

General Terms of Service (GTS) of Timly Software AG

These General Terms of Service (GTS) apply to all services offered by Timly Software AG (hereinafter "Timly"). By using the services of Timly you accept the following terms and conditions unchanged and in full.

1. Subject

These GTS define the cooperation of the two contracting parties, services of the Provider and obligations of the Customer in connection with the software "Timly" (hereinafter referred to as "Contract Software").

2. Services of the provider

2.1. Making the Contract Software available for use via the Internet

The Provider shall enable the Customer to access the Contract Software via the Internet against payment after conclusion of the Service Agreement and after setup has taken place. The Provider or its subcontractors operate the Contract Software on servers rented by the Provider in the cloud (hereinafter referred to as Contract Server), which the Customer can access via the Internet using a browser and thus use the Contract Software. The Provider grants the Customer a non-exclusive, personal, non-transferable, non-sublicensable, geographically unrestricted and remunerated right of use to the Contract Software for the duration of the Service Agreement for use by the Customer and its commissioned third party (hereinafter only "User"). The customer does not acquire any ownership and / or intellectual property rights to the contractual software.

Access and use may only be used for the customer's own internal purposes. Third parties are only entitled to use the data if this serves the internal benefit of the customer. Use for other purposes (in particular for the purposes of other third parties, distribution, renting, etc.) is expressly prohibited. Authorized third parties have no rights of their own vis-à-vis the provider and cannot assert any rights vis-à-vis the provider. The provider is only obligated to the customer.

2.2. Maintenance and software maintenance

The contract software provided operates according to the "Software as a Service" (SaaS) principle. The contract software is made available to the customer for use via the internet. The provider continuously develops the contract software and automatically makes the latest version of the contract software available to all customers. Consequently, the customer always has the latest version of the contract software available for use via the internet and is not entitled to demand the use of an earlier version. The Provider shall endeavor not to restrict the functional scope of the solution in the event of further developments.

2.3. Provision of storage capacity

The Provider shall provide the Customer with storage capacity on the contract server for the purpose of storing the data that accumulates in connection with the use of the contract software by the Customer and the third parties authorized to use the software via the internet.

The customer is not entitled to use the storage space for purposes other than the inherent purpose of the application. Illegal content may lead to immediate and unannounced blocking of access (e.g. copyrighted content, pornographic material, etc.) and the Provider is entitled to delete such content immediately and without consulting the Customer.

2.4. Protection of the IT infrastructure / data security

The Provider shall take appropriate technical, organizational and contractual precautions to adequately protect the Customer Data stored on the contract server. For this purpose, the provider takes

1. backups regularly (at least once a day),
2. software updates / maintenance and keeps the software used by him to provide the contractual software up to date.
3. checks the contract server for known malware,
4. shall protect the Customer's data stored on the contract server against unauthorized access by suitable means in line with the state of the art. In addition, he shall ensure that the software used by him is up-to-date.
5. promotes appropriate safety awareness among its employees and undertakes targeted employee training.

2.5. New functions

The customer can suggest new functionalities, but has no contractual right to the implementation. If the idea is implemented, the customer has no right to remuneration.

2.6. Final regulation of the rights of use of the contract software

The customer shall only have the access or usage rights to the contractual software explicitly listed in Section 2.1, to the exclusion of any other and/or more extensive access and usage rights. In particular, the customer may not copy the contractual software or the structure of the database.

The customer shall take the necessary precautions to ensure that third parties (other than third parties authorized to use the software) do not gain access via the customer's user account. In the event of unauthorized access to the contractual software by a third party, the customer shall report this to the provider immediately upon becoming aware of it. The Customer shall support the Provider in taking measures to protect the Provider's interests. Conversely, the Provider shall also report any suspicion of unauthorized data access or loss to the Customer immediately upon becoming aware of it.

3. Obligation of the customer to cooperate

3.1. Provision of hardware & software

The Customer shall be responsible for the provision and maintenance of the end devices (hardware, operating system, display software) as well as the infrastructure required for this (network connection and Internet access) (hereinafter "IT infrastructure").

3.2. Protection of the IT infrastructure

The Customer shall ensure that its IT infrastructure is up-to-date in accordance with industry standards and that recommended software updates (in particular security-relevant updates) from third-party software providers are installed regularly. In addition, he specifically protects his IT infrastructure against unauthorized access (e.g. hacker attack) and malware (viruses, Trojans, ransomware, etc.) and independently ensures that his infrastructure remains protected against future threats. The customer is solely responsible for monitoring its IT infrastructure.

