General Terms and Conditions of Business

1. Scope of Validity

These General Terms and Conditions of Business regulate the legal relationship between udm Colombo, Egli & Zurmühle (hereinafter "udm") and its customers (hereinafter "Customer") who use services of udm.

2. Services of udm

udm will provide the Customer with online tests on a server connected to the Internet.

Within the framework of its operational resources, udm shall strive to offer the services free of faults and without interruptions around the clock. Nevertheless, maintenance work, troubleshooting, expansion of the services etc. may necessitate temporary interruptions to operations. The Customer shall be informed about such interruptions to operations if this is possible in the circumstances. However, the availability of the service shall not fall below 99% per year of the contract. Downtimes that are attributable to downtimes at hosting providers used by udm shall not be taken into account when calculating the availability. Downtimes shall be calculated from the time when notification is given by the Customer. udm can use third parties to provide the service.

3. Obligations of the Client

As a general rule, udm only provides support to pre-determined and known contact persons at the customer companies.

The Customer undertakes towards udm to use the service pursuant to the instructions of udm and to comply with the guidelines for usage. It is obligated to treat its usernames and passwords as confidential. udm may rely on the person using an identification parameter being authorised to do so.
The Customer bears the costs for the location and elimination of faults by udm if the Customer has requested the investigation and the cause of the fault is attributable to the culpability of the Customer and/or the equipment used by it. udm does not assume any costs for support by third parties.

4. Conditions of Payment

The payment deadline on invoicing is 30 days net unless otherwise agreed.

5. Guarantee and Liability

udm vouches for the service being provided with due diligence and professionalism. However, udm cannot guarantee that the service will be available on the Internet without interruption and that the data requested by the Customer will be transmitted from the Internet correctly and without delay. udm also does not provide any guarantee that the services provided by udm and any third parties used will enable the Customer to attain the commercial or other purpose intended by the Customer.

udm also does not assume any liability for damage that the Customer or its customers incur due to erroneous test classifications, data loss or the impossibility of gaining access to the Internet or of sending or receiving information.

6. Non-Disclosure and Data Protection

udm and the Customer undertake towards each other to maintain non-disclosure of all information and data that is not generally known and that becomes accessible to them when preparing and implementing this contract. This obligation also continues to apply after the contract has ended.

When processing personal data, udm will abide by the Swiss Data Protection Act. udm will only save data that is necessary to provide the service and for invoicing purposes.

7. Intellectual Property

For the duration of the contract, the Customer shall receive the non-transferable, non-exclusive right to use and utilise the service.

All rights to existing intellectual property or intellectual property that is created with regard to the service in the fulfilment of the contract (e.g. test questions, program code) shall remain with udm or the third parties deployed by udm.

Test questions and program code may not be forwarded or used outside of the online tests without the written consent from udm.

8. Duration of Contract and Termination

Unless otherwise agreed, the contract is concluded for an indefinite period of time, whereby both parties may withdraw from the contract, giving a period of notice of 6 months. After the expiry of the contract, udm is entitled to delete the data of the Customer.

9. Partial Invalidity

If one or more of the provisions of these General Terms and Conditions of Business should prove to be invalid, provisions are deemed to be agreed that correspond or come as close as possible to the intended purpose in a legally permissible manner. The other provisions retain their validity.

10. Other Provisions

udm can change the General Terms and Conditions of Business at any time. The current version is available on the website of udm with the date of their validity. udm will inform the Customer by e-mail that a new version of the General Terms and Conditions of Business has been published on the udm website. If the Customer does not accept the amendments, it has the opportunity to notify udm of this in writing and to declare ordinary termination of the contract to the next date of termination. The amendments are deemed to have been approved by the Customer if there is no written notice or termination within the ordinary period of notice.

Rights and obligations arising from the contract can only be transferred to third parties with the written consent from the other party. This provision does not apply for the transfer of the contract by udm to a legal successor or affiliated company. The contract is governed by Swiss law. The parties agree the business domicile of udm as the place of jurisdiction for any disputes. udm is entitled to file legal action against the Customer at the latter's domicile.

8 July 2006
General Terms and Conditions of Business Version 1.0
udm Colombo, Egli & Zurmühle