

# General terms and conditions of use of TS Group GmbH

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## **1 Scope**

- 1.1 The following general terms and conditions of use apply to all contractual relationships, contractual-like relationships and pre-contractual negotiations of TS Group GmbH, Steinacher Straße 6-12, 90427 Nuremberg (hereinafter "**provider**") in connection with the provision of the client and server-based application "Toolbox" by the provider to the customer (hereinafter "**customer**").
- 1.2 The services offered by the provider are aimed exclusively at entrepreneurs in the meaning of sec. 14 BGB, that means to a natural or legal person or a legal partnership who, when concluding a legal transaction, is exercising their commercial or independent professional activity.
- 1.3 The provider does not recognize any deviating general terms and conditions of business and purchase used by the customer. These do not become part of the contract, even if the provider does not expressly object to the validity of such regulations of the customer.

## **2 Subject**

- 2.1 The subject of the contract is the provision of the client and server-based communication and messaging application "Toolbox" of the provider, including the included interfaces to databases and systems of third-party providers and the online services required for the intended functionality of the application services (hereinafter referred to as "**software**"), limited to the contract period. The subject of the contract is only the current version of the software last published by the provider.
- 2.2 An obligation to provide or transfer unpublished program versions or the source code of the software is not part of the contract.
- 2.3 For the contractually agreed quality and the contractually agreed scope of functions of the software, the official program description available at the time the contract is concluded and the contractually agreed service package are ultimately decisive. A quality or functionality of the software that goes beyond the official program description or the agreed service package is not owed. In particular, the customer cannot derive such an obligation from other representations, statements or advertising statements by the provider, its employees or its sales partners, unless the provider has confirmed this in writing. The provider does not guarantee that the software is suitable for any other specific purpose intended by the customer.
- 2.4 The customer has informed himself about the scope of services and the essential functional features of the software. The establishment of a functional and adequately dimensioned hardware and software environment for the software, taking into account the additional load caused by the software, is the sole responsibility of the customer.

- 2.5 The interfaces to databases, systems and modules from third-party providers contained in the software are digital connections via which data, content and services can be automatically accessed and integrated into the functions of the software. The provider only owes the opening of the possibility of access, retrieval and exchange of such data and content. The provider owes neither the data and content itself, nor their topicality, correctness and completeness.
- 2.6 The software contains functions for the use of online services and for transmission and access via the Internet. The subject of the contract is the technical provision of the remote access or transmission option as intended. The connection to the Internet or the data line via which remote access or transmission is to take place is not part of the contract.
- 2.7 To ensure that the software functions as intended for the data generated by the customer (hereinafter: "application data"), the provider keeps storage space available in the scope specified by the customer. Unless the extent of the storage space is expressly specified, the provider owes the provision of storage space to a reasonable extent.
- 2.8 If and to the extent that the provision of a new program version of the software is accompanied by a significant change in functions, the provider will notify the customer of this in writing no later than six weeks before such a change takes effect. If the customer does not object to the change in writing within a period of two weeks from receipt of the notification of change, the change will become part of the contract. The provider will draw the customer's attention to the aforementioned deadline and the legal consequences of its expiry if the option to object is not taken advantage of every time changes are announced.
- 2.9 The provider delivers the software by sending the installation-ready object code of the software on a data carrier or by making it available for download by the customer and notifying the customer of the provision, stating all the information required for the download.
- 2.10 Unless otherwise agreed, the provider provides the customer with integrated user help. The customer accepts this as documentation and user manual. The customer is entitled to save and reproduce the documentation and the user manual if and to the extent that this is necessary for the intended use of the online service.
- 2.11 Installation and the making of customer-specific settings on the installed software are not owed.

### **3 Granting of usage rights**

- 3.1 The provider grants the customer the simple, non-exclusive, non-transferable and non-sublicensable right to use the software exclusively for his own operational purposes as intended and in accordance with the scope specified in the agreed service package during the contract period. The granting of usage rights is subject to full payment of the contractually agreed, due remuneration.
- 3.2 The customer is only entitled to use the software beyond the rights of use granted with the prior written consent of the provider. In the event of additional use without the consent of the provider, in particular if a larger number of users are used at the same time than may have been agreed, the provider is entitled to invoice the amount incurred for further use according to the price list valid at the time.

