

GENERAL TERMS AND CONDITIONS

of w-support.com GmbH for performance of repair services

§ 1 Scope, definitions

- (1) These general terms and conditions (hereinafter referred to as GTC) apply to any contracts with w-support.com GmbH (hereinafter “w-support.com”) for the performance of the repair services described below. The Customer accepts these terms and conditions upon entering into the business relationship.
- (2) **A Consumer** for the purposes of the GTC is any natural person who enters into a legal transaction for purposes which can be attributed primarily neither to a commercial nor occupational activity.
Contractors for the purposes of the GTC are natural or legal persons or partnerships with whom a business relationship is entered into, and who are acting in the exercise of a commercial or independent professional activity.
Customers for the purposes of the GTC are Consumers as well as Contractors.
- (3) Deviating, conflicting or supplementary general terms and conditions of the Customer are not part of the contract, even if acknowledged, and not recognized, even in part, unless their validity is expressly agreed to.

§ 2 Conclusion of contract

- (1) All w-support.com offers are non-binding and subject to change. Technical changes as well as changes in shape, colour and/or weight are reserved within reason.
- (2) After posting of the offer to contract, the Customer will receive an automatically generated confirmation of receipt by e-mail, which confirms the receipt of the equipment and which the Customer can print. The automatic confirmation of receipt still does not represent an acceptance of the offer for the repair services, but merely documents that the order has been received.
- (3) Subsequently, w-support.com may send the Customer an offer to prepare a cost estimate, for a fee, regarding the remediation of the fault referred to in the service report, unless the fault is covered by a guarantee or warranty. The offer to prepare a cost estimate, for a fee, shall be sent to the Customer and is to be confirmed by the Customer in writing by fax or e-mail if the Customer wishes to proceed with the order and have the equipment repaired. If w-support.com does not accept the order to prepare a cost estimate, w-support.com will promptly so inform the Customer.
- (4) If the Customer has already approved the repair service in the service report, no cost estimate will be prepared. The acceptance of the order then takes place through a separate e-mail, or is made tacitly through performance of the contracted services.

§ 3 Scope of services

- (1) w-support.com shall provide maintenance or repair services in the context of the concluded service contract. Services such as data backup and recovery shall be provided under the service contract. Accordingly, only the performance of a service is due, and not its success.
- (2) Due to the quality guidelines from the manufacturers, w-support.com is obligated to fully recondition the incoming equipment, which is to be repaired in accordance with the technical description.
- (3) In the event of damage resulting from improper use by the Customer (e.g. damage due to falling or breaking, or from being subjected to excessive voltage), the defective equipment or accessories are outside the scope of the warranty and guarantee. If w-support.com determines that this is not a case that falls under the guarantee or warranty, but that the equipment can nevertheless be repaired, it may prepare a cost estimate and send it to the customer.
The Customer may accept this offer within 7 days (receipt by w-support.com). If the Customer does not accept the offer or there is irreparable damage (total loss), the Customer shall receive the equipment back without repairs having been undertaken.
- (4) The following applies for Contractors: Insofar as the Customer does not explicitly request a repair at its own expense, or if repair is not pos-

sible, w-support.com reserves the right to charge the Customer for the costs of examining equipment incorrectly submitted as being covered by a warranty or guarantee, in the amount of 50 €. The Customer has the right to demonstrate that the actual costs incurred are lower.

- (5) The acceptance of equipment sent to w-support.com without prepayment may be declined by w-support.com insofar as it is not a case covered by a Consumer warranty. If accepted, w-support.com reserves the right to charge the Customer for the costs of shipment which have not been prepaid.
- (6) Exchanged parts shall without compensation become the property of w-support.com.
- (7) Only the defective equipment or defective parts themselves are to be sent, in particular, original packaging, manuals and non-defective accessories are not to be submitted, even if these were used for protection or as an accessory (e.g. batteries, cards, protective foil, covers and other loose parts from the housing, toner). w-support.com assumes no liability for loss of or damage to non-defective equipment that has nevertheless been sent in. w-support.com also assumes no liability for any damage to equipment or accessories caused by sending parts unnecessarily or in a manner that is not secure or in accordance with manufacturer's recommendations.
- (8) Equipment or accessories will be reset to factory settings during repair.
- (9) w-support.com is entitled to make use of third parties in the provision of the (repair) services as well as for delivery of the repaired equipment.
- (10) w-support.com points out that it might be necessary to open or perform work on the equipment for the purpose of examination whether a service is covered by the warranty or manufacturer's guarantees. In the event that warranty service cannot be offered and subsequent discovery of irreparable damages or refusal of the amended cost estimate the original state of the device will not be restored.