3.3. Employee training in IT security and dangers on the Internet

As the security of IT infrastructures in companies increases, employees are increasingly becoming the target of cybercriminals. In such attacks, it is not the system that is technically attacked, but rather an attempt is made to gain access to the system again via employees. The customer ensures and warrants that users (including authorized third parties) are trained with regard to potential IT risks and have appropriate security awareness with regard to current IT risks.

3.4. Login data protection

All user login data must be kept protected so that unauthorized third parties cannot access the software. The login data are individual for each user and may only be used by the respective user. The customer is prohibited from disclosing login data (user names and passwords) and other personal access data to third parties (except for third parties authorized to use the software).

If unauthorized access to the customer's data occurs with or without damage (e.g. viewing by unauthorized third parties, malicious data mutation, data loss) due to negligent handling of login data by users of the customer or third parties commissioned by the customer, the provider disclaims any liability and is not obliged to restore the data. For a fee, the Provider shall examine the possibilities for data recovery and, if possible, shall perform such upon the Customer's instruction.

3.5. Duty of supervision over its employees and commissioned third parties

The Customer shall ensure and be responsible for ensuring that the Users and third parties authorized to use the Service comply with the Customer's obligations under these GTS and the Service Agreement.

3.6. Liability Damages and release of the provider from his obligation to perform

If the Customer culpably and substantially violates its duties to cooperate pursuant to Section 3, so that damage results therefrom (loss of data, additional expense, infringement of intellectual property rights, etc.), the Provider shall be released from its performance obligations accordingly. The Customer shall be liable to the Provider for the culpable actions and omissions of its own users (in particular in case of lack of IT security awareness of the employees), as well as for damages caused by unauthorized or improper use by the Customer or its users.

Furthermore, the Customer shall indemnify the Provider against all costs, expenses and liability incurred by the Provider and/or its subcontractors as a result of such unauthorized use. The Provider is entitled to delete illegal and/or third party infringing data and information and/or to block the use of the contractual software if the Customer does not delete such data and information despite a justified written reminder.

4. Secrecy

Each party undertakes to keep confidential any facts, information and data of the other party, including the associated documents and data carriers, which become known to it in connection with the Service Agreement and which are neither publicly known nor generally accessible (hereinafter "Confidential Information"). Confidential Information of the Provider shall be deemed to include, in particular, the Service Agreement, the agreed remuneration, the contractual software, any specific software applications and the related documentation. The Customer's confidential information shall be deemed to include, in particular, the Customer data stored on the Contract Software and any internal Customer documents received by the Provider under this Service Agreement. Customer data includes, but is not limited to, user accounts and objects.

The disclosure of confidential information of one party by the other party to third parties shall require the prior written consent of the first party. The following cases are exempt from this, whereby in each case only the information necessary for the performance of the service is to be passed on ("need-to-know principle"):

- a. the Provider is allowed to disclose confidential information of the Customer to the Provider's affiliated companies, to the subaccordants and to the Provider's consultants, as well as to the authorized third parties;
- b. the Customer is allowed to disclose confidential information of the Provider to the Customer's affiliated companies, to the Customer's subcontractors and to the Customer's consultants as well as to third parties authorized to use the information;
- c. each party is permitted to disclose confidential information of the other party to third parties in the context of an M&A transaction or restructuring, if this is necessary for the M&A process / restructuring. For the provider, this does not include customer data.
- d. each party is entitled to disclose the other party's confidential information if it is/will be required to do so by law or by authorities, but only after having informed the other party thereof (if legally permissible) so that the latter may, if necessary, apply for a protective order.

Each Party shall ensure that its employees and third parties engaged by it (including their employees), prior to any possible exchange of Confidential Information, are required to keep confidential any Confidential Information of the other Party (except in the case of disclosure to public authorities).

The confidentiality obligations shall continue to apply after termination of the service agreement(s), for a period of five (5) years.

5. Intellectual property rights and know-how

All intellectual property rights to the contractual software, as well as to any specific software applications (including documentation), as well as to any (further) developments, work results, etc., as well as to the know-how shall belong to the Provider or its licensors. The Customer shall not acquire any ownership and/or intellectual property rights to the contractual software and any specific software applications (including documentation), any (further) developments, work results etc. as well as the know-how of the Provider.

