

**General Terms and Conditions**  
**NOVEMBER 2022**

## 1. CONTRACTUAL BASIS

- 1.1** The parties to this contract are SLASCONE GmbH (registered in the commercial register of the Berlin district court under registration No. HRB 174522; hereinafter "Provider") and Customer. Provider and Customer may be also referred to herein collectively as the "Parties" and individually as a "Party".
- 1.2** The language of the contract shall be English. All communications regarding the contract shall be in English.
- 1.3** Any special terms and conditions agreed upon by the Parties in writing – whether at the time of conclusion of the contract or afterwards – shall always take precedence over the provisions of these General Terms and Conditions.

## 2. COMPENSATION, PAYMENT, SERVICE PROTECTION, DEADLINES

- 2.1** Provider's compensation normally comprises of net prices plus statutory value-added tax imposed thereon. Compensation and any other amounts payable under the contract shall be invoiced by Provider on a monthly basis. Where services are remunerated on the basis of their actual usage by Customer, Provider's invoices will be accompanied by relevant documentation evidencing the nature and duration of such usage.
- 2.2** Invoices are sent in electronic form only. The Customer must provide Provider with at least two valid email addresses, for invoicing purposes.
- 2.3** Customer must pay Provider's invoices within 30 calendar days from their receipt, free of charges for the recipient and without any deductions or withholding. If Customer is required by law to withhold or deduct any amount from the compensation or any other sums payable under the contract, Customer shall "gross-up" the respective payment so that the amount actually received by Provider is the full amount of the specified compensation and other payable sums. If Provider is required by law or elects to pay any taxes and duties levied or based upon Provider's compensation or other payable sums, such amounts shall be reimbursed by Customer.
- 2.4** The Customer may offset or withhold payments due to defects only insofar as the Customer has a claim against Provider arising out of a material defect or defective title related to services. Customer has no right to withhold payment if their claim arising out of defects is time barred. Furthermore, Customer shall be entitled to an offset or to withhold payment only as regards claims which are undisputed or established in a legally valid way.

- 2.5** If Customer fails to pay, in whole or in part, any amount due under this contract, by the stipulated payment date, Provider will send Customer a reminder notice in electronic form ("first reminder"). If Provider does not receive full payment of the delayed amounts within 30 calendar days from the receipt by Customer of the first reminder Provider shall send a second reminder for payment in electronic form ("second reminder"). If Provider does not receive full payment of the delayed amounts within 15 calendar days from the receipt by Customer of the second reminder, Provider will be entitled to suspend Customer's access to all services, without further notice. Such suspension shall not release Customer of its contractual obligations nor of its obligation to pay the compensation that corresponds to the suspension period. Services can be resumed, only as soon as all due amounts have been paid by Customer in full.
- 2.6** If Customer fails to pay any amount due under the contract before the receipt of the second reminder, Provider shall be entitled to revoke agreed payment terms for any or all future payments and to render any future services only against advance payment or security (in the form of a performance guarantee on first demand) issued by a credit institution or credit insurer licensed to do business in the European Union. As regards services of a continuous nature which are chargeable on a recurring basis, the advance payment or the performance guarantee shall cover the full amount payable for the applicable billing period. For one-off services the advance payment or the performance guarantee shall cover the full amount of the compensation payable for such services. § 321 of the German Civil Code and § 112 of the German Insolvency Law – where applicable - remain unaffected.
- 2.7** Fixed service deadlines must be explicitly agreed in a documented form. Any agreement of a fixed service deadline is subject to the provision that Provider receives services from its respective suppliers in a timely and contractually compliant manner.
- 2.8** Provider may increase compensation not earlier than 36 months after the date of the execution of the contract. Further increases can follow not earlier than 12 months after a preceding increase has become effective. An increase shall become effective 3 months after such has been notified to Customer. Customer will be entitled to terminate the agreement in the event of an increase of more than 18%. Customer must exercise such right of termination not later than the effective date of the increase.

### 3. CONTRACT DURATION AND TERMINATION

- 3.1** The contractually agreed services shall be provided by Provider from the date specified in the contract and until the expiry of the minimum term set forth below. The Parties hereby waive their right to an ordinary termination of the contract during this minimum term.
- 3.2** The minimum term duration shall be 12 months.
- 3.3** At the expiry of the minimum term, the contract shall be automatically extended for successive periods of 12 months, unless either Party has exercised its right to an ordinary termination of the contract by giving the other Party a notice to this effect at least 3 months before the expiry of the minimum term or of the respective extension period.
- 3.4** Each Party's right to extraordinary termination for important reasons remains unaffected.
- 3.5** Every declaration of termination must be in written form to be effective. Section 20.4 applies.

