

## **1. Subject matter**

- 1.1. These General Terms and Conditions (GTC) shall apply between VTA Software & Service GmbH (hereinafter referred to as "VTA") and its contracting party (hereinafter referred to as "Customer" or "Customers") within the scope of contracts for the provision of software (Software as a Service).
- 1.2. These GTC shall also apply to contracts for other additional one-time services between VTA and the Customers in connection with the provision of the software, insofar as they are applicable to them.
- 1.3. The features and functionality of the software provided are to be taken from the respective service description enclosed with the offer.

## **2. Scope**

- 2.1. These General Terms and Conditions shall apply exclusively within the territory of the Federal Republic of Germany.
- 2.2. Services and offers shall be provided exclusively on the basis of these GTC. They shall also apply to all future transactions with the customer, insofar as these are legal transactions of the same or a related nature.
- 2.3. The customer's terms and conditions of business and purchase are hereby rejected.
- 2.4. These GTC shall apply exclusively to traders within the meaning of § 14 BGB (German Civil Code) as well as to legal entities under public law or to a special fund under public law within the meaning of § 310 para. 1 sentence 1 BGB. Prior to the conclusion of the contract, VTA may require that the customer sufficiently proves its trader status, e.g., by providing its VAT ID number or other suitable evidence. The data required for this purpose shall be provided completely and truthfully.

## **3. Scope of Services and Content**

- 3.1. VTA shall provide the customer with the software in accordance with the service description for the duration of the contractual term specified in the offer as well as the access rights required for use in accordance with the contract in accordance with the offer or contract and these GTC.
- 3.2. VTA shall be responsible for maintenance of the software provided and shall provide support services to the customer. The agreed maintenance services as well as the scope of customer support can be found in the respective service description.
- 3.3. Use / Access privileges
  - 3.3.1. The Software is operated by VTA on a central server in a secure data center, unless specified otherwise in the offer. Access to the functions of the software shall be provided via the

internet as SaaS (Software as a Service) on the basis of user name and password (use of web services or file interfaces).

3.3.2. The functional capability of the software shall be deemed to have been demonstrated if all interfaces at the customer's site operate without errors.

3.3.3. Further details can be found in the respective service description.

#### 3.4. Support Services / „Customer Support“

3.4.1. VTA shall provide the following services to the customer within the scope of customer support:

- Consulting and support services in connection with the functions of the software;
- Handling of errors that occur during the proper use of the software;
- Consulting and support necessary due to updates of the software

3.4.2. Error handling includes isolating the cause of the error, error diagnosis and services aimed at correcting the error, provided that the error is caused by the software.

3.4.3. Services not covered by customer support:

- Services outside the agreed-upon business hours or availability times of on-call support
- Services that become necessary because the customer does not fulfil its obligations to cooperate.

3.4.4. Customer support shall only be provided during the times specified in the service description attached to the offer.

3.4.5. After receipt of a sufficiently specified error description, which includes error behaviour, affected components of the software and steps already taken, the reaction times of VTA designated in the service description shall apply. Reaction time means the period of time within which VTA will commence work.

3.4.6. Further details can be found in the respective service description.

3.5. The performance obligations in connection with other one-time services pursuant to clause 1.2. are to be taken from the respective individual offer.

#### **4. Cooperation obligations of the customer**

4.1. The customer shall cooperate closely and efficiently with VTA, for which the customer's personnel, organizational, professional and technical responsibility is also essential. In particular, the customer shall perform the following duties to cooperate:

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- 4.1.1. The customer shall provide VTA with all documents, documentation and information required for the proper performance of VTA's obligation.
  - 4.1.2. The customer shall provide VTA with test data to the extent available.
  - 4.1.3. The customer shall provide documentation of errors detected during testing or live operation in a reproducible or at least in a comprehensible form and shall inform VTA immediately about the documented errors.
  - 4.2. The customer shall name at least one employee to VTA as contact person (VTA shall be informed immediately of any changes in this regard). The contact person must have experience in using the software. Only the contact person or a representative designated by the contact person shall be authorized to submit error reports.
  - 4.3. Prior to reporting an error, the customer shall perform an analysis of the system environment within the scope of its possibilities in order to ensure the error is not caused by system components which are not subject of the contract with VTA.
  - 4.4. If the customer does not comply with its duty to cooperate and VTA is therefore unable to provide customer support properly or only at disproportionate additional expense, VTA shall be released from its obligation to perform. Additional expenses caused by the above-mentioned failure to comply with the duty to cooperate shall be reimbursed to VTA in addition to the agreed remuneration in accordance with the remuneration agreement separately concluded with the customer.