If the Customer cooperates in the development of (further) developments and/or work results, it hereby undertakes to assign to the Provider all rights to the parts created/integrated by the Customer and assigns to the Provider free of charge all rights to such parts at the time of their creation/integration by the Customer. If an assignment is not legally permitted, the Customer shall grant the Provider a free, temporally and geographically unlimited, exclusive license to such parts created/integrated by the Customer at the time of their creation/integration to the extent permitted by law (including the right to use, copy, adapt, modify, create second-hand works, distribute, make perceptible, broadcast, assign, grant sublicenses, freely exploit, etc. by the Provider). The customer is responsible for and ensures that the authors waive the assertion of any moral rights to these parts created/integrated by the customer. Should the customer involve third parties for the creation, the preceding regulation shall apply analogously and the customer shall in particular ensure the assignment.

The Customer shall be entitled to use the Customer-specific developments, if any, developed by the Provider internally for its own purposes as well as for the internal purposes of third parties entitled to use them (same right of use as for the contractual software) for the duration of the corresponding service agreement, but only if this has been explicitly agreed between the parties in an addendum to a service agreement. The provider remains the owner and proprietor of these customer-specific developments.

If the Customer desires new functionalities or has concrete suggestions for improvement that the Provider deems useful after internal review, then such enhancements will generally be developed at the Provider's expense and in this case made available to the Customer free of charge for the duration of the corresponding service agreement. In such a case, however, the Provider shall not guarantee any time horizon, but shall inform the Customer of a possible release date for these enhancements.

6. Availability, disruptions, warranty and liability

6.1. Availability

The provider guarantees an annual average (24/7) 99% availability of the contractual software. Excluded from this are times when the servers cannot be reached due to technical problems that are beyond the control of the provider (in particular force majeure, fault of third parties). Also excluded are planned and announced maintenance work outside normal business hours Mon-Fri from 08:00 - 17:00.

6.2. Malfunctions / Availability

The Provider does not guarantee the all-time and full availability of the Contract Software. The Provider shall use commercially reasonable efforts to make the Contract Software available 24 hours a day, seven days a week.

Faults shall be deemed to be significant deviations from the specifications of the contractual software documented by the customer and reproducible by the provider, which result in the use of the contractual software not being possible for the customer during the periods of use and the agreed availability. Errors and deviations which do not or only slightly restrict the productive use of the contractual software are explicitly not considered to be malfunctions. In any case, a malfunction shall not be deemed to exist in particular if it is caused by:

- the use of unsuitable display software and/or hardware (e.g. outdated browser version);
- interference with the telecommunication networks of or at third parties (e.g. for access to the Internet);
- computer failure of or by third parties not belonging to the Provider or one of its subaccordants;
- incomplete and/or non-updated offers from so-called proxies (caching);
- improper use or incorrect operation;
- unauthorized use of the contractual software and/or any specific software applications;
- changes or interventions in the Contract Software and/or the specific software applications, if any, not made by or through the Provider; and
- any other breach of the customer's obligations.

The Provider is entitled to suspend access to the contractual software for a limited period of time in the event of urgent maintenance work (hereinafter "Maintenance Window"). Maintenance Windows shall be announced in advance in the event of scheduled maintenance.

6.3. Troubleshooting

In the event of a malfunction, which the customer shall notify the provider of in detail immediately upon discovery, the provider shall take the appropriate measures required to remedy the malfunction without incurring any costs for the customer, provided that the provider is responsible for the malfunction and the customer and the third parties authorized to use the service (as well as their auxiliary persons) are not at fault. The customer has no right of self-remedy.

6.4. Warranty

In the case of software, it is difficult if not impossible to guarantee that the contractual software is 1) absolutely error-free (classic software bugs) or also that 2) the contractual software is available to the customer at all times without interruption. The provider does not offer any guarantee on these two points. However, the Provider makes every effort and undertakes to ensure availability in accordance with Section 7.1. as well as error correction in accordance with Sections. 6.2 and 6.3 without any costs for the customer. The Provider makes every effort to ensure that the specific software applications and the contract server comply with the legal and regulatory requirements applicable to the Customer and the authorized third parties, but does not guarantee this.

The present provisions govern the warranties of the provider conclusively. Any further warranties of the Provider (neither explicit nor implicit) as well as representations and warranties of the Provider are expressly excluded.

6.5. Liability

Irrespective of the basis of liability (contractual, non-contractual, breach of warranty, etc.) and irrespective of the number and timing of the damaging events, the Provider shall be liable to the Customer for the direct and immediate damages demonstrably culpably inflicted by the Provider and/or the Sub-Accordant on the Customer (and third parties entitled to use the Service) under or in connection with the Service Agreement up to a maximum and aggregate amount of CHF 2 million (two million Swiss francs).

Any liability of the Provider for other or further claims and damages, in particular claims for compensation for indirect, consequential and/or incidental damages, lost profits, lost use, unrealized savings, loss of earnings, business or production, damage to reputation as well as loss and corruption of data, regardless of their legal basis, is expressly excluded.