- 3.6** Within thirty (30) days as of the expiry or termination of the contract, Customer may request that all of its data uploaded on the software or in the possession of Provider are returned to Customer or deleted. If Customer does not exercise the right to choose between return or deletion of the data as per previous sentence, Provider shall bear no liability as regards such data and shall be entitled, after the lapse of this thirty (30) day period, to permanently erase any data uploaded in the software by or on behalf of Customer, as well as any data otherwise in Provider's possession.

## **4. COLLABORATION, OBLIGATIONS TO COOPERATE, CONFIDENTIALITY**

- 4.1** Customer and Provider shall each appoint a contact person. Communication between the Parties shall be made only through such contact persons, unless otherwise agreed in writing. The contact person of each Party must be authorized to and shall promptly make all decisions related to the performance of the contract on behalf of such Party.
- 4.2** Customer is obliged to support Provider as necessary and create all the conditions necessary in their sphere of operations for proper execution of the contract. For this, they shall provide, in particular, the necessary information and enable remote access to Customer's system as far as possible. If remote access is not possible for security-related reasons or other reasons, relevant deadlines shall be extended appropriately; as concerns further effects, the contractual partners will agree on suitable provisions. Customer shall furthermore ensure that qualified staff are available for supporting Provider. Insofar as the contract contains agreements that services can be provided at Customer's site, Customer shall provide adequate workstations and work equipment free of charge at Provider's request.
- 4.3** Customer shall immediately report any defects in the services to Provider in a comprehensible and detailed manner and in writing. All defect reports must include all information useful for defect identification and analysis, that is, indicatively, the work steps which led to the emergence of the defect, how was the defect detected and the consequences of the defect. Provider's relevant forms and procedures shall be used for this purpose, unless otherwise agreed in writing by the Parties.
- 4.4** On request, Customer shall appropriately assist Provider in reviewing and asserting claims against third parties involved in the provision of the services. This applies especially to recourse claims by Provider against its own suppliers.

- 4.5** Each Party shall keep the other Party's Confidential Information secret and confidential and shall not – without the other Party's prior written consent - disclose it to any person except to such limited group of its employees and – if permitted by the contract – third parties, whose duties give them a need to know such Confidential Information. Each Party shall ensure that any employee and third party to whom it discloses any Confidential Information in accordance with the contract has duly committed to be bound by the provisions of confidentiality set forth in this section. The obligations set out in this section 4.6 shall apply during the term of contract and for a period of five years after expiry or termination of the contract for any reason whatsoever. "Confidential Information" means any information relating to the business (for example and not limited to proprietary and trade secret, technical information, technical plans) of either Party and to the identity and business of either Party's clients and potential clients and which both Parties regard, or could reasonably be expected to regard as confidential, whether or not marked or characterized as "confidential". The term "Confidential Information" covers also Provider's software and relevant documentation and presentations, or any part thereof.
- 4.6** The contractual partners are aware that electronic and unencrypted communication (e.g., via e-mail) is subject to security risks. In such case, they cannot make any claims based on the lack of encryption, unless encryption has been agreed beforehand.
- 4.7** Customer shall indemnify, defend and hold Provider harmless against any third party claim and all related demands, damages, losses, liabilities, fines, penalties, assessments, costs and expenses (including attorneys' fees), arising from or in connection with the violation of any applicable law which stems from Customer's unlawful use of the services or not in accordance with the contract, or which has occurred with Customer's consent. If Customer becomes aware or should have been aware that such a violation is imminent, Customer is obliged to immediately inform Provider.

## 5. HOSTING

- 5.1** The services shall be provided via software which runs in Microsoft Azure data centers only.
- 5.2** Customer can use an own Microsoft Azure subscription. Clause 4.2 applies. In this case, Customer shall bear all costs related to Microsoft Azure. If Customer uses an own Microsoft Azure subscription, Customer must provide Provider with a dedicated Microsoft Azure resource group, which shall be intended exclusively for the operation of Provider's software, as well as with corresponding administrative access. Customer may not change the content of this resource group without prior consultation with Provider. Provider shall bear no liability if the content of this resource group is changed by Customer or otherwise without Provider's prior written agreement.

## 6. SERVICE DESCRIPTION

- 6.1** Provider shall provide the contractual services, in particular access to the software, in Provider's area of disposal (from the data center interface to the Internet).

- 6.2** The scope of services, the intended use and the conditions of use of the contractual services result from the respective service description, in combination with the online documentation of the software. The online documentation is ultimately decisive for the quality of the functionality of the software, unless explicitly agreed otherwise. Provider is not obliged to any additional software description. The online documentation can be found at <https://slascone.com/docs>.
- 6.3** Provider has no obligation to provide any further services, such as – but not limited to - development of customer-specific solutions or customizations. Such services may be provided only if agreed by the Parties in a separate contract.