## **5. Remuneration**

- 5.1. The remuneration for the services shall be based on the price list provided with the offer.
- 5.2. Services outside the scope of the contract as well as other one-time services according to item 1.2. shall be remunerated separately according to the respective offer.
- 5.3. The prices may be adjusted based on changes in the determining factors. An adjustment shall then be made in proportion to the respective changes. VTA shall notify the customer of the price adjustment by handing over the adjusted price list and informing the customer of the changed price-determining factors. The new price list shall apply from the billing period following the handover of the adjusted price lists. If the customer requests an adjustment of the price list due to changes in the price-forming factors, VTA shall adjust the price list accordingly as soon as the customer so requests. Price-forming factors are, in particular, wage, material and financing costs, levies/surcharges, license costs, hardware costs and costs for data centers.
- 5.4. The Customer shall be obligated to sign acceptance reports submitted without undue delay, but no later than within 10 days of receipt. Insofar as the customer does not agree with the acceptance reports, it shall set out any concerns in detail in writing within this period. The parties shall then

immediately attempt to reach an agreement. After agreement has been reached, the acceptance protocols shall be signed off by the customer without delay.

- 5.5. VTA shall invoice the remuneration in accordance with the price list or the respective offer. Invoices shall be due for payment without deduction within 30 days of the invoice date. If the customer is in default of payment, the outstanding amount shall bear interest at the legally applicable base rate. This shall not affect the assertion of further rights.
- 5.6. Unless expressly agreed otherwise, all amounts stated in the price list shall be net amounts, i.e., plus the statutory value added tax. VTA shall show the tax rate and the amount of the value added tax separately on the invoice.
- 5.7. The parties agree that the customer is the sole debtor of the remuneration for VTA also with regard to the agreed use by the companies conclusively listed in the commissioned processing agreement attached to the offer. However, VTA agrees, at the customer's request, to invoice the individual companies conclusively listed in the commissioned processing agreement in accordance with the actual use by these companies.

## **6. Liability for Material Defects**

- 6.1. VTA warrants that the software essentially corresponds to the product description. Claims for defects shall not exist in the event of an insignificant deviation from the agreed or assumed quality and in the event of only insignificant impairment of the usability. In the event of version changes/updates, VTA shall take into account the criteria for the functional capability of the system pursuant to 3.3.3.
7. If the customer demands subsequent performance due to a defect, VTA shall have the right to choose between rectification of the defect, replacement delivery or replacement performance. If the customer has set VTA another reasonable grace period after a first grace period has expired without result and this grace period has also expired without result, or if a reasonable number of attempts at rectification, replacement delivery or replacement performance have remained unsuccessful, the customer may, subject to the statutory requirements, at its option terminate the contract or reduce the remuneration and claim damages or reimbursement of expenses. Subsequent performance may also be effected by installing a new program version or a work-around. If the defect does not impair the functionality or does so only insignificantly, VTA shall be entitled, to the exclusion of further warranty rights, to remedy the defect by installing a new version or an update within the scope of its version, update and upgrade planning.
- 7.1. Defects shall be notified by the customer in text form by a comprehensible description of the error symptoms, as far as possible proven by written records, screenshots or other documents illustrating the defects. The notice of defect should be sufficient to enable the reproduction of the defect. Statutory obligations of the customer to examine and give notice of defects shall remain unaffected.

7.2. Claims for damages shall be subject to the restrictions of clause 9.

7.3. VTA may refuse subsequent performance if and as long as the customer is in default of payment of at least 6 monthly instalments of the agreed remuneration. This shall not apply if a justified suspension of payment by the customer due to significant defects has been agreed in writing.

## **8. Liability for Defects of Title**

8.1. VTA warrants that the software supplied or made available by it is free from any third-party rights which might prevent its use in accordance with the contract. This shall not apply to customary reservations of title.

8.2. If third parties are entitled to such rights and assert them, VTA shall do everything in its power to defend software against the asserted rights of third parties at its expense. The customer shall immediately notify VTA in writing of the assertion of such third-party rights and grant VTA all powers of attorney and authority necessary to defend the software against the asserted third-party rights.

8.3. Insofar as defects of title exist, VTA shall be entitled to take lawful measures to eliminate the rights of third parties which impair the contractual use of the software or to assert such rights, or to modify or replace the software in such a way that it no longer infringes third-party rights (if and insofar as the functionality of the Software owed is not significantly impaired thereby). VTA shall be obligated to reimburse the necessary recoverable costs incurred by the customer for legal action.

8.4. If the indemnification pursuant to Section 8.3 fails within a reasonable grace period set by the customer, the customer may, subject to the statutory requirements, at its option terminate the contract or reduce the purchase price and claim damages.

## **9. Liability, Compensation**

VTA's liability - irrespective of the legal grounds - shall be limited, as far as fault is involved, in accordance with the following provisions.

9.1. VTA shall not be liable in the event of simple negligence of its legal representatives, employees or other vicarious agents, unless a breach of a material contractual obligation ("cardinal obligations") is involved. Cardinal obligations are those essential obligations which form the basis of the contract, which were decisive for the conclusion of the contract and on the performance of which the Customer may rely. Furthermore, these include such obligations of VTA which are intended to protect the life or limb of the customer's personnel or third parties or the customer's property from significant damage.