- 3.3 The customer may only use the software for the purpose of handling his internal business transactions. In particular, (i) a data center operation for third parties or (ii) the temporary provision of the software (e.g. as application service providing or software as a service) or (iii) the use of the software to train people who are not employees of the customer is not permitted and requires a separate agreement with the provider. Commercial leasing or subletting is prohibited.
- 3.4 Duplications of the software are only permitted insofar as this is necessary for use in accordance with the contract. The customer may make backup copies of the software in accordance with the rules of technology to the extent necessary. Backup copies on movable data carriers are to be marked as such and provided with the copyright notice of the original data carrier.
- 3.5 The customer is responsible for changes, extensions and other modifications to the software in the meaning of sec. 69 c No. 2 UrhG only insofar as the law allows such inevitable. Before the customer corrects errors himself or through a third party, he allows the provider two attempts to correct the error. The customer is not entitled to his own rights of use and exploitation - beyond the rights of use granted - to such processing.
- 3.6 The customer is only entitled to decompile the software within the limits of sec. 69 e UrhG and only if the provider has not provided the necessary data and / or information for interoperability with other hardware and / or information within a reasonable period of time after a written request.
- 3.7 If the provider provides the customer with a new program version (e.g. patch, update, upgrade) that replaces the software that was previously made available, this is subject to the same contractual provisions. If the provider makes a new version of the program available, the customer's rights with regard to the old software expire, even without an express request for return, as soon as the customer uses the new software productively

#### **4 Availability and troubleshooting**

- 4.1 Unless otherwise agreed, the provider guarantees the availability of the online services in accordance with section 2.6 of 98% on a monthly average. Failures and impairment of accessibility due to regular maintenance work between 10:00 p.m. and 6:00 a.m. do not count as times of unavailability.
- 4.2 The provider provides a telephone hotline on working days from Monday to Friday from 9 a.m. to 6 p.m. (hereinafter "normal business hours"). The customer informs the provider by phone, email or in writing of any problems that have arisen. The customer will provide all necessary information for the fastest possible processing. If the customer has problems that cannot be resolved immediately by telephone consultation, the provider will analyze the error and work out ways of eliminating the problem. If the error correction cannot be carried out within twelve hours of the provider becoming aware of the error, the provider will inform the customer about the expected period of time for the error correction, stating reasons. The response and troubleshooting times do not take into account times outside the normal business hours of the provider.

## **5 Data storage of application data**

- 5.1 The provider keeps the application data stored by the customer and all other stored data of the customer stored and available for a period of one month during the contract period and after termination of the contract.
- 5.2 The provider shall provide the customer's application data at the customer's request on a common data carrier in a common data format or by means of remote data transmission for acceptance against reimbursement of the necessary and proven costs. The provider is not entitled to withhold application data from the customer.
- 5.3 If and to the extent that the compilation of application data on the provider's server creates a database, databases, database work or database works, the customer is entitled to all rights thereto. The customer remains the owner of the databases or database works even after the end of the contract. After data backup has been enabled and prior notification in text form, with which the customer is requested to download the data backup within three weeks, the provider is entitled to delete the databases.

## **6 Duties and obligations of the customer**

- 6.1 The customer is obliged to keep the usage and access data provided to him secret, to protect them from access by third parties and not to pass them on to other users or third parties. The customer must take suitable precautions to prevent misuse of the usage and access data and unauthorized use of the online services in accordance with section 2.6.
- 6.2 The customer will inform the provider immediately if there is a suspicion that the access data or passwords may have become known to unauthorized persons or he has knowledge that unauthorized access to the online services has taken place via the internet or telecommunications connection opened by him.
- 6.3 The customer ensures that data is neither retrieved from the system nor transferred to the provider's system via the internet and telecommunications connection opened by him, unless this corresponds to use in accordance with the contract or the security and integrity of the system of the Provider or the data stored there is at risk. In particular, the customer will use virus protection programs on his systems.
- 6.4 The customer ensures that the content transmitted to the provider via the internet or telecommunications connection opened by him is free of third-party rights or that he has sufficient rights of use and exploitation.
- 6.5 The customer ensures that the functions made available by the provider are not used for purposes that are racist, discriminatory, pornographic, endanger the protection of minors, politically extreme or otherwise illegal or against official regulations or requirements.
- 6.6 The customer ensures that the application data generated using the software are backed up regularly and in accordance with the significance of the data in order to be able to restore them if data is lost.

6.7 The customer observes the instructions given by the provider for the installation and operation of the software. He will find out about current product information on the provider's website at regular intervals and take these into account during operation.

## **7 Blocking, deletion**

7.1 If the customer violates the provisions in section 6.1 or for reasons for which he is responsible, the provider can, after prior written notification of the customer, block the customer's access to the online services in accordance with section 2.6 or application data in accordance with section 5.1 if the violation can be demonstrably be turned off.

7.2 If the customer unlawfully violates section 6.5, the provider is entitled to delete the data affected by this.

## **8 Remuneration, terms of payment, exclusion of set-off**

8.1 Unless otherwise agreed, the respective agreed remuneration is due upon invoicing with a payment deadline of ten working days, but not before the contractually agreed service is made available or the service is made available on the network and the customer is informed about the availability. A remuneration agreed monthly or according to other billing periods is due for payment on the third working day of each calendar month or the respective billing period.

