

General Terms and Conditions (GTC) of Timly Software AG

These General Terms and Conditions (GTC) apply to all services offered by Timly Software AG (hereinafter "Timly"). By using Timly's services, you accept the following terms and conditions unchanged and in full in the version agreed by the provider and the customer.

1. Object

These GTC define the cooperation between the two contracting parties, the provider's services and the customer's obligations in connection with the services.

in connection with the "Timly" software (hereinafter referred to as "contractual software").

2. Services of the provider

2.1 Making the contract software available for use via the Internet

Once the service contract has been concluded and setup has been completed, the provider shall enable the customer to access the contract software via the Internet in return for payment. The provider or its subcontractors shall operate the contract software on servers rented from the provider in the cloud (hereinafter referred to as the contract server), which the customer can access via the Internet using a browser and thus use the contract software. The Provider shall grant the Customer a non-exclusive, personal, non-transferable, non-sublicensable, geographically unrestricted right to use the contractual software for the duration of the service contract for use by the Customer and its authorized third parties (hereinafter referred to as the "User"). The customer does not acquire any proprietary and/or intellectual property rights to the contract software.

Access and use may only be used for the customer's own internal purposes. Third parties are only authorized to use the service if this is for the customer's internal benefit. Use for other purposes (in particular for the purposes of other third parties, distribution, rental, 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 works according to the principle of "Software as a Service" (SaaS). 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 latest version of the contract software is always available to the customer for use via the Internet and the customer 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 storing the data that is generated in connection with the use of the contract software by the Customer and the authorized third parties via the Internet.

The customer is not authorized to use the storage space for purposes other than the inherent purpose of the application. Illegal content can 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. However, the customer must be informed subsequently in writing of the deletion of the content.

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:

1. the provider performs regular backups (at least once a day),
2. the provider carries out software updates/maintenance and keeps the contract software up to date,
3. the provider checks the contract servers for known malware,
4. the provider shall protect the customer's data stored on the contract server against unauthorized access by suitable, state-of-the-art means. It shall also ensure that the software it uses is up to date,
5. the provider promotes appropriate security awareness among its employees and provides targeted employee training.
6. It protects the stored customer data specifically against unauthorized access (e.g. hacker attacks) and malware (viruses, Trojans, ransomware, etc.) and independently ensures that it remains protected against future threats.

2.5 New functions

The customer can suggest new functionalities, but has no contractual right to their implementation. If the idea is implemented, the customer is not entitled to any remuneration.

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

The customer only has the access and usage rights to the contractual software explicitly listed in Section 2.1, to the exclusion of any other and/or further 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 authorized third parties) 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 notify the provider immediately upon becoming aware of this. The customer shall support the provider in taking measures to protect the interests of both contracting parties. Conversely, the provider shall also notify the customer immediately upon becoming aware of any suspicion of unauthorized data access or loss and shall take the necessary precautions to prevent further data loss and further damage to the customer.

3. Obligation of the customer to cooperate

3.1 Provision of hardware & software

The customer is responsible for the provision and maintenance of the end devices (hardware, operating system, display software) and the necessary infrastructure (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-related updates) from third-party software providers are installed on a regular basis. In addition, it protects its IT infrastructure against unauthorized access (e.g. hacker attacks) and malware (viruses, Trojans, ransomware, etc.) and independently ensures that its 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 companies' IT infrastructures increases, employees are increasingly being targeted by cyber criminals. In such attacks, it is not the system that is technically attacked, but rather an attempt is made to gain illegal access to the system via employees. The customer ensures that users (including authorized third parties) are trained with regard to potential IT risks and have an appropriate level of security awareness with regard to current IT risks.

3.4 Protection of login data

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

If unauthorized access to the customer's data occurs with or without damage (e.g. access by unauthorized third parties, malicious data mutations, data loss) due to negligent handling of login data by the customer's users or third parties commissioned by the customer, the provider rejects any liability. In return for payment, the provider is obliged, insofar as technically possible, to carry out data recovery on the customer's instructions. The fee is based on the contractually agreed rates.

3.5 Duty to supervise its employees and commissioned third parties

The customer shall ensure and be responsible for ensuring that users and authorized third parties comply with the customer's obligations under these GTC and the service contract.

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

If the customer breaches its obligations to cooperate in accordance with Clause 3 intentionally or through gross negligence and in a significant manner, resulting in material damage to the provider (loss of data, additional expenses, infringement of intellectual property rights, etc.) and if this impairs the provider's ability to provide the service, the provider shall be released from its obligations to provide the service accordingly. The customer shall be liable to the provider for the intentional or grossly negligent acts and omissions of its own users (in particular in the event of a lack of IT security awareness on the part of employees), as well as any resulting direct damage caused by unauthorized or improper use by the customer or its users. Liability is limited to CHF 200,000.

for indirect and/or consequential damages, loss of profit, loss of use, loss of earnings, loss of business or production, damage to reproduction and loss of data, irrespective of their legal basis, is expressly excluded.

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. Liability for slightly negligent behavior on the part of the customer or the user as well as for indirect damages such as loss of profit, consequential damages, etc. is excluded. The provider is entitled to delete data and information that is unlawful and/or infringes the rights of third parties and/or to block the use of the contractual software if the customer does not delete this data and information despite a justified written reminder.

4. Secrecy

Each party undertakes to maintain the confidentiality of 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 contract and which are neither publicly known nor generally accessible (hereinafter "confidential information"). The provider's confidential information shall include, in particular, the service contract, the agreed remuneration, the contractual software, any specific software applications and the associated documentation. In particular, the customer data stored on the contractual software and any internal customer documents that the provider has received as part of this service contract shall be deemed to be confidential information of the customer. Customer data includes, among other things, user accounts and objects.

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

- a. The provider is permitted to pass on confidential information of the customer to the affiliated companies of the provider, to the subcontractors and to the consultants of the provider, as well as to authorized third parties;
- b. The customer is permitted to disclose confidential information of the provider to the customer's affiliated companies, subcontractors and consultants as well as to authorized third parties;
- c. Each party is permitted to disclose confidential information of the other party to third parties as part 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/is required to do so by law or by the authorities, but only after informing the other party (if legally permissible) so that the other party can apply for a protective order if necessary.

Each party shall ensure that its employees and any third parties it engages (including their employees) are obliged to keep confidential information of the other party confidential prior to any exchange of confidential information (except in the case of disclosure to authorities).

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

5. Intellectual property rights and know-how

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

If the customer cooperates in the development of (further) developments and/or work results, it hereby undertakes to assign all rights to the provider to the parts created/contributed by the customer and assigns all rights to these parts to the provider free of charge upon their creation/contribution by the customer. If an assignment is not permitted by law, the customer shall grant the provider a free, exclusive license, unlimited in time and geography, to such parts created/contributed by the customer to the greatest extent permitted by law (including the right to use, copy and distribute them) at the time of their creation/contribution. the right to use, copy, adapt, modify, create second-hand works, distribute, reproduce, broadcast, assign, sublicense, freely exploit, etc. by the provider). The customer shall ensure and guarantee that the authors waive the assertion of any moral rights to these parts created/contributed by the customer. Should the customer involve third parties in the creation, the above provision shall apply analogously and the customer must in particular ensure the assignment.

The customer shall be entitled to use any customer-specific developments created by the provider internally for its own purposes and for the internal purposes of authorized third parties for the duration of the corresponding service contract (same right of use as for the contractual software). The provider shall remain the owner and proprietor of these customer-specific developments.

6. Availability, malfunctions, warranty and liability

6.1 Availability

The provider guarantees an annual average (24/7) of 99% availability of the contract software. This does not include times when the servers cannot be reached due to technical problems beyond the provider's control (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 full availability of the contractual software at all times. The Provider shall make commercially reasonable efforts to make the Contract Software available 24 hours a day, seven days a week.

Faults are defined as significant deviations from the specifications of the contractual software documented by the customer and reproducible by the provider, which result in the customer not being able to use the contractual software during the periods of use and the agreed availability, or only to a limited extent. Errors and deviations that do not or only slightly restrict the productive use of the contractual software are explicitly not considered malfunctions. In any case, a malfunction does not exist in particular if it is caused by

- the use of unsuitable display software and/or hardware (e.g. outdated browser version);
- Disruptions to the telecommunications networks of or at third parties (e.g. for access to the Internet);
- computer failure of or at third parties that do not belong to the provider or one of its subcontractors;
- incomplete and/or not 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 contractual software and/or any specific software applications not made by the provider;

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 are announced in advance during scheduled maintenance.

