

# **Walbing Platform Terms and Conditions**

## **§ 1 Application of the Platform Terms and Conditions, Platform Description, Definitions**

### **1.1 Application of the Platform Terms and Conditions**

- 1.1.1 These Platform Terms and Conditions apply exclusively to the contractual relationships between Participants (as defined in Section 1.3.8) and Walbing Marketplace GmbH (hereinafter referred to as “Walbing”) regarding the use of the platform Walbing.com (Section 1.2.1). Divergent terms and conditions by the Participants do not apply, unless Walbing has expressly agreed to their validity in writing. This also applies if Walbing provides services without reservation in knowledge of conflicting or deviating terms and conditions of Participants.
- 1.1.2 These Platform Terms and Conditions only apply to traders, companies and institutions and public corporations and their foreign equivalents.

### **1.2 Platform Provider, Platform Purpose and Services Offered**

- 1.2.1 Walbing.com, accessible at [www.walbing.com](http://www.walbing.com), [www.walbing.de](http://www.walbing.de), [marketplace.walbing.com](http://marketplace.walbing.com) and other domains (hereinafter collectively referred to as the “Platform”), is an internet trading platform on which traders and companies, provided they are approved Participants, can buy and sell trade receivables either in an auction or at a fixed price. In an auction, receivables are offered at the best price according to the open Vickrey auction. Walbing does not act as a buyer or seller in either auctions or fixed-price trades. Purchase agreements over trade receivables are concluded solely between Participants. Walbing merely provides the technical infrastructure for the conclusion of purchase agreements and supports the contracting parties to the agreed extent during the transaction processing. Walbing is not a credit institution or financial service provider, but a platform provider. Walbing does not provide legal advice or tax consultancy services. Individual services on the platform are not provided by Walbing, but by Third-Party Providers (as defined in Section 1.3.2).
- 1.2.2 Walbing is not liable for the legal validity of the Trade Receivables offered and sold on the Platform nor for the creditworthiness of the relevant debtors.
- 1.2.3 Identity and legal address of the Platform provider: Walbing Marketplace GmbH, Carsten-Rehder-Straße 50, 22767 Hamburg; HRB 145 996.

### **1.3 Definitions**

- 1.3.1 “Service Provider” and Platform Provider is Walbing. Walbing will perform individual Settlement Services (as defined in Section 1.3.10) during the processing and fulfilment of Trade Receivable purchase agreements as described in these Platform Terms and Conditions. The payment processing order between the respective parties to the Trade Receivable purchase

agreement and the Service Provider takes place simultaneously with the conclusion of the Trade Receivable purchase agreement unless the parties agree otherwise.

- 1.3.2 “Third-Party Providers” are companies that offer their services on the Platform on their own behalf and own account. Such services are labelled accordingly on the Platform. The services may include ratings of Participants or the calculation of the probability value for a specific future behavior of Participants and debtors according to the Third-Party Providers’ terms and conditions which are made available by the Third-Party Providers (e.g., via a link to the Third-Party Providers’ websites). Offers made by Third-Party Providers are not Walbing offers. The terms and conditions of Third-Party Providers apply exclusively between the Participants and Third-Party Providers with respect to the Third-Party Providers’ offers. Walbing does not review Third-Party Provider offers for legality, correctness, and completeness. Third-Party Provider services may cause separate costs at the expense of the Participant using such services, at the prices stated by the Third-Party Providers.
- 1.3.3 “Trade Receivables” are receivables between traders, companies and institutions according to Section 1.1.2 arising from the sale of goods or the performance of services that have not yet been paid. Further details are provided in Section 3.1.1.
- 1.3.4 “Buyer” is a Participant who acquires a Trade Receivable on the Platform.
- 1.3.5 “Instruments of Legitimation” are access data made available by Walbing.
- 1.3.6 “Partner” is a distribution partner who cooperates with Walbing.
- 1.3.7 “Platform Terms and Conditions” are these terms and conditions applying between Walbing and the respective Participants. They regulate the admission of Participants, the access to the Platform, the auction conditions, and the purchase and sale of the Trade Receivables offered on the Platform.
- 1.3.8 “Participants” are domestic and foreign traders, companies as well as domestic and foreign corporations, including public corporations, which, as legally independent entities, may and are able to conclude contracts for the purchase and sale of Trade Receivables on the Platform, and who wish to be and have been admitted as Participants in accordance with these Platform Terms and Conditions. Consumers cannot be Participants.
- 1.3.9 “Seller” is a Participant who offers a Trade Receivable for sale on the Platform.
- 1.3.10 “Settlement Services” are the services provided by Walbing in accordance with these Platform Terms and Conditions for the settlement of the purchase of Trade Receivables, in particular the transfer of payments from the Trade Receivables sold on the Platform and the transfer of the purchase price. These services are provided in accordance with Section 7, unless otherwise agreed in writing between the parties to the Trade Receivable purchase agreement and Walbing.
- 1.3.11 “Fees” are fees charged by Walbing, as further specified in Section 8 and in the effective price list published on the Platform, unless otherwise agreed in individual cases.

## **1.4 Amendments to the Terms and Conditions**

- 1.4.1 Walbing is entitled to change or supplement the Platform Terms and Conditions as far as it is necessary to comply with mandatory legal provisions or a change in case law, as well as to make changes or additions solely for the benefit of affected Participants. In all other cases, a unilateral change or addition is only allowed if it is reasonable for the Participants considering Walbing's concerns, in particular if changes in the law result in an unreasonable additional burden of costs and expenses to Walbing, and this unreasonable burden can be avoided by amendments to these Platform Terms and Conditions that are reasonable for the Participants.
- 1.4.2 Walbing will notify the Participants of changes or additions to these Platform Terms and Conditions in writing (electronic form is sufficient) at least two months prior to their entry into force ("Amendment Notice"). Participants may object to the changes or additions for the reasons stated in Section 1.4.1 sentence 2 within six weeks of the Amendment Notice to Walbing Marketplace GmbH, Carsten-Rehder-Straße 50, 22767 Hamburg, Germany. In case of non-objection, the changes or additions will become effective. Walbing will specifically indicate in the Amendment Notice the legal consequences of non-objection. In the event of a change required for legal reasons to the detriment of the Participants according to Section 1.4.1 sentence 2, the Participants will be entitled to an extraordinary right of termination, which can be exercised within 6 weeks of the Amendment Notice.

## **§ 2 Registration Process**

### **2.1 Usage of the Platform**

Only authorized Participants (Section 2.2) may use the Platform. Participants must first register and be activated. Participants are not allowed to use the Platform while they are blocked by Walbing.

### **2.2 Participant Admission**

#### **2.2.1 General Requirements for Participants**

Walbing will review at its sole discretion Participants for evidence of lack of economic stability prior to admission, without assuming any responsibility towards Platform Participants or third parties in this respect.