8.2 Payments are to be made without deduction.

8.3 All prices are exclusive of the applicable statutory sales tax.

8.4 In the event of default in payment, the provider is entitled to charge the customer interest at the rate of 9 percentage points p. a. to be calculated above the respective base rate. In the case of a return debit, there are additional costs for the new collection. In addition to the bank-side fees, a processing fee of 15 euros is charged for each return debit.

8.5 The customer is only entitled to a right of set-off for ongoing payments if his counterclaim has been legally established or is undisputed. The customer is only entitled to assert a right of retention due to counterclaims from the respective contractual relationship.

## **9 Material and legal defects**

9.1 In the event of material defects, the provider initially provides a guarantee through supplementary performance. For this purpose, he gives the customer a fault-free program version of the software or removes the defect. Removal of defects is also considered to be the case if the provider shows the customer reasonable options for avoiding the effects of the defect.

9.2 In the event of legal defects, the provider initially provides a guarantee through supplementary performance. For this purpose, the provider provides the customer with a legally flawless use of the software or replaces it with an equivalent software.

- 9.3 The customer is obliged to take over a new program version of the software or an equivalent software if the contractual scope of functions is retained and the takeover does not lead to significant disadvantages.
- 9.4 If two attempts at supplementary performance fail, the customer is entitled to set a reasonable grace period to remedy the defect. He must expressly point out in writing that he reserves the right to withdraw from the contract and / or to demand compensation if the contract fails again.
- 9.5 If the improvement also fails in the grace period, the customer can terminate the contract or reduce the remuneration.
- 9.6 The provider pays compensation or reimbursement of wasted expenses due to a defect within the limits set out in these general terms and conditions. After the expiry of a deadline set according to section 9.4, the provider can demand that the customer exercise his rights resulting from the expiry of the deadline within two weeks of receiving the request. After the deadline, the right to choose is transferred to the provider.
- 9.7 If the provider provides services in connection with a search for alleged errors in the software or their removal without being obliged to do so, the provider can demand remuneration for this. This applies in particular if a defect cannot be proven to be attributable to the provider. The additional expense on the part of the provider that arises from the fact that the customer has not complied with his cooperation and information obligations must also be remunerated.
- 9.8 If third parties assert claims that prevent the customer from exercising the contractually granted rights of use, the customer shall immediately inform the provider in writing and comprehensively. If the customer is sued, he agrees with the provider and only takes legal action, in particular acknowledgments and comparisons, with his consent.

## **10 Liability**

- 10.1 In all cases of contractual and non-contractual liability, the provider pays damages in full only in the event of intent, as well as in the absence of a quality for which the provider has assumed a guarantee.
- 10.2 In the event of gross negligence, the provider is only liable to the amount of the foreseeable damage that should be prevented by the breached duty.
- 10.3 In other cases, the provider is only liable for a breach of an essential contractual obligation if the purpose of the contract is jeopardized, but only to the extent of the foreseeable damage.
- 10.4 Otherwise the liability of the provider is excluded. The exclusion of liability also applies to the legal representatives of the provider and his vicarious agents.

## **11 Beginning and duration of continuing obligations, termination**

- 11.1 Unless otherwise agreed, the contract period is 12 months and begins with the provision of the software. The contract term is extended by a period of a further 12 months if the

contract is not terminated with a notice period of 3 months prior to the end of the respective contract term.

- 11.2 The right to terminate the contract is excluded for both parties during the term of the contract.
- 11.3 The right of the contracting parties to extraordinary termination for good cause remains unaffected.
- 11.4 The termination must be in writing.

## **12 Termination of Contractual Relationships**

- 12.1 Upon termination of the contractual relationship, the customer must return any items, original data carriers including manuals and documentation, if and to the extent that these are not intended to remain with the customer according to the purpose of the contract. Any copies made must be completely and permanently deleted.
- 12.2 Instead of the return, the provider can also request the deletion or destruction of objects left over.

## **13 Final provisions**

- 13.1 Only the substantive law of the Federal Republic of Germany applies to all contractual relationships between the customer and the provider. The application of the UN sales law (UNCITRAL) is excluded.
- 13.2 The place of jurisdiction for both contracting parties is the registered office of the provider. The provider is entitled, at his own discretion, to assert his own claims at a customer's place of jurisdiction.
- 13.3 Should individual clauses of the above general terms and conditions be invalid in whole or in part, this does not affect the validity of the remaining clauses. The contracting parties will agree on a replacement regulation that comes closest to the economic purpose of the ineffective regulation. In case of doubt, the legal regulations apply.