6.3 Troubleshooting

In the event of a fault which the customer notifies the provider of in detail as soon as it is discovered, the provider shall take the appropriate measures necessary to rectify the fault at no cost to the customer, provided that the provider is responsible for the fault and the customer and the third parties authorized to use the service (and their assistants) are not at fault. The customer has no right to remedy the fault himself.

6.4 Warranty

In the case of software, it is difficult or impossible to guarantee that the contract software 1) is absolutely error-free (classic software bugs) or that 2) the contract software is available to the customer at all times without interruption. The provider offers no guarantee on these two points. However, the Provider makes every effort and undertakes to ensure availability in accordance with Clause 6.1 and to rectify errors in accordance with Clauses 6.2 and 6.3 at no cost to the Customer. The Provider shall make 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. Clause 6.1. remains reserved, according to which 99% availability is guaranteed.

These provisions govern the provider's warranties conclusively. Any further warranties of the provider (neither explicit nor implicit) as well as assurances and guarantees 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 time of the damaging events, the Provider shall be liable to the Customer for direct and immediate damage caused by the Provider and/or the subcontractor to the Customer (and authorized third parties) under or in connection with the service contract, demonstrably culpably or through gross negligence, up to a maximum total 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 and/or consequential damages, loss of profit, loss of use, unrealized savings, loss of earnings, loss of business or production, damage to reputation, regardless of their legal basis, is expressly excluded.

Under no circumstances shall the provider be liable for the unlawful content of the data stored with it or its misuse by the customer and/or third parties authorized to use it.

The limitations and exclusions of liability of the provider listed in the preceding paragraphs apply if and to the extent that they are permissible under the applicable law.

7. Force majeure

The provider is released from its performance obligations if, insofar and as long as the non-fulfillment of its services is due to the occurrence of force majeure circumstances. Force majeure circumstances include, in particular, war, strikes, pandemics, unrest, expropriation, 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. The Provider and the Customer must inform 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 far as possible. In the event that force majeure only prevents the Provider from providing 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 force majeure completely prevents, hinders or delays the provider from providing the contractual services under a service contract for longer than 30 days, the customer is entitled to terminate the corresponding service contract in writing to the provider without notice. Any remuneration paid in advance shall be refunded by the provider pro rata temporis.

8. Adjustment of benefits

8.1 Changed circumstances

The Provider is entitled, but not obliged, to adapt the content or scope of its services in the event of technical or legal necessity. If the provider does not adapt the contract software, any specific software applications and/or the contract server despite technical or legal necessity, the customer shall be entitled to terminate the relevant service contract in writing to the provider without notice. Any remuneration paid in advance shall be refunded pro rata temporis.

8.2 Contractual adjustments

The Provider and the Customer may agree at any time by letter or e-mail to extend the contractual software with additional functionalities. If the provider makes an additional function available within the contract software, the overview of the services visible to the customer shall be deemed to be the provider's current offer, upon explicit written confirmation of which a corresponding extension of the corresponding service contract is agreed by the customer and the customer must 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 are agreed and invoiced separately with the customer and outside of the recurring license fees.

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 earlier deletion of the customer data at any time.

9.2 Termination

One party is entitled to terminate the service contract in writing to the other party without notice in the following cases:

- if bankruptcy proceedings are opened against the other party;
- if the probate authority grants a moratorium to the other party in judicial probate proceedings;
- if the other party offers an out-of-court composition agreement to all its creditors;

- if the other party enters into liquidation proceedings (except for the purpose of a merger or the reorganization of a solvent company);
- upon declaration of insolvency of the other party by the other party; or
- in constellations that are analogous to the aforementioned under European law.

However, the customer also has the right to terminate the service contract with the provider without notice if the following cumulative conditions are met:

- the provider has repeatedly breached its obligations under the service contract in a material way;
- the customer has given the provider two prior written warnings to remedy the relevant violations within a reasonable period of time (of at least 20 days in each case);
- the second reminder expressly states that the service contract 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 rectified the breach even after the second rectification period has expired.

The provider is also entitled to terminate the service contract extraordinarily without notice by sending a registered letter to the customer if

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

Any remuneration paid in advance will be refunded by the provider pro rata temporis. The parties have no further rights of termination and/or withdrawal for the service contracts.

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