#### **2.2.2 Platform Login and Registration**

Each Participant must register with Walbing and must be authorized by Walbing to trade Trade Receivables on the Platform. Walbing is not obligated to authorize participants and may reject applications without giving reasons. A contract for the use of the Platform is concluded upon admission. Each Participant is assigned a Participant account (company Platform account).

The Participant account is not transferable. Participants shall keep only one Participant account. Walbing reserves the right to delete accounts of incomplete registrations after a reasonable period of time.

- 2.2.3 The registration process is conducted by Walbing on its own responsibility.
- 2.2.4 Participants who wish to be admitted as Buyers or Sellers on Walbing are not required to grant a power of attorney for a business account upon registration. However, granting an account power of attorney is useful for the purpose of transaction processing. For the Seller it is required for incoming invoice accounts as soon as the Seller offers the first Trade Receivable for sale. The Buyer must grant Walbing a power of attorney for the portfolio account from which the purchase price is paid, before the Buyer places a purchase bid for a Trade Receivable for the first time. The purchase price is transferred by Walbing from the Buyer's portfolio account to the business account of the Seller when the Trade Receivable is purchased.
- 2.2.5 The Participant authorizes Walbing to transmit necessary customer data to other Platform Participants or public authorities for identification and anti-money laundering purposes.
- 2.2.6 The legal representatives registered as such on Walbing must be indicated in the commercial register (or in an equivalent provided if there are no commercial register excerpts in the Participant's home state) as authorized to represent the Participant.
- 2.2.7 The following Participant data, inter alia, must be entered correctly during registration:
- a. Company, name or designation;
  - b. Legal form and legal representatives;
  - c. LEI (Legal Entity Identifier), if applicable;
  - d. Register number, if applicable;
  - e. Address of the registered office or head office and names of the members of the representative body or legal representatives. If a member of the representative body or legal representative is a legal person, the firm, name or designation, legal form, register number (if any) and address of the registered office or head office must be provided.
  - f. Beneficial owners
- 2.2.8 Identification Process

Platform Participants are solely responsible for the identification of their contractual partners in accordance with anti-money laundering law.

2.2.9 Fees

As soon as the Participant takes part in trading on the Platform, the Participant must pay the Fees to Walbing as specified in the effective price list published on the Platform.

## **§ 3 Tradable Receivables, Assignment Categories**

### **3.1 Tradable Receivables**

- 3.1.1 Only Trade Receivables, i.e., receivables arising from the sale of goods between a supplier and a debtor acting in a commercial capacity, are eligible for purchase on the Platform. Purchase contracts over goods which were bought in the first place for personal use or for use within the family or the private household of the debtor are excluded. “Goods” and “purchase of goods” includes the performance of services within the business sector and receivables from Operative Leasing and rentals. Receivables of or against private persons (consumers) as well as the sale and purchase of trade receivables by private persons are excluded. Also excluded are receivables that were previously assigned or transferred outside the Platform, unless Walbing has expressly permitted the auctioning of such receivables in individual cases. Walbing does not perform any examination, especially does not check the solvency nor the reliability of the reseller.
- 3.1.2 Credit claims and securitized receivables may not be traded on the Platform. Furthermore, financial instruments in the meaning of section 1(11) of the German Banking Act (KWG) may not be offered.
- 3.1.3 The maturity of a Trade Receivable offered for auction may not be due earlier than eleven days from the start of the auction.
- 3.1.4 It is prohibited to upload Trade Receivables for sale on the Platform which, to the knowledge of the Seller, will not be paid or will not be paid in full.
- 3.1.5 Similarly, it is prohibited to upload Trade Receivables for which the underlying invoice amount and/or the maturity the debtor agreed on is not in line with the prevailing market terms. Furthermore, it is prohibited to upload Trade Receivables between companies intertwined by personal identity of managing directors or partners or associated under company law (intercompany receivables). If Trade Receivables are not paid in full and on time by the debtor and if there are factual indications of interdependencies and/or unusual market conditions, the Seller must prove that the sale of the Trade Receivables was in accordance with these Platform Terms and Conditions.
- 3.1.6 Furthermore, it is prohibited to upload Trade Receivables against partnerships, sole traders or other companies such as companies with only one natural person as shareholder, which enable conclusions about one specific natural person, unless the affected person has consented to the Seller to the transfer of their personal data to the necessary extent to potential Buyers on the Platform in accordance with applicable data protection law. The Seller must provide Walbing with such consents upon request.
- 3.1.7 The Seller may not offer for sale via the Platform any Trade Receivables from a debtor if the Seller is aware of or has reasonable grounds to suspect the debtor’s insolvency, imminent insolvency, ongoing enforcement measures or over-indebtedness.
- 3.1.8 Sales of Trade Receivables may not violate applicable export control law and may not be processed in currencies of embargoed countries. Trade Receivables must not be traded if the

purchase or sale violates a legal prohibition or embargo; or if the purchase or sale is impermissible without approval of state or supervisory authorities.

- 3.1.9 The Trade Receivables must not be subject to an absolute assignment prohibition and must be assignable without certain form.
- 3.1.10 Trade Receivables against the same debtor may be combined to form a collective receivable. This also applies if these Trade Receivables are based on several invoices.

## **3.2 Exclusion of Receivables**

Walbing is entitled to exclude Trade Receivables from the auction, especially if they do not meet the requirements of these Platform Terms and Conditions or if their trade is illegal for other reasons.

## **3.3 Categories of Receivables and Assignment**

### **3.3.1 Disclosed Assignment**

In the case of disclosed assignment, the debtor of the Trade Receivable will be informed about the assignment and sale. The Trade Receivable is automatically transferred to the Buyer upon conclusion of the Trade Receivable purchase agreement. In the case of disclosed assignment, the Seller must inform the debtor immediately about the assignment of the Trade Receivable to the new creditor. If the Seller has chosen direct payment from the debtor to the new creditor as payment method, the Seller must also immediately inform the debtor of the account information of the new creditor and ask the debtor to make the payment to the new creditor. In the case of direct payment, the Seller must ensure that the debtor pays the new creditor directly. Walbing will also inform the debtor of the assignment and the information about the new creditor using the contact details provided by the Seller.

If the debtor has uploaded the Trade Receivable to Walbing, this is considered an irrevocable declaratory promise of payment by the debtor to the Buyer.

- 3.3.1.1 Category 1: Disclosed assignment, awareness of the debtor about the assignment, the debtor has given an irrevocable declaratory payment undertaking to the Seller, the debtor pays the Buyer directly.
- 3.3.1.2 Category 2: Disclosed assignment, awareness of the debtor about the assignment, the debtor has not given an irrevocable declaratory payment undertaking to the Seller, the debtor pays the Buyer directly.
- 3.3.1.3 Category 3: Disclosed assignment, awareness of the debtor about the assignment, the debtor has given an irrevocable declaratory payment undertaking to the Seller, the debtor pays the last known creditor.

- 3.3.1.4 Category 4: Disclosed assignment, awareness of the debtor about the assignment, the debtor has not given an irrevocable declaratory payment undertaking to the Seller, the debtor pays the last known creditor.

### 3.3.2 Undisclosed Assignment

In the case of undisclosed assignment, the debtor of the Trade Receivable will not be informed about the assignment and sale. The Trade Receivable is automatically transferred to the Buyer upon conclusion of the Trade Receivable purchase agreement.

- 3.3.2.1 Category 5: Undisclosed assignment, no awareness of the debtor about the assignment, the debtor pays the last known creditor directly with exempting effect. In authority of the Seller and within the Settlement Services Walbing instructs, provided Walbing has power of attorney, the Seller's bank to transfer the received payment of the debtor to an account of the Buyer. If the Seller has not granted Walbing power of attorney, the Seller shall transfer the payment manually to an account of the Buyer or to a Walbing escrow account for forwarding to the Buyer by Walbing.

## **§ 4 Participants' Rights and Obligations**

Each approved Participant may be a Buyer and Seller of Trade Receivables.

### **4.1 Internet Connection, Hardware, Software, Data Backup**

Participants are responsible for their internet access and internet connection to the Platform. Participants must ensure that the hardware and software as well as the telecommunication means required to use the Platform are adequately dimensioned and secure according to the state of the art. Participants are responsible for the appropriate backup of their data according to the state of the art.

### **4.2 Correctness of Information, Correction of Information**

- 4.2.1 Each Participant must provide the requested information to the best of its knowledge and belief during the registration and validation process. The same applies for the information requested from the Seller and Buyer, in particular regarding the respective Trade Receivable, for a sale or purchase on the Platform. The Participant must refrain from providing information where the Participant is not certain of the accuracy of such information.
- 4.2.2 Each Participant must immediately correct information as soon as it becomes aware of its inaccuracy. This applies in particular to changes in the company name, authorized representatives and corporate purpose.
- 4.2.3 Fees and charges for requests to the residents' registration office, commercial register, or other registers, which arise due to the Participant's failure to notify changes, will be borne by the Participant. Likewise, bank charges incurred through the use of Walbing's escrow account will be borne by the Participant.

- 4.2.4 Each Participant who offers Trade Receivables for sale on the Platform must upload the corresponding invoice on the Platform. The invoice will be made available to the Buyer if the debtor does not pay or does not pay in full despite a payment request.

#### **4.3 [Intentionally Omitted]**

#### **4.4 International Receivables Purchase and Sale**

If the sale or purchase of Trade Receivables relates to a Trade Receivable that is subject to foreign law from the Participant's point of view and/or if the debtor and the Participant are of different nationalities, the Participant is reminded of the international context of the Trade Receivables trade and requested to pay particular attention to the relevant legal and tax specificities in this respect.

#### **4.5 Indemnification by the Seller**

The Seller shall indemnify and hold harmless Walbing against any third-party claims arising out of or resulting from false information provided by the Seller. Such false information may, for example, relate to the legal validity of the Trade Receivable or other properties of the Trade Receivable or debtor, or to the fact that the Trade Receivable is enforceable and free from objections and defenses and that no set-off situation exists, and/or that the assignment of the Trade Receivable can be made without any formal requirements, and/or that no formalities are required which prevent the sale of the Trade Receivable on the Platform according to these Platform Terms and Conditions.

#### **4.6 Confidentiality and Use of Instruments of Legitimization**

The use of Instruments of Legitimization indicates to Walbing that the user of the Instruments of Legitimization is entitled and authorized by the Participant to make declarations and to conclude transactions on behalf of the Participant via the Platform.

**The Participant must keep all access data to the Platform confidential and protect them from unauthorized access. This also applies to employees of the Participant who have no authorization (power of representation and authority to dispose) to trade on the Platform. Participants are responsible for the actions performed on the Platform via the Participant's account or by using the Participant's devices or access data, even if such actions are performed by unauthorized third parties.**

If the Participant nevertheless passes on the Instruments of Legitimization to third parties or employees other than the authorized users, the persons using these Instruments of Legitimization are deemed to be authorized by the Participant. The same applies if the Participant is responsible for the loss of the Instruments of Legitimization and/or if the Participant does not inform Walbing about the loss immediately.

Walbing is entitled to block the Participant's account and/or has the extraordinary right to terminate the contract to use the Platform in accordance with these Platform Terms and Conditions in the event of suspicion of unauthorized transfer or unauthorized use of the Instruments of Legitimization by the Participant or the Participant's employees and vicarious agents.

The Participant must inform Walbing immediately in the event of loss, passing on or misuse of Instruments of Legitimization.

**Walbing expressly advises Participants to set up subaccounts with limited volume and to make use of the function for limiting the transaction limit and the volume of Trade Receivables sold. Significant disposals can be performed through the Platform, including by persons without power of disposition of corporate accounts. Participants are therefore encouraged to monitor all corporate accounts to determine whether transactions conducted through the Platform are in order. For this purpose, for each transfer initiated by a user via the Platform, the account statement will indicate that it was a Walbing-transfer and which user initiated it.**

## **4.7 Use of Information**

- 4.7.1 The Participant may only use the Platform and the information provided therein in accordance with applicable laws and regulations, for its own information purposes and for the initiation, conclusion and processing of a purchase contract. This also applies to information provided by other Participants on the Platform, for example in the context of sales offers or for the initiation, conclusion or processing of a purchase contract.
- 4.7.2 Information received by a Participant in connection with sales offers or the initiation, conclusion or processing of a purchase contract (hereinafter "Contract Purposes") may only be used for such Contract Purposes. The Participant must ensure within its organization that only those persons who have a need to know such information in connection with the Contract Purposes have access to it. In particular, the Participant must ensure that the information is not used to gain information on the prices or terms of other Participants or debtors or to acquire customers.

## **4.8 Authorization to Disclose and Use Information and Data, Customer Protection**

- 4.8.1 Each Participant must ensure that it is authorized to disclose to Walbing for the purposes concerned such information and data collected by Walbing and shared by the Participant with Walbing. Walbing may share this information and data with subcontractors and other partners, including but not limited to trade credit insurers, trade credit insurance intermediaries, and Track and Pay partners such as airlines, freight forwarders, and shipping companies. This applies in particular to all information and data regarding Trade Receivables and their debtors transmitted to Walbing by the Seller in connection with the placement of Trade Receivables. The Seller must ensure that Walbing is authorized to publish the information and data on the Platform within the offers and to use them to contact the debtor, for example

to notify the debtor of a sale of a Trade Receivable in the case of a disclosed assignment or to send payment reminders to the debtor in the case of a disclosed assignment.

- 4.8.2 Participants may not use personal data received by using Walbing's services for any purpose other than contractual and precontractual communication. In particular, it is prohibited to resell this data or to use it for sending advertising without the explicit consent of a Participant.
- 4.8.3 The Participant undertakes not to use or pass on the Participant data provided by Walbing or by other Participants via the Platform as well as the information obtained therefrom outside of the Platform, either for itself or for third parties, insofar as the passing on of such data is not necessary for the execution of receivables trading and the conclusion of receivables purchase agreements, trade credit insurance agreements, or Track and Pay transactions via the Platform. Without Walbing's express written consent, the Participant may not, either directly or through employees or indirectly through third parties, enter into business contact with other Participants whose data has been made available by Walbing in order to offer them the opportunity to trade in Trade Receivables or economically similar transactions, such as in particular the credit business. For each violation, the Participant shall pay Walbing an appropriate contractual penalty. The contractual penalty shall be determined by Walbing at its reasonable discretion and, in the event of a dispute, shall be reviewed for reasonableness by the Regional Court (*Landgericht*) of Hamburg. In addition, in the event of a violation, the Participant undertakes to provide Walbing with information on the transactions conducted directly with other Participants and to compensate Walbing for the fees lost by Walbing as a result of the violation on the seller and buyer sides. Further claims for damages and injunctive relief by Walbing remain unaffected.

#### **4.9 Sufficient Funds**

Each participant must ensure that the account for which the Participant has given Walbing a power of attorney always has sufficient funds to enable the respective account-holding bank to execute the transfers instructed by Walbing (e.g., purchase price of a Trade Receivable or fees of Walbing). The Participant is liable for any damage caused by a delay in transfers caused by insufficient funds.

#### **4.10 Support During Transaction Processing**

The Buyer and Seller must support Walbing upon request during the transaction processing to the necessary extent.

#### **4.11 Examination of Invoice Documents/Advice Notes**

Participants must review the advice notes and invoices issued by Walbing for their actual and fiscal accuracy and, if necessary, correct them independently towards their contracting party. Inaccuracies must be reported to Walbing immediately in writing.

## **4.12 Rules of Conduct**

Participants must comply with the following rules of conduct:

- 4.12.1 Participants may not make available or transmit any content on or via the Platform that violates applicable law. This includes, in particular, content infringing criminal law, competition law or third-party rights (e.g., trademark rights, copyrights, industrial property rights or personal rights). If a Participant becomes aware of any such content, the Participant must inform Walbing immediately by e-mail at [success@walbing.com](mailto:success@walbing.com).
- 4.12.2 When using the Platform and during sales processes, Participants must observe the provisions of the Act on the Tracing of Profits from Serious Criminal Offences (German Anti-Money Laundering Act – “GwG”). This includes, in particular, the due diligence obligations regulated in the GwG and the obligations to identify contracting parties. In particular, the Buyer and Seller must provide each other and Walbing with all information and documents required for compliance with the provisions of the GwG without undue delay, and at the latest upon request by the respective other party or by Walbing.
- 4.12.3 Participants must comply with all applicable sanctions and embargo regulations. In particular, it is prohibited to conclude sales contracts with persons or organizations affected by sanctions or embargoes or to offer or purchase Trade Receivables from such affected persons or organizations when using the Platform. The trading of Trade Receivables in embargoed currencies or countries is also prohibited.
- 4.12.4 It is prohibited to offer or sell Trade Receivables on the Platform whose sale or assignment would violate applicable law, in particular prohibition laws. This also includes receivables which would disclose special personal data during their assignment or in connection with the purchase procedure.
- 4.12.5 Unless provided by Walbing, Participants may not use tools, software or the like for bidding on auctions that enable or support automatic bidding.
- 4.12.6 Participants may not enter into direct business contact outside of the Platform with other Participants with whom the initial contact was established through Walbing. This applies in particular to avoid transaction fees (as well as other applicable fees). Walbing’s fees also apply in full for transactions outside of the Platform. Walbing reserves the right to prove further damages.

## **4.13 Account Authorization for Walbing**

The Participant grants Walbing power of attorney for all accounts specified by the Participant on Walbing in order to be admitted as a Seller or Buyer. In particular, this account authorization also authorizes Walbing to collect all fees pursuant to Section 8 and to process transactions pursuant to Section 7.5. Transaction processing is a support service provided by Walbing that is merely intended to facilitate processing. Walbing will not execute any transactions on the basis of the power of attorney if the insolvency of the account holder or a corresponding application for the opening of proceedings under the Insolvency Act becomes known to Walbing or if the transaction is not executed due to incorrect information provided

by the Participant (bank code, name, Trade Receivable amount, etc.). Walbing will not carry out automated settlements if the Trade Receivable cannot be assigned automatically, e.g., because only partial payments or deviating redemption provisions are made. If Walbing does not provide transaction processing, the Participant must make the payments themselves. If errors occur during transaction processing, Walbing may reverse executed transactions to correct the error.

#### **4.14 Information on the Enforcement of the Trade Receivable**

The Seller must disclose all information relating to the Trade Receivable (e.g., correspondence with the debtor, invoices and contracts relating to the Trade Receivable) and support the Buyer with the enforcement of the Trade Receivable. The Seller authorizes the Buyer and Walbing to use the information for the purpose of enforcing the trade receivable. This includes the passing on of this information to law firms, collection agencies and other third parties.

#### **4.15 Indemnification and Information in the Event of a Breach of Obligations by the Participant**

If other Participants or third parties assert claims against Walbing based on a breach by the Participant of its obligations under the contract with Walbing, third-party rights or rights of other Participants or statutory provisions, the following applies:

The Participant must indemnify Walbing from and against such claims upon Walbing's request. The indemnification obligation includes the assumption of reasonable attorneys', court and settlement fees incurred by Walbing in connection with the legal defense. Further, it includes the costs for legal consultation deemed necessary in Walbing's reasonable discretion. The Participant must actively support Walbing in the judicial and out-of-court settlement of such disputes, whereby Walbing retains the exclusive right of action as well as the right to conclude judicial and out-of-court settlements of claims asserted against Walbing. The Participant's obligations regulated in this paragraph do not apply if the Participant is not responsible for the breach.

Upon request, the Participant must provide Walbing with truthful and complete documentation and information necessary to examine the validity of claims and a possible defense.

Walbing's further claims against the Participant remain unaffected.

### **§ 5 Payment History on Walbing**

- 5.1** Walbing analyzes the Trade Receivables uploaded by Sellers prior to their release for trading by means of a payment history based on the data provided by the Seller and, if applicable, by the debtor and the account data visible to Walbing. The Seller is given the opportunity to provide data about a specific debtor when uploading the first Trade Receivable against this

debtor. Insofar as personal data of the Seller is concerned, the Seller consents to the collection, storage, processing and publication of the aggregated data in the context of the payment history.

**5.2** From the first upload, Walbing monitors the fulfilment of each uploaded Trade Receivable of this debtor by accessing the accounts and enters the collected data to the aforementioned payment history.

**5.3** The analysis can only take place if no personal data of the debtor is affected which the debtor has not agreed to. The Seller is responsible for ensuring that the disclosure to Walbing of data affecting the debtor and the publication of data concerning the debtor to potential Buyers do not violate the debtor's rights. Section 4.7 applies additionally.

**5.4** The following data about the debtor will be disclosed to potential contract partners on the Platform:

- risk of payment delay and underpayment for the uploaded Trade Receivable based on the debtor's payment history.

The actual probability of a payment delay and underpayment may vary due to other information or data. The analyses do not contain a price or a purchase recommendation.

## **§ 6 Auction Process and Trade Receivable Purchase Agreement between Participants**

### **6.1 Bidding Process and Conclusion of Trade Receivable Purchase Agreement**

6.1.1 Walbing provides Participants with various offer formats and functions on the Platform to conclude receivable purchase agreements.

6.1.2 The Seller may sell the Trade Receivable by auction or at a fixed price.

6.1.3 The Seller may choose between disclosed and undisclosed assignment.

6.1.4 In the case of auctions, the disclosed Trade Receivable purchase comes into existence between the Buyer and the Seller on the terms of the disclosed trade receivable purchase contract available at <https://walbing.com/platform-documents/>. The undisclosed trade receivable purchase comes into existence between the Buyer and the Seller on the terms of the undisclosed trade receivable purchase contract available at <https://walbing.com/platform-documents/>. The contracting parties agree on German law for the assignment. The Trade Receivable will be assigned to the Buyer at the time of the conclusion of the contract. In the case of an undisclosed assignment, the Seller must transfer the debtor's payment to the Buyer. The same applies if the debtor pays to the Seller in the case of a disclosed assignment.

6.1.5 The Seller must provide the Trade Receivable and the preferred selling format as well as the duration and minimum price and/or fixed price via input formats provided by Walbing on the Platform and, in doing so, provides the necessary information regarding the debtor and the

Trade Receivable, which can depend and vary according to the properties of the respective debtor and the respective Trade Receivable.

The minimum information for each uploaded Trade Receivable arises from the input mask for manual receivable input and the Excel or XML template.

#### 6.1.6 Input Options

The Seller can enter individual Trade Receivables manually into a web form (input with a screen input mask) or upload several Trade Receivables with a preconfigured Excel or XML file or via an API to the Platform.

#### 6.1.7 Offer Currency

Any offers for a Trade Receivable must be made in the currency in which the Trade Receivable is to be paid by the debtor. The currency is displayed to potential Buyers on the Platform. To bid on a Trade Receivable in a specific currency, the bidder must have a current account in that currency as a portfolio account on Walbing.

#### 6.1.8 Legal Validity and Solvency

##### 6.1.8.1 Liability for the Legal Validity of the Trade Receivable

The Seller guarantees the legal validity of the Trade Receivable and the absence of defenses and objections and the assignability of the Trade Receivable (validity). Furthermore, the Seller guarantees that there is no set-off situation against the Trade Receivable. A performance guarantee (guarantee of the debtor's solvency) is not provided by the seller.

##### 6.1.8.2 Withholding Tax and Other Deductions

The Seller represents and warrants that the debtor is obliged to pay 100% of the invoice amount of the Trade Receivable to the Buyer, without deduction of withholding tax or other deductions.

#### 6.1.9 Trade Receivable Verification

6.1.9.1 Before a Trade Receivable is released as an offer on the Platform, Walbing subjects the Trade Receivable to a limited review in accordance with Section 7.2. A manual verification is carried out if this computer-aided review does not lead to release. If the Trade Receivable can still not be released after this manual verification, Walbing sends an e-mail to the Seller, informing the Seller about the rejection of the Trade Receivable and asking the Seller to verify the data. If the Seller then makes changes to the Trade Receivable, a re-examination is required. Walbing is not obligated to release Trade Receivables for sale or to communicate the reasons behind a rejected release. A rejected release will not be publicized to other Participants.

6.1.9.2 The positive review of a Trade Receivable by Walbing and the release for sale are made without obligation; in particular, it does not result in the Buyer being able to

rely on the legal validity of the existing Trade Receivable and the correctness of the information provided by the Seller. Rather, the Seller is solely responsible therefor.

#### 6.1.10 Auction Starting Price and Duration

6.1.10.1 In the case of auctions, the Seller determines the auction's starting price (floor price) and duration using the Platform's corresponding functionality. For the starting price, a fixed minimum amount may be specified by Walbing as a euro amount, whose equivalent value for non-euro receivables is determined in accordance with paragraph V. of the price list published on the Platform using the reference rates of the European Central Bank (ECB). The auction duration is either 1, 3 or 7 days, beginning with the start of the auction by the Seller. The days refer to full 24 hours from the release of the Trade Receivable (/24 hours/78 hours/168 hours).

6.1.10.2 Walbing is entitled to extend the auction duration via a random generator by a maximum of five (5) minutes. This is to prevent that an offer deliberately submitted at the last second is in every case the highest bid. Furthermore, Walbing may extend the auction duration by a necessary period of time for technical reasons.

6.1.10.3 Due to technical reasons, it is possible that Trade Receivables released for auction are not visible on the Platform immediately after release.

#### 6.1.11 Offer to Sale

By uploading a Trade Receivable on the Platform and releasing it for auction and purchase through confirmation of the corresponding "Start sale" button on the website of the Platform, the Seller makes a binding offer to conclude a Trade Receivable purchase agreement with the predetermined content in the respective specified category (disclosed or undisclosed sale of Trade Receivables) for the designated Trade Receivable. If the Seller determines a minimum price, the Trade Receivable purchase agreement comes into existence at the end of the auction duration only if the highest bid is above or equal to the minimum price. The same applies accordingly to sales offers at a fixed price.

#### 6.1.12 Bidding Process

All Participants not excluded by the Seller may continuously view the current status of offers on the Platform and may submit bids until the end of the auction duration. The bidder who submits the highest price to purchase the respective Trade Receivable by the determined end of auction purchases the Trade Receivable. If the highest bidder is the debtor, the payment of the auction price after the end of the auction results in premature payment of own payables. By acquiring the Trade Receivable, the debtor is both creditor and debtor of the Trade Receivable, which extinguishes it. There is an "automatic bidding system" with increasing steps (so-called increments) to raise previous bids.

#### 6.1.13 Offer Acceptance

In the case of auctions, the Buyer accepts the Seller's offer to sell the Trade Receivable by submitting a bid. The acceptance takes place under the condition precedent that the Buyer is the highest bidder at the end of the auction according to the highest price determination

procedure as described hereinafter. A bid expires if another bidder submits a higher bid during the auction duration. Automatic bids through the bidding assistant are bids made by the Buyer.

#### 6.1.14 Correction of Inputs and Declarations

All inputs by the Seller and Buyer take place via the corresponding input mask on the Platform's website. In each case, Participants have the opportunity to review the accuracy of their entries and, if necessary, to correct them before submitting a binding declaration.

#### 6.1.15 Dispatch and Deposit of Contract Documents

The Seller and the Buyer receive the contract for the respective Trade Receivable sale by e-mail. In addition, these documents are also available on the Platform for the Seller and Buyer to download.

### 6.2 Termination of the Auction Process, Consequences

6.2.1 Walbing is entitled to terminate a running auction before the end of the auction duration if it is necessary to protect the Platform or a Participant or the debtor of a Trade Receivable, or for legal or technical reasons.

6.2.2 If an auction is terminated prematurely, no valid contract between the Buyer with the highest bid and the Seller comes into existence.

6.2.3 The Buyer and Seller may revoke their offer or bid if the conditions of the special revocation terms according to Section 6.3. are fulfilled.

6.2.4 In the event of technical malfunctions, Walbing may release the auction again after consultation with the Seller.

6.2.5 An auction's premature termination will be reported to the Seller and potential bidders.

### 6.3 Revocation

6.3.1 A subsequent correction of binding inputs by Participants is technically not feasible for auctions after the start of the auction. In case of objections by a Participant concerning the Participant's declarations, the Participant must contact Walbing directly at [success@walbing.com](mailto:success@walbing.com). Revocations are only possible in accordance with Section 6.3.2. Sellers and Buyers reserve the right to subsequently modify the receivable purchase agreement outside of the Platform after its conclusion. Insofar as this affects the amount and/or the maturity date of the Trade Receivable, Walbing must be notified thereof immediately via e-mail to [success@walbing.com](mailto:success@walbing.com).

6.3.2 In the following cases, the result of the auction or fixed-price sale may be revoked by the Seller, the Buyer or Walbing immediately after the reason becomes known:

- 6.3.2.1 Facts become known that cancel the tradability of the Trade Receivable according to these Platform Terms and Conditions (eligible Trade Receivable);
  - 6.3.2.2 Effective appeal of the issuance of a declaration by the Seller or Buyer;
  - 6.3.2.3 Existence of technical faults by Walbing that were causal for the auction's or the fixed-price sale's result;
  - 6.3.2.4 Existence of an important reason justifying the termination of the license agreement according to these Platform Terms and Conditions.
- 6.3.3 In the event of an effective revocation, the Trade Receivable purchase agreement will be deemed not to have come into existence. In the event of technical faults, Walbing may release the auction or the fixed-price offer again after consultation with the Seller.

## **6.4 Additional Agreements**

Additional agreements with the debtor regarding the Trade Receivables for sale or amendments to contract terms prior to the conclusion of an auction or a fixed-price sale are only effective with the express consent of Walbing.

## **§ 7 Walbing Services**

### **7.1 Adjustment of Services**

Walbing is entitled to change or adjust its service content in the scope of technological, user interface-related or content-related further developments, provided that the agreed services are not substantially or unreasonably restricted for the Participants. Walbing will inform the Participant of such changes beforehand via e-mail.

### **7.2 No Binding Verification of Trade Receivables or Debtors**

Walbing verifies the Trade Receivables offered on the Platform and/or their debtors only in a limited context for money laundering and crime prevention including consideration of embargos. Before their release for auction, the Trade Receivables are automatically or possibly manually reviewed for plausibility by Walbing referring to certain general information based on experience and probabilities. The Buyer is therefore responsible for obtaining the necessary information before bidding on a Trade Receivable. Walbing is not liable for the accuracy of the information and declarations provided by the Seller. In particular, Walbing is not liable for the existence of the Trade Receivable and the creditworthiness or willingness to pay of the parties involved.

### **7.3 No Verification of Buyer and Seller**

Beyond the actions taken as part of the registration process, Walbing does not further verify the Participants registered on the Platform and the persons acting within an auction, in particular regarding their creditworthiness or identity.

### **7.4 No Verification of Third-Party Information**

The Platform includes references to various information offers of third-party providers, e.g., credit agencies or credit rating providers, which offer their services via the Platform on their own behalf and for their own account and which the Participant can use on the Participant's own responsibility and, if applicable, at the Participant's own cost. These are not Walbing's own information offers or services. Walbing does not review the information offers of third-party providers that are linked to the Platform.

### **7.5 Services of Walbing Supporting the Execution of Transactions**

#### **7.5.1 Information of Seller, Buyer and Debtor**

##### **7.5.1.1 Unsuccessful Auction**

If the auction expires without a bid on the relevant Trade Receivable, the system will display this.

##### **7.5.1.2 Successful Auction**

If a Buyer is determined after the expiration of the auction, Walbing will send an e-mail with the applicable Trade Receivable Purchase agreement and assignment agreement to the Buyer and Seller via the Platform. This e-mail is sent for information purposes only. The conclusion of the contract between the parties is already effected in accordance with Section 6.

#### **7.5.2 Transfer of the Purchase Price for Successful Auction and Invoicing**

In the event of a successful auction, Walbing electronically instructs the account-holding bank to transfer the agreed purchase price from the bank account of the Buyer to the designated bank account of the Seller after the end of the auction on the basis of the account authorization granted to Walbing by the Buyer for the designated bank account. The instruction of the bank takes place subject to sufficient account coverage, which is not guaranteed by Walbing. The Buyer remains obligated to pay the purchase price by itself. According to the case law of the Federal Fiscal Court (*Bundesfinanzhof - BFH*) and the European Court of Justice (ECJ), the difference between the purchase price of the Trade Receivable and the nominal amount of the Trade Receivable ("discount") can be classified as pay for a collection service. To standardize the processes for all Participants, Walbing automatically issues an invoice for the so-called discount to the Seller in the name and on behalf of the Buyer after the purchase of a Trade Receivable on the Platform. In this context, Walbing may opt for sales tax on behalf of the Participants and show sales tax on the invoice, regardless of whether

sales tax can actually be assessed in the individual case. The Buyer must immediately verify the invoice for correctness and notify Walbing of any objections. After the purchase on the Platform, Walbing also automatically issues a receipt for the purchase price of the Trade Receivable to the Buyer in the name and on behalf of the Seller. The Seller must immediately verify the receipt for correctness and notify Walbing of any objections via e-mail to [succes@walbing.com](mailto:succes@walbing.com). In atypical cases, especially if the auction price is below the discount amount, Walbing will not provide transaction support.

#### 7.5.3 Transaction Support for Undisclosed Assignment

In the case of an undisclosed assignment, the debtor pays into the bank account of the Seller or the original Seller (if the Trade Receivable was resold on the Platform) of the Trade Receivable. Immediately after receipt of the payment for the sold Trade Receivable, Walbing instructs the account-holding bank to transfer the received payment from the (original) Seller's bank account to the Buyer's designated bank account on the basis of the account authorization granted to Walbing by the (original) Seller for the designated bank account. This results in a delay within the usual time frame for bank transfers. The bank will only execute the transfer if the account is sufficiently covered. In the event of a lack of cover, the Seller shall remain obliged to pay the purchase price to the Buyer. In the case of receipts of money for which certain data (purpose of transfer, invoice number, amount of money, name of remitter, etc.) do not fully coincide with the corresponding data of the sold Trade Receivable, Walbing reserves the right to inquire with the (original) Seller of the Trade Receivable to ensure that the receipt of money actually relates to the sold Trade Receivable and is therefore due to the Buyer. The Seller must cooperate in the clarification of such atypical cases. Walbing is entitled to determine the purpose of the payment in the event of allocation difficulties. If payments have been misdirected due to allocation difficulties, Walbing will not reverse the payment. In atypical cases, in particular if the auction price achieved is below the discount amount, Walbing will not provide transaction support. In such a case, the Seller must immediately make the payment manually to the Buyer's account, or to an escrow account of Walbing for Walbing to forward the payment to the Buyer. The same applies if the Seller has not granted Walbing a power of attorney for the account.

#### 7.5.4 Transaction Support for Disclosed Assignment

In the case of a disclosed assignment, the Seller must also inform the debtor immediately of the sale. Walbing will also inform the debtor about the assignment via the contact details provided by the Seller. In the cases referred to in Section 3.3.1.1 and 3.3.1.2, the debtor must pay to the account of the Buyer, so that no assistance is required from Walbing in the handling of the payment. The Seller must also request the debtor to pay to the Buyer. If the debtor nevertheless inadvertently pays into the account of the Seller and Walbing becomes aware thereof, Walbing will assist in the handling of the payment – provided that Walbing has power of attorney for the account – as in the case of undisclosed assignment. If Walbing has no power of attorney for the account, the Seller must immediately make the payment manually to the Buyer's account, or to an escrow account of Walbing for Walbing to forward the payment to the Buyer. This also applies in the cases referred to in Sections 3.3.1.3 and 3.3.1.4, in which the debtor pays to the account of the previous creditor known to him.

#### 7.5.5 Trust Agreement

Walbing as trustee will deposit the payment amounts received from the Seller pursuant to Sections 7.5.3 and 7.5.4 in one or more escrow accounts kept with one or more credit institution(s) for the Seller as trustor. These escrow accounts will be held in the name of Walbing as open collective escrow accounts within the meaning of section 17(1) sentence 2 no. 1b of the German Payment Services Oversight Act (*Zahlungsdiensteaufsichtsgesetz – “ZAG”*). Walbing will ensure that the payment amounts received pursuant to sentence 1 will be allocable to the Participant for accounting purposes and will at no time be commingled with the funds of natural or legal persons other than the Participant for whom they are held, in particular not with its own funds. Walbing is permitted to withdraw amounts from the escrow accounts in the amount of claims existing for the benefit of Walbing or for the benefit of another Participant against the Participant. Upon request, Walbing will inform the Participant without delay at which institutions the amounts deposited by the Participant are held. In the fulfillment of its statutory safeguarding obligations, Walbing is free at any time to choose a different safeguarding method permissible under section 17 ZAG and to amend these Platform Terms and Conditions for this purpose in accordance with Section 1.4.

#### 7.5.6 Payment Reminder to the Debtor at Maturity for Disclosed Assignment

Walbing sends at maturity date payment reminders to the debtor and the original holder of the Trade Receivable (contractual partner of the debtor) if the debtor fails to pay the sold Trade Receivable of a disclosed assignment. Walbing also sends a notice of non-payment to the Buyer. The number of payment reminders, the dates on which the payment reminders are sent and the form (e-mail or letter) is determined by Walbing in its reasonable discretion. The Buyer may instruct Walbing to stop the payment reminder process at any time. If the debtor fails to make any payment in response to such payment reminders, Walbing notifies the original holder of the Trade Receivable and the Buyer respectively. The Seller and the original holder of the Trade Receivable (contractual partner of the debtor) must fully support the Buyer in this regard. Walbing will notify the Seller of the disclosure of the invoice deposited with Walbing and, if applicable, of other deposited documents and will subsequently disclose these documents to the Buyer after a reasonable period of time as evidence for the Trade Receivable. Until 30 days after maturity, the Seller and Buyer shall not instruct the debtor to pay into a different bank account, nor shall they allow any third party, e.g., law firms or collection agencies, to make such an instruction, so as to allow Walbing to determine if a receipt of payment has been made to the Buyer's bank account monitored by Walbing up to 30 days after maturity. The Buyer and the Seller must immediately notify Walbing of the receipt of payment in the event of full or partial receipt of payment on an account other than the monitored account.

#### 7.5.7 Payment Reminder to the Debtor After Maturity for Undisclosed Assignment

Walbing sends at maturity date payment reminders to the original holder of the Trade Receivable (contractual partner of the debtor) if the debtor fails to pay the sold Trade Receivable of an undisclosed assignment. Walbing also send a notice of non-payment to the Buyer. If the debtor fails to make any payment in response to such payment reminders, Walbing notifies the original holder of the Trade Receivable and the Buyer respectively. The number of payment reminders, the dates on which the payment reminders are sent and the form (e-mail or letter) is determined by Walbing in its reasonable discretion. The Buyer may instruct

Walbing to stop the payment reminder process at any time. If the debtor fails to make any payment in response to such payment reminders, Walbing will notify the Buyer. The Seller and the original holder of the Trade Receivable (the contracting party of the debtor) must fully support the Buyer in this regard. In particular, the Seller will also demand payment from the debtor and will provide evidence thereof to Walbing and the Buyer upon request. Walbing may, after prior notice to the Seller, demand payment directly from the debtor. Walbing will notify the Seller of the disclosure of the invoice deposited with Walbing and, if applicable, of other deposited documents, and will subsequently disclose these documents to the Buyer after a reasonable period of time as evidence for the Trade Receivable. Until 30 days after maturity, the Seller and Buyer shall not instruct the debtor to pay into a different bank account, nor shall they allow any third party, e.g., law firms or collection agencies, to make such an instruction, so as to allow Walbing to determine if a receipt of payment has been made to the Buyer's bank account monitored by Walbing up to 30 days after maturity. The Buyer and Seller must immediately notify Walbing of the receipt of payment in the event of full or partial receipt of payment on an account other than the monitored account.

#### 7.5.8 Collection Service

If the Trade Receivable is more than 35 days overdue, the Buyer assigns the Trade Receivable to Walbing for collection purposes. Walbing hereby accepts the assignment. The parties agree that no separate assignment agreement is required.

Walbing may mandate law firms in its own name and for the account of the Buyer to enforce the claims of the Buyer in and out of court. Walbing calculates its collection fees in accordance with the German Lawyers' Fees Act (Rechtsanwaltsvergütungsgesetz) when legally trained employees are involved. Walbing will transfer the collected amounts to the Buyer. The Buyer has the option via the Platform to exclude the assignment to Walbing as collection service provider or to irrevocably terminate the collection process.

### 7.6 Platform Availability; Impact of Interruptions on Running Auctions

7.6.1 Walbing does not owe a constant availability of the Platform and its functionalities and the services offered on the Platform. In particular, the risk of an unforeseen failure of the Platform cannot be excluded. Walbing will, however, endeavor to provide the Platform largely without interruption.

7.6.2 Walbing will inform the Participants via e-mail of any unforeseen failure of the Platform lasting longer than 30 minutes, insofar as this is possible with reasonable effort within the existing technical conditions.