The provider is in no case liable for illegal content of the data stored with him or their improper use by the customer and / or the third parties authorized to use.

The limitations and exclusions of liability of the Provider set forth in the preceding paragraphs shall apply to the extent and to the extent permissible under applicable law.

7. Force majeure

The Provider shall be released from its performance obligations if, to the extent that and for as long as the non-performance of its services is due to the occurrence of circumstances of force majeure. Circumstances of force majeure shall include, in particular, war, strikes, pandemics, riots, expropriations, sanctions and/or measures by authorities and countries, severe weather and natural disasters, all types of interruptions or failures of telecommunications connections due to political (e.g. censorship) or technical (e.g. energy supply) disruptions, as well as other unforeseeable circumstances that cannot be remedied by economically reasonable means and for which the Provider is not responsible. Provider and Customer shall notify each other immediately and in writing of the imminent or actual occurrence of a case of force majeure.

The Provider shall endeavor to limit the effects of the force majeure event on the provision of its contractual services as much as possible. In the event that an event of force majeure prevents the Provider from providing only part of its services, it shall not be released from the obligation to provide the remaining services.

The Provider shall also inform the Customer at regular intervals about the course of the force majeure and its steps and measures to limit the effects on the provision of its contractual services.

If a force majeure prevents, hinders or delays the provider completely and for more than 30 days from the contractual performance of services under a service contract, the customer is entitled to terminate the corresponding service contract in writing by registered letter to the provider without notice. Any remuneration paid in advance shall be refunded by the Provider pro rata temporis.

8. Adjustment of the services

8.1. Changed conditions

In the event of technical or legal necessity, the Provider shall be entitled, but not obliged, to adapt the content or scope of its services. If the Provider does not adapt the contractual software, the specific software applications, if any, and/or the contractual server despite technical or legal necessity, the Customer shall be entitled to terminate the corresponding affected service contract in writing by registered letter to the Provider without notice. Remuneration paid in advance shall be refunded pro rata temporis.

8.2. Contractual adjustments

The Provider and the Customer may agree on the extension of the Contract Software with additional functionalities at any time by letter or e-mail. If the Provider provides an additional function within the contractual software, the overview of the services visible to the Customer shall be deemed to be the current offer of the Provider, upon whose explicit, written confirmation by the Customer a corresponding extension of the corresponding service agreement shall be agreed and the Customer shall pay the correspondingly increased remuneration. The remuneration is the annual license fee to be paid by the Customer to the Provider. Customer-specific development services shall be agreed and charged separately and outside the recurring license fees with the Customer.

9. Contract duration and termination

9.1. Deletion of customer data upon termination

The provider is entitled to delete the customer data 30 days after expiry of the notice period without notice and irrevocably. The customer may request an earlier deletion of the customer data at any time.

9.2. Extraordinary termination

A party is entitled to terminate the service agreement in writing by registered letter to the other party without notice in the following cases:

- upon commencement of bankruptcy proceedings against the other party;
- in the event of the granting of a moratorium to the other party in judicial probate proceedings by the probate authority;
- when the other party offers an out-of-court composition agreement to all its creditors;
- upon entry of the other party into liquidation proceedings (except for the purpose of merger or reorganization of a solvent company);
- upon declaration of insolvency of the other party by the other party; or
- in constellations analogous to the aforementioned under a European law.

There are no further termination and/or withdrawal rights of the parties for the service contract. The Customer, however, shall furthermore have the right to terminate the Service Agreement extraordinarily without notice by sending a registered letter to the Provider, provided that the following cumulative conditions are met:

- the Provider has repeatedly breached its obligations under the Service Agreement in a material way;
- the Customer has previously warned the Provider twice in writing to remedy the respective violations within a reasonable remedy period (of at least 20 days each time);

- the second reminder expressly indicates that the service agreement will be terminated by the customer in the event of failure to remedy the situation after the expiry of the second remedy period; and
- the provider has not remedied the breach even after the expiry of the second remedy period.

The Provider shall also be entitled to terminate the Service Agreement without notice by sending a registered letter to the Customer if

- the customer continues to be in default with the fulfillment of a payment obligation despite two written reminders; or
- the customer continues to violate essential contractual obligations despite two written reminders (e.g. unauthorized use of the contractual software, violation of confidentiality provisions, etc.).

Any remuneration paid in advance shall be refunded by the provider pro rata temporis. There are no further termination and/or withdrawal rights of the parties for the service agreements.

03/2022, Timly Software AG