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- 9.2. VTA shall be liable for the loss of data only up to the amount that would have been incurred to restore the data if the data had been properly and regularly backed up.
- 9.3. Insofar as VTA is liable for damages on the merits pursuant to Section 9.2, such liability shall be limited to the extent of the damage which VTA foresaw as a possible consequence of a breach of contract at the time of the conclusion of the contract or which it should have foreseen taking into account the circumstances of which it was aware or which it should have been aware if it had exercised due care. Clause 9.5. shall apply accordingly.
- 9.4. VTA shall be liable exclusively for direct damage and not for indirect damage such as loss of profit or for consequential damage resulting from defects of the services provided by VTA. VTA always adapts the software to the current customs regulations. VTA shall also be liable for this to the extent stated. However, VTA shall not be liable for any damage incurred by the customer due to customs and/or tax regulations and which is attributable to the use of the software or other services provided by VTA.
- 9.5. In the event of liability for simple negligence, VTA's liability for damages shall in any case be limited to an amount equal to three times the annual remuneration, even if a breach of material contractual obligations is involved.
- 9.6. The above exclusions and limitations of liability shall apply to the same extent to the personal liability in favour of VTA's corporate bodies, legal representatives, employees and other vicarious agents.
- 9.7. Insofar as VTA provides technical information free of charge outside of existing contractual relationships or acts in an advisory capacity by means of recommendations or advice and such information or advice is not part of the contractually agreed scope of services owed by VTA, this shall be done free of charge and to the exclusion of any liability.
- 9.8. The limitations of this Section 9 shall not apply to VTA's liability for intentional acts, for guarantees given, for injury to life, body and health or under the product liability act.

## **10. Confidentiality, Privacy**

- 10.1. The parties undertake to treat as confidential all confidential information of which they become aware during the performance of this contract and to use it only for contractually agreed purposes. Confidential information within the meaning of this provision shall be information, documents, details and data which are designated as such or which by their nature are to be regarded as confidential. VTA undertakes to grant access to confidential information of the customer only to employees who are entrusted with the performance of services under this contract. Both parties are obligated, upon request of the other party, to have their employees sign a corresponding declaration of obligation and to submit it to the other party. The parties shall not file any applications for property rights for confidential information of the respective other party.
- 10.2. VTA may use (publish) the fact of the customer's use of the software as a reference.

- 10.3. If confidential information in the aforementioned sense is requested by a public authority, the customer's consent shall be obtained in advance.
- 10.4. The rights and obligations under clauses 10.1. and 10.2. shall not be affected by termination of this agreement.
- 10.5. Both parties shall be obligated at the other party's option to either return confidential information of the other party upon termination of this agreement or to destroy it if it has not been properly consumed (e.g., data that has already been deleted due to termination of the retention period).

## **11. Offer and Conclusion of Contract**

Offers made by VTA are non-binding unless they are expressly designated as binding.

- 11.1. The acceptance of the offer by the customer shall be qualified as an offer to conclude a contract. The acceptance of the offer by the customer shall be made by sending a declaration in text form.
- 11.2. The contract shall be concluded with the confirmation of the customer's acceptance by VTA in text form (confirmation of contract). VTA is not obligated to confirm.

## **12. Term and Termination**

- 12.1. The contract shall have the term stated in the offer. If it is not terminated at the end of the term, the contract shall be automatically extended by a further year. The notice period shall be three months in each case, unless otherwise agreed in the offer.
- 12.2. VTA shall have an extraordinary right of termination if
- a customer fails to fulfil a material obligation and this breach has not been remedied within 14 days despite a written reminder. An essential obligation is, in particular, the timely and proper performance of the cooperation obligations,
  - the customer ceases or threatens to cease business operations;
  - the financial situation of the customer deteriorates significantly, which disturbs the basis of trust for the performance of the contract between the parties, in particular insolvency or over-indebtedness, foreclosure or protest of a check or bill of exchange,
  - the customer fails to obtain or loses a required permit, license or registration to conduct business under this agreement.
- 12.3. The right to terminate without notice for good cause shall remain unaffected.
- 12.4. Terminations must be in text form.

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- 12.5. Upon termination of the contract,
- the customer shall cease to use the software and remove all installed components from its computers.
  - VTA shall return to the customer the data and logs stored on behalf of the customer and subsequently delete them from the system.

### **13. Final Provisions**

- 13.1. VTA shall have the right to use subcontractors for the performance of this contract.
- 13.2. Any amendments to the contract shall be made in writing in order to be effective. This shall also apply to any amendment of this written form requirement.
- 13.3. This contract shall be governed by the laws of the Federal Republic of Germany with the exclusion of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980.
- 13.4. The place of business of VTA shall be the exclusive place of jurisdiction for all disputes arising from and in connection with this contract.
- 13.5. If personal data is processed and/or stored for the Customer, the "Agreement on Commissioned Data Processing" between the customer and VTA shall apply in the respective current version.