§ 4 Cost estimate

- (1) Insofar as the Customer accepts the offer to issue a cost estimate for a fee, the cost estimate is to be paid according to the applicable price list for w-support.com.
- (2) The cost estimate represents only a professional calculation of estimated costs. w-support.com assumes no liability for the accuracy of the cost estimate. If, in the course of repair, it is established that the repair cannot be undertaken without significantly exceeding the cost estimate, the Customer may for this reason cancel the contract. In the event of cancellation, w-support.com may require payment of a portion of the remuneration corresponding to the work actually performed and reimbursement of the expenses not included in the remuneration. If it is expected that the cost estimate will be significantly exceeded, w-support.com shall inform the Customer before carrying out the work.
- (3) The cost estimate is carried out on the basis of error description given by the customer and visual inspection of the device. The device will be opened only after acceptance of cost estimate as non-destructive examination is not always possible due to the design. Irreparable damages such as entry of moisture and further damages might not be discovered until opening of the device. In the event of subsequent discovery of irreparable damages or refusal of the amended cost estimate the device will not be dismantled to the original state.

§ 5 Data backup and data recovery

- (1) The customer is obliged to ensure, prior to relinquishment or submission of the equipment or accessories, that all saved data are deleted or otherwise stored. w-support.com expressly indicates that any stored data may be lost during the repair or service.
- (2) w-support.com will attempt at the explicit request of the Customer without intervention in the software or on the device to preserve the existing data on the equipment (data backup) if conditions allow (depending on the type of equipment and the type of data to be backed

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up, etc.). The data backup is not covered by the warranty or manufacturer's guarantees. w-support.com expressly points out that in the event of a failed attempt at preserving the data, the existing data may be wholly or partially lost.

Costs for data backup will be charged if the backup is successful. This offer does not apply to accessories. If the Customer wishes the backup to be performed by w-support.com, this must be indicated on the service report.

- (3) If a data backup is not possible, w-support.com shall, at the explicit request of the Customer, by alterations in the software or by physical intervention on the device (data recovery) attempt to transfer the data stored on the device to an external data carrier if conditions allow (depending on the device type and the type of data to be backed up, etc.). Data recovery is also not covered by the warranty or manufacturer's guarantees. w-support.com expressly points out that in the event of a failed attempt at recovery of the data, any data present may be wholly or partially lost. In case of success it might be the case, the intervention necessary for the data recovery may result in loss of manufacturer's guarantee. In this case repairs may no longer be possible or only carried out at the expense of the customer. Prior to commissioning of the data recovery it has to be accepted that the concerned data is stored on removable media (memory card). Costs for data recovery will be charged only if the recovery was successful. Data recovery is deemed to be successful if data of the category ordered by the customer can be extracted from the internal memory and saved on an external data carrier. The size of the recovered data does not matter. Data recovery is not carried out if the category ordered by the customer does not contain any data. Therefore the customer does not have to pay for the data recovery in this category.
- (4) The Customer agrees that w-support.com may disassemble the device and carry out the necessary interventions for the purposes of successfully recovering data. If the data recovery was successful, the Customer shall receive its equipment back along with an external data carrier.

§ 6 Remuneration

- (1) The remuneration is calculated according to the time required for the performance of the repair or service plus the necessary expenses, particularly the price of the required spare parts. The price list in effect at the time a cost estimate is prepared forms the basis for such estimate; this applies also to data backup or data recovery carried out at the Customer's request. For replacement parts, the applicable prices for replacement parts at the time the cost estimate is generated shall apply.
- (2) Payment is due upon receipt of the invoice, unless the Customer has not validly disputed acceptance of the service. At its option, the Customer may make advance payment to w-support.com of the repair costs listed in the cost estimate or previously approved by the Customer. In this event, any excess payment will be returned to the Customer within 10 days of the invoice being issued by w-support.com. The same shall apply if it is determined during the course of performance of repairs that the Customer's equipment cannot be repaired, or if the Customer does not send the equipment for repair after having been twice requested to do so by w-support.com. In this case, w-support.com reserves the right to cancel the order and issue a refund to the Customer.
- (3) The prices include the statutory VAT plus additional shipping costs. The prices listed for data recovery refer to standard data recovery. If no data can be read from the equipment because the file systems are badly damaged or there are multiple defective sectors, etc., w-support.com will prepare a separate offer.