7.6.3 In the event measures are necessary to ensure the security and the maintenance of the Platform's ongoing operation (e.g., by installing updates or upgrades), and such measures may lead to disruptions in the availability of the Platform, Walbing will plan maintenance windows during which a planned shutdown of the Platform may occur. Walbing will inform Participants of upcoming maintenance windows and their expected duration and impact by posting notices on the Platform at [status.walbing.com](https://status.walbing.com). Walbing will consider the legitimate interests of typical Participants when planning and performing such operations. During maintenance windows, auctions will be interrupted and will resume after the completion of

the maintenance, in which case the auction duration will be extended accordingly, whereby a rounding of the auction duration to full hours is permitted.

- 7.6.4 In the event of a Platform failure lasting up to two hours, the duration of all running auctions will be extended by an appropriate time of up to two hours.
- 7.6.5 In the event of a Platform failure lasting longer than two hours, the duration of all running auctions will be extended by 24 hours, counting from the end of the failure. In such a case, each Seller is entitled to cancel its running auctions. If a Seller cancels an auction based on such a failure, no purchase contract for the affected Trade Receivable comes into existence with the highest bidder or any other bidder at the time of cancellation. Walbing will inform the bidders affected by such a cancellation via e-mail.
- 7.6.6 If an auction is cancelled due to a Platform failure for which Walbing is responsible, Walbing will refund or remit the fees already paid or incurred by the Participants for the cancelled auction.

## **§ 8 Fees**

- 8.1** Walbing's Fees arise from the price list published on the Platform, unless there is a deviating agreement in individual cases.
- 8.2** Walbing's Fees do not include sales tax. Sales tax is applied and charged additionally by Walbing at the statutory rate, if any.
- 8.3** Unless otherwise agreed, the Fees shall be paid by direct debit or by Walbing instructing the account-holding bank to transfer the Fees owed from the current account of the respective Participant to the bank account of Walbing on maturity of the respective Fee on the basis of the power of attorney granted to Walbing for the current designated account. If Walbing has not been granted a power of attorney, the Participant must transfer the fees to Walbing manually without delay.
- 8.4** Unless there was an error by Walbing, paid Fees are non-refundable – not even partially –, even if the transaction is subsequently reversed (e.g., due to challenge) or its amount is corrected (e.g., in the event of a mistake by a party regarding the applicable VAT rate for the Trade Receivable).

## **§ 9 Blocking**

- 9.1** Walbing may block Participant accounts temporary or permanently if:
- there is suspicion that the Participant has made false statements knowingly or through gross negligence, especially during registration;
  - there is a reason for extraordinary termination of these Platform Terms and Conditions on the part of the Participant or Walbing;

- there is a concern that unauthorized third parties use the Participant's account; and/or
- the Participant repeatedly gives access to the Platform to unauthorized persons.

**9.2** Walbing will notify the Participant of the blocking and its reason via e-mail upon request. Access will be restored upon elimination of the reason, unless Walbing terminates these Platform Terms and Conditions.

## **§ 10 Term and Termination**

### **10.1 Term**

The contract on the use of the Platform is concluded for an indefinite period.

### **10.2 Ordinary Termination**

The Participant and Walbing may each terminate these Platform Terms and Conditions without giving reasons with two weeks' notice. Nevertheless, auctions in which the terminating Participant is involved and which are not yet completed at that time will be completed contractually. Transaction support ends with the expiry of the notice period. Login details, including password, will be deactivated upon expiry of the last transaction. The Participant is prohibited from using them once the termination takes effect, unless their use is necessary to process the unfinished transactions. The right to block a Participant remains unaffected.

### **10.3 Extraordinary Termination**

The extraordinary right of termination under Section 1.4.2 remains unaffected.

### **10.4 Form of Termination**

Termination notices must be in text form to be effective.

## **§ 11 Liability**

### **11.1 General Standard of Liability**

Unless otherwise provided elsewhere – in particular in the Track and Pay agreement – the following shall apply: Walbing is liable in accordance with statutory provisions for damages to Participants caused by intentional or grossly negligent conduct of Walbing, its legal representatives, executives or other vicarious agents. The same applies for personal injuries and for damages under the Product Liability Act.

## **11.2 Limitation**

Unless otherwise stipulated in a guarantee provided by Walbing, Walbing's liability for damage claims is limited according to the following provisions:

- 11.2.1 Walbing is liable for damages caused by slight negligence only if they are based on the violation of essential contractual duties (cardinal duties). Cardinal duties are such contractual duties whose fulfilment enables the proper execution of the contract and on whose compliance the Participant can rely. To the extent Walbing is liable for negligence, Walbing's liability is limited to the damage that is typically predictable.
- 11.2.2 Walbing's liability for the loss of data and/or software caused by negligence is limited to the typical recovery expenses that would have been incurred if the Participant had made regular and appropriate backups.

## **11.3 Expenses**

The provisions of the preceding paragraphs apply correspondingly to limit the obligation to compensate wasted efforts (*vergebliche Aufwendungen*) within the meaning of section 284 of the German Civil Code.

## **11.4 Vicarious Agents**

The preceding limitations of liability also apply for the benefit of Walbing's vicarious agents.

## **11.5 Initial Defects**

The strict liability of Walbing for defects already existing at the time of conclusion of the contract (section 536a (1) case 1 German Civil Code) is excluded.

# **§ 12 Final Provisions**

## **12.1 Applicable law**

The contractual relationship between Walbing and the Participant is governed by the laws of the Federal Republic of Germany, excluding the UN Sales Convention (CISG). This Agreement is written in German and English. In the event of any discrepancy between the languages, the German version will prevail.

## **12.2 Jurisdiction**

If the Participant is a merchant within the meaning of the German Commercial Code (*HGB*), a legal entity under public law or a special fund under public law, the exclusive place of jurisdiction for all disputes, including tort claims, arising directly or indirectly from the contractual relationship between Walbing and the Participant shall be Hamburg, Germany. The same place of jurisdiction applies if the Participant has no general place of jurisdiction within Germany, has transferred its residence or usual abode abroad after concluding the contract, or if the Participant's residence or usual abode is unknown at the time of filing an action.

## **12.3 Exclusion of Set-off**

In general, the following applies: The Participant may only offset receivables by Walbing against undisputed or legally established counterclaims. In the event of service deficiency by Walbing, the Participant is only entitled to a right of offset or retention if the offset or retention amount does not exceed the reduced value of the affected service or the potential cost of supplementary performance or correction of faults.

## **12.4 Severability**

If any provision is invalid or unenforceable, the remainder of these Platform Terms and Conditions will continue to be valid and enforceable. The parties are obliged to replace the invalid or unenforceable provision by agreeing on a valid and enforceable provision that comes closest to the economic intention of the initial provision. The latter also applies in the event of a gap in these Platform Terms and Conditions.

## **12.5 Text Form**

Unless otherwise expressly stipulated, all declarations must be made in text form.