutory limitation periods shall apply, as shall claims under the Produkthaftungsgesetz [German Product Liability Act].

§ 7 Limitation of Liability

1. Without respect to the legal grounds, Hoffrogge may only be held liable for damages and futile expenses it caused
   a) by negligent or intentional violation of an essential contractual obligation, i.e. an obligation, the fulfilment of which is essential for the proper performance of the contract and on the observance of which the Customer regularly relies and may rely, or
   b) by gross negligence or intent.
2. Should Hoffrogge be held liable pursuant to para. 1 a) for a violation of an essential contractual obligation without a showing of gross negligence or intent, its liability is limited to the damage reasonably foreseeable at the time of entering into the Agreement.
3. Liability regardless of fault for Hoffrogge on the basis of section 536 para. 1 first alternative BGB due to defects which have already been present at the time of conclusion of an agreement shall be excluded.
4. Hoffrogge shall be liable for the loss of data and software programs as well as for their recovery only within the framework provided under para. 1 through para. 3 and only to the extent to which Customer could not have avoided such loss could by taking reasonable precautionary measures, in particular by making backup copies of all data and software programs at least on a daily basis.
5. The limitation of liability provided for under para. 1 through para. 4 shall apply accordingly in favour of employees and agents of Hoffrogge.
6. Hoffrogge's possible liability for damages resulting from injury to life, limb or health, for malicious conduct or from guarantees as well as under the Product Liability Act shall remain unaffected.

§ 8 Term

1. Unless otherwise agreed upon, individual agreements on the provision of services shall run for an indefinite period of time and may be terminated by notice of four weeks to the end of each calendar month.

2. Statutory rights of the parties to terminate the agreement for good cause remain unaffected.
3. Any termination requires written form.

§ 9 Confidentiality

1. The Parties shall keep confidential any business and trade secrets of the respective other Party as secret which were provided, made accessible, or otherwise communicated to them by the other Party ("Disclosing Party") for an unlimited period of time, and may neither record or distribute them nor to exploit them in any way, unless re-quired for fulfilling contractual obligations towards the respective other Party or required for exercising contractual rights of use. The term "business and trade secrets" shall include any commercial, operational, organizational and technical knowledge, processes and information which the respective other Party describes as confidential and/or which are recognizable as being of confidential nature considering any other circumstances. Hoffrogge's business and company secrets, which the Customer shall keep secret, include in particular technical data, know-how, functional scope and functionalities of Hoffrogge's software as well as in particular its source codes and other IT-related information which Hoffrogge makes available to the Customer, makes accessible or otherwise discloses.
2. Unless this had not been done, Customer shall, by making adequate contractual agreements with any employees working for him, ensure that such employees also refrain from exploiting, transferring or recording any information, business and/or company secrets described under para. 1 without being authorised to do so and that they are also subject to a non-disclosure obligation identical to the one Customer is subject to.
3. The non-disclosure obligation under para. 1 and para. 2 above shall not apply to information in relation to which the Party obliged to confidentiality ("Receiving Party") is able to provide evidence showing
   a) that it already owned or possessed such information prior to the time of disclosure and that it received such information without any third-party's breach of any confidentiality obligation; or
   b) that the information became known or publicly available prior to its disclosure to the Receiving Party; or
   c) that the information became known or publicly available after its disclosure to the Receiving Party without any intentional or negligent participation, co-operation or other actions of the Receiving Party; or
   d) that the Receiving Party or its affiliates are obliged to disclose the Confidential Information pursuant to legislation, court order, or stock exchange rules
4. In the event that the Receiving Party becomes legally compelled to make an announcement or disclosure by law, stock exchange rules or by any court or regulatory authority, the Receiving Party shall provide the Disclosing Par-ty with prompt written notice that such announcement or disclosure is required. Prior to the announcement or disclosure, the Receiving Party shall consult with the Disclosing Party regarding the proposed content of the announcement or disclosure. In any case the Receiving Party will furnish only that portion of the Confidential In-formation which is legally required to be disclosed or announced.
5. The Parties mutually undertake to return to the respective other Party any and all documents, files and records containing confidential information as well as any copies thereof if and to the extent to which these are no longer required for the purpose of fulfilling any obligations in relation to this business relationship or for the purpose of fulfilling any statutory obligation to preserve business documents; any electronic copies thereof must also be deleted. However, this shall not apply to the extent to which the respective copies were saved for data backup purposes and to the extent to which their deletion is considered unreasonable. Apart from that, the Parties shall have no right of retention with respect to the respective other Party's confidential materials.

§ 10 Final provisions

German law shall apply exclusively with the exception of the provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG) and such conflict-of-law rules according to which other than German law would be applicable. The place of jurisdiction shall be Hoffrogge's place of business.