§ 7 Place of performance, shipping, transfer of risk

- (1) Return shipment is free of charge for Consumers; return shipment is charged for Contractors, usually from the registered office of

w-support.com. All shipments are provided with standard packaging. The choice of shipping method is left to the reasonable discretion of w-support.com, unless other special arrangements are made.

- (2) The following applies for Contractors: The place of performance for all services and repairs is the registered office of w-support.com. Shipment by the Contractor to w-support.com and shipment by w-support.com to the Contractor shall occur at the Contractor's risk, unless otherwise agreed in individual cases. The statutory provisions shall apply for Consumers.
- (3) The Customer bears the risk of loss of data and data carriers during transport. Upon request, special shipping insurance (e.g. registered letters, packages, insured items) can be purchased according to the current price list.
- (4) We are not liable for the loss of data carriers (even if the device has shipping insurance). The client undertakes to ensure the secure transport of its data carriers. If we receive a shipment, and the data-storage device is no longer included, w-support.com cannot be held liable. Please do not send any new memory cards, USB sticks or other data carriers for the purposes of data backup. This can easily lead to confusion.

§ 8 Terms of payment

- (1) Payment may be made by cash on delivery, credit card, or PayPal.
- (2) If a SEPA direct debit has been agreed with the Customer, the creditor must inform the debtor about the debit via a pre-notification before submitting the debit request to the bank. The pre-notification must be sent by w-support.com at least 1 day prior to the due date.
- (3) While in default of payment, a Consumer shall pay interest on the amount due of 5% above the current base interest rate. While in default of payment, a Contractor shall pay interest on the amount due of 9% above the current base interest rate. w-support.com also reserves the right to demonstrate and assert higher default damages vis-à-vis Contractors.
- (4) If the Customer finds itself in default of payment on an invoice due to general liquidity problems, or if its financial situation has significantly worsened after conclusion of the contract, all obligations to w-support.com shall be due immediately. w-support.com shall then be entitled to perform pending repair and services, generate cost estimates, and deliver items only against a guarantee or advance payment, or may withdraw from the contract.

§ 9 W-SUPPORT.COM vendor's lien, failure to retrieve

- (1) w-support.com is entitled to a vendor's lien with regard to services provided in accordance with the contract and any other claims arising from the business relationship between w-support.com and the Customer. This lien applies to equipment that has come into w-support.com's possession in the context of the order. If the Customer does not pay for the equipment sent carriage forward, does not accept it, or it cannot be delivered to the Customer, w-support.com shall urge the Customer in writing to pick up the equipment within one month or, upon the Customer's request, have the equipment resent to the Customer for a fee. If the Customer does not collect the equipment within a month following this request, or if a second attempt at delivery does not succeed, w-support.com shall announce to the Customer the sale of the equipment and indicate the amount of the debt which the sale is intended to satisfy.
- (2) After one month has passed from this announcement, w-support.com is entitled to liquidate the equipment. w-support.com is also entitled to dispose of the equipment via private sale.
- (3) The right to private sale applies also if the communication to be made by w-support.com in accordance with Para. 1 cannot be delivered to the Customer at the address listed in the contract and the Customer has, in violation of § 17 (3), not informed w-support.com of the change in address.

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§ 10 Warranty

- (1) If a repair service performed by w-support.com is defective, the Customer may request supplementary performance within a reasonable period of time. Supplementary performance for a Contractor shall be undertaken at w-support.com's option through remediation of the defect or manufacture of a new item. Exchanged parts shall become the property of w-support.com without compensation.
- (2) Damage resulting from improper operation, use, or storage, or from interference by third parties, is not covered by the warranty.
- (3) The following also applies for Contractors:
Warranty claims on the part of the Contractor presuppose that the Contractor has appropriately fulfilled the obligatory inspection and notification requirements in accordance with § 377 of the Commercial Code [Handelsgesetzbuch]. The warranty period is 1 year. Excepted from this 1-year period are claims by the Customer arising from product liability, claims in tort, claims arising from bodily injury, injury to health, or loss of life attributable to w-support.com, claims arising from a failure to honour independent guarantees, and if w-support.com acts in bad faith.
The statutory provisions apply for Consumers.
The warranty period is 2 years.
- (4) Notifications of defects are to be sent to w-support.com with a clear description of the problems found. For Contractors, the description must be in writing.
- (5) If the Customer is responsible for the defect or the problem, or the defect reported by the Customer does not exist, w-support.com is entitled to request compensation for the costs incurred through the remediation or attempted remediation of the defect.
- (6) The warranty offered by w-support.com does not cover defects resulting from external influences or by a failure to comply with the terms of use provided by w-support.com for the use of the object to be repaired or serviced. The warranty also does not apply if the Customer or a third party alters the object of the repair or service without the consent of w-support.com, unless the Customer proves that the defect did not result from such alterations or that the remediation of the defect is not unreasonably complicated by the alteration.
- (7) w-support.com may refuse supplementary performance until the Customer has paid the agreed upon remuneration to w-support.com minus a portion corresponding to the financial impact of the defect or the guaranteed quality or characteristic.
- (8) Once the Customer has set a reasonable period for supplementary performance and such supplementary performance has failed or been refused, the Customer may withdraw from the contract or demand a reduction in the agreed remuneration. Any claim to damages by the Contractor-Customer is excluded. Failure to make supplementary performance shall be found only after at least two failed attempts at remediation of the defect. The subsequent limitations of liability in accordance with § 15 also apply.

§ 11 Contractual right of withdrawal

- (1) w-support.com has the right to withdraw from the contract in any of the following cases:
 - (a) Cases of force majeure, labour disputes, natural disasters and similar incidents, inasmuch as they more than temporarily substantially impede or make it impossible for w-support.com to provide its services;
 - (b) if the financial situation or the creditworthiness of the Customer has considerably worsened after conclusion of the contract, in particular if an application for the commencement of insolvency proceedings has been made;
 - (c) in case of false claims made by the Customer regarding its financial circumstances or creditworthiness which threaten the intended purpose of the contract;
 - (d) in the event of actions by the Customer violating its contractual ob-

ligations, or business transactions contra bonos mores or constituting unfair acts.

- (2) In the event of a partial inability to perform or inability to perform in an agreed time frame, the contract may be adapted to the changed conditions by the mutual agreement of the parties.
- (3) In case of inability to perform or withdrawal from the contract on the basis of a statutory or contractual right to withdrawal, w-support.com is entitled to a lump-sum compensation amounting to 25% of the respective contractual remuneration unless the Customer proves lower damages. w-support.com also retains the right to prove higher damages.

§ 12 Assignment, set-off, right of retention

- (1) w-support.com is entitled to assign the claims and obligations arising from the business relationship with the Customer to third parties insofar as the purpose of the contract is not thereby threatened.
- (2) The Customer may assign its rightful claims to third parties only with the prior written consent of w-support.com, insofar as the claim is of a non-pecuniary nature.
- (3) The Customer may set off the claims of w-support.com only against undisputed or legally enforceable counterclaims.
- (4) The Customer has the right to assert a right of retention only on the basis of counterclaims arising directly from the relevant contractual relationship. In addition, the Customer may exercise a right of retention on the basis counterclaims against w-support.com only if these counterclaims are undisputed or are legally enforceable.

§ 13 Right of withdrawal for Consumers for services commissioned as remote sales transactions

For services commissioned as remote sales transactions (in particular telephone and online orders), Consumers shall be entitled to a right of withdrawal in accordance with the following provisions. A Consumer is any natural person who concludes a legal transaction for purposes that can be primarily attributed neither to a commercial nor to an independent professional activity.

Information regarding right of withdrawal

Right of withdrawal

You have the right to withdraw from this contract within 14 days without providing reasons.

The period in which this right of withdrawal may be exercised is fourteen days from the date on which the contract was concluded.

To exercise your right of withdrawal, you must inform us at

w-support.com GmbH Phone: 03722/713 3171
Ernst-Lässig-Straße 7 Fax: 03722/797 590
09232 Hartmannsdorf E-mail: info@w-support.com

You must provide a clear declaration of your decision to withdraw from this contract (for example, by means of a postal letter, fax, or e-mail). At your option, you may use the attached withdrawal form template for this purpose.

It is sufficient for compliance with the deadline for exercising the right of withdrawal that the communication regarding the exercise of the right of withdrawal be sent before the expiration of the period for withdrawal.

Consequences of withdrawal

If you withdraw from this contract, we must reimburse you for all payments we have received from you, including the delivery charges (except for additional costs incurred if you chose a different mode of

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delivery than our standard, cheapest delivery option), without delay and no later than fourteen days from the day on which the communication regarding your withdrawal from the contract is received. Reimbursement shall be made using the same means of payment employed in the original transaction, unless otherwise expressly agreed with you; you will under no circumstances be charged fees for this repayment.

If you requested that the provision of services should start during the period in which the right of withdrawal could be exercised, you must pay us an appropriate amount for the services already provided corresponding to that proportion of the total contractually agreed services already performed by the time at which you informed us that you were exercising your right of withdrawal from the contract.

End of the notice regarding the right of withdrawal

§ 14 Clause regarding intercompany offsetting

- (1) The term “KOMSA company” refers to all affiliated companies of KOMSA Kommunikation Sachsen AG in accordance with §§ 15 ff. of the German Stock Corporation Act [Aktiengesetz].
- (2) w-support.com is entitled to offset any claims against the Customer accruing to it against all claims that may be asserted by the Customer against other companies associated with KOMSA Kommunikation Sachsen AG according to §§ 15 ff. of the German Stock Corporation Act, regardless of their legal basis.
- (3) In the event of several co-existing obligations, the Customer waives the right to dispute our determination of the obligations to be settled (see §396 Para.1 sent. 2 German Civil Code [BGB]).
- (4) A list of all companies affiliated with KOMSA Kommunikation Sachsen AG according to §§ 15 ff. of the German Stock Corporation Act may be found in the current annual report which is published according to the statutory regulations, or shall be sent to the Customer by w-support.com upon request.

§ 15 Liability

- (1) The liability of w-support.com is limited to tortuous acts and cases of gross negligence. Liability for failure to fulfil the obligations of a guarantee, due to bad faith, according to the Product Liability Act [Produkthaftungsgesetz], and for loss of life, physical injury, or injury to health remains unaffected.
- (2) Also unaffected is liability for breach of duties the fulfilment of which is required for the fulfilment of the contract, and compliance with which the customer may regularly rely upon. However, this liability is limited in amount to those losses typical and foreseeable for the contract in question at the time of its conclusion.
- (3) The same applies to breaches of duty by our agents.
- (4) The Customer is obligated to create and store its own backup copies of data which the Customer has saved or processed on its equipment or accessories, in accordance with the Customer's own security needs. w-support.com shall not be liable for loss of data insofar as the damage has resulted from the Customer's failure to backup data and thereby ensure that the lost data could be recovered at a reasonable cost.
- (5) Claims by Contractors shall lapse one year after the delivery of the goods or acceptance of the work. For Customers who are Consumers, the limitation period of one year applies only for defect claims concerning used goods supplied in the name of w-support.com itself. Otherwise, the statutory limitation periods apply for Consumers.
- (6) Insofar as w-support.com enables access to other websites through hyperlinks, w-support.com is not responsible for the contents of such external sites. w-support.com also does not endorse any third-party content. The provider of a linked site shall be liable for its content and any resulting losses, and not the party who refers to such publication through the link. If we should become aware that

unlawful content is found on these sites, we will immediately block access.

§16 Data protection, credit assessment

- (1) The Customer and w-support.com mutually undertake to observe the legal provisions on data protection in the performance of the contractual relationship and to impose on their employees the obligation to comply with such provisions. The contracting parties mutually agree to prove compliance with this obligation in the form required under the statutory provisions, upon the request of the other party.
- (2) w-support.com collects, processes, stores, and uses the personal data of customers in automated procedures insofar as necessary for performance of the contract, particularly inventory data, in accordance with § 28 of the German Federal Data Protection Act [Bundesdatenschutzgesetz (BDSG)], § 95 Telecommunication Act [Telekommunikationsgesetz (TKG)] § 14 Telemedia Act [Telemediengesetz (TMG)], and usage and billing data, in accordance with § 15 TMG, §§ 96, 97 TKG, if applicable. Furthermore in case of guarantee handling personal data of the Customer (title, name, address, e-mail address, telephone number, fax number) as well as order data (device data, IMEI, error description) are forwarded to the manufacturer of the sent in device.
- (3) The Customer is entitled at any time to obtain information about the data stored regarding his or her person and if necessary have the information corrected, locked or deleted (§§ 34, 35 BDSG).
- (4) In conducting its business operations, w-support.com uses third parties contracted for order-data processing in accordance with § 11 BDSG.
- (5) w-support.com is also entitled, with the Customer's consent, to use the Customer's personal data for its own informational, marketing and market research purposes, or to provide the data to affiliated companies for such purposes. The use of personal data by w-support.com or transmission of such data to affiliates is permissible only for the purposes mentioned. The Customer is entitled to refuse the collection, storage, use and transmission of personal data by w-support.com for informational, marketing and market research purposes or revoke consent granted at any time with effect for the future. The revocation of this right may be made by e-mail to info@w-support.com or by mail to w-support.com GmbH, Ernst-Lässig-Straße 7, 09232 Hartmannsdorf.
- (6) w-support.com reserves the right in individual cases to verify the Customer's credit and identity. The submission of the Customer's identity card and/or credit card information for the specified credit card may be required in this context.
- (7) Contract data (name, first name, date of birth, street address, zip code/city) shall be used if needed to carry out a credit check with a company that provides credit information. This notification is made in accordance with the provisions of § 33 Para. 1 BDSG. All personal data shall be treated confidentially. The Customer may consult w-support.com about the outcome of the request.
- (8) The Customer and w-support.com mutually undertake to either destroy or otherwise handle in accordance with the relevant data protection laws all data collected in connection with the relevant business relationship or company-specific information acquired in the course of such relationship.
- (9) The Customer agrees upon placement of the order that it is entitled to dispose of the delivered device and the data stored therein.

§17 Alternative dispute resolution

- (1) The EU Commission provides on its website the following link to the ODR platform: <http://ec.europa.eu/consumers/odr>. This platform shall be a point of entry for out-of-court resolutions of disputes arising from online sales and service contracts concluded

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between consumers and traders.

- (2) w-support.com is neither obliged nor prepared to attend a dispute settlement procedure before an alternative dispute resolution entity.

§18 Concluding provisions

- (1) Cases of force majeure significantly impeding or frustrating a contractual partner's performance or obligation entitle the affected contractual partner to delay the fulfilment of this obligation for the duration of the hindrance, plus a reasonable period of time required to respond to such events. Equivalent to cases of force majeure are labour disputes at the premises of the contracting partner or at third-party companies, as well as similar circumstances affecting the contracting parties directly or indirectly. This applies especially for delays in the delivery of services by w-support.com if these result from a failure of performance on the part of its suppliers or agents.
- (2) w-support.com may use third parties, especially affiliated companies, as agents in the performance of its commitments. This shall not affect the contractual obligations of w-support.com.
- (3) The Customer is obligated to notify w-support.com immediately of all changes in its personal circumstances relevant to the contract.
- (4) All legal relations between W-SUPPORT.COM and the Customer shall be governed by the laws of the Federal Republic of Germany, with the exception of the United Nations Convention on Contracts for the International Sale of Goods of 11/04/1980 (UN CISG).
- (5) These GTC are made in English and German language. In case of contradictions between the two versions or in case of ambiguity about the content or meaning of clauses, the German version shall be leading.
- (6) The parties agree that the exclusive place of jurisdiction for disputes arising from this contract shall be the registered office of KOMSA Kommunikation Sachsen AG in 09232 Hartmannsdorf, insofar as the Customer is a merchant or legal entity or special asset under public law [öffentlich-rechtliches Sondervermögen]. The same applies if, when filing suit, the Customer has no general place of jurisdiction, domicile, or habitual place of residence in the Federal Republic of Germany, or if none is known.

Stand 05/2017