## 7. PROFESSIONAL SERVICES (CUSTOMIZING)

- 7.1** Provider renders services by way of suitable staff members. Customer has no claim to service provision by specific employees of Provider.
- 7.2** Provider defines the way services are rendered, unless agreed otherwise.
- 7.3** Customer is not authorized to issue instructions to Provider's employees involved in rendering services.
- 7.4** If Provider must present the results of service provision in writing, only the written presentation is definitive.
- 7.5** Customer ensures that the contact person appointed by said Customer supplies Provider with the documents, information and data needed for service provision completely, correctly, in a timely way and at no charge, unless Provider is liable for this. Customer furthermore ensures that these items are up to-date. Provider may assume the completeness and accuracy of these documents, information and data, unless said Provider recognizes or has to recognize that they are incomplete or inaccurate.
- 7.6** In this regard, Customer shall monitor service provision by Provider.
- 7.7** As regards the service results which Provider has supplied within the scope of the contract and transferred to Customer, Provider grants Customer a non-exclusive and non-transferable right to use these results in perpetuity for their own internal purposes within the contractually intended context, unless agreed otherwise.
- 7.8** Otherwise, all rights remain with Provider.
- 7.9** Provider can revoke the rights of use granted to Customer if they significantly breach the restrictions on use or other rules on preventing unauthorized use. Provider shall set a grace period of remedy for Customer beforehand. In case of recurrence and in special circumstances which justify immediate revocation, bearing in mind the interests of both sides, Provider can also declare revocation without setting a period of notice. After rights of use have been revoked, Customer shall confirm this to Provider in writing. Provider shall restore rights of use for Customer after they have submitted and warranted in writing that there are no more breaches of these rights of use, and previous breaches as well as their consequences have been eliminated.
- 7.10** Agreed proofs of expenditure are considered approved if Customer does not contradict them in writing and in detail within 21 days of receipt, and Provider has referred to the approval concept in the proof of expenditure.

- 7.11** If a service is not provided in compliance with the contract and Provider is responsible for this (service disruption), they are obliged to provide the service, in whole or in part, to Customer in compliance with the contract within a reasonable period and without additional costs, unless this is only possible with a disproportionate expenditure.

This obligation of Provider exists only if Customer has objected to the service disruption in writing and without delay, but no later than by the end of two weeks after obtaining knowledge thereof, unless agreed otherwise.

- 7.12** Section 16 applies to any further claims for compensation of expenditure and damage.

## 8. SOFTWARE UPDATES

- 8.1** Provider regularly makes available updated versions of the software, even if Section 5.1 applies. Provider is not obliged to explicitly inform Customer about this.
- 8.2** Provider informs Customer as soon as the software can no longer be regularly developed or updated.
- 8.3** Provider is entitled to change, extend and further develop the software, including the online documentation, at its own discretion, provided that the contractual functional scope of the software is essentially retained and changes do not hinder the contractual and intended use of the software by Customer.
- 8.4** The right to change the software also includes the right to remove functions that are not essential or are no longer essential for the contractual use of the software. Such changes shall be notified to Customer at least 6 months in advance. Customer must review the changes and immediately inform Provider in writing if such changes will not allow use of the software for the contractually agreed and intended purpose. If Customer fails to so notify Provider within three months from having been notified of the changes, then such changes shall be considered accepted by Customer.

## 9. AVAILABILITY

- 9.1** The provided software has an availability guarantee of 99.95%. The availability of the provided software technically depends on the availability of the Microsoft Azure resources used in combination with the software.
- 9.2** Such Microsoft Azure resources: Front Door, App Service, SQL Database, Active Directory B2C, Azure Maps, Storage Account. Microsoft Azure's service level (SLA) agreements can be found at <https://azure.microsoft.com/en-us/support/legal/sla/>.

## 10. PERMITTED USE AND RESTRICTIONS

- 10.1** The contractual services may be accessed and used only by Customer and only for the purposes agreed in the contract. For the entire term of the contract, Customer may access the contractual services by means of telecommunication (via the Internet), and use the functionality associated with the software in a contractually compliant manner by means of a browser or other appropriate application (for example, an "app"). Any further use requires Provider's prior written consent. Provider and its licensors (as applicable) retain all rights, title and interest in and to any Intellectual Property Rights in the services and the software, the documentation and any modifications, derivative works, updates thereof, Customer has no and hereby acquires no interest in or right to use the services, the software and the documentation and any modifications and updates thereof, or anything else developed and made available or delivered to Customer, except in accordance with the terms of the contract.
- 10.2** Software or parts of it may not be copied, sold, transferred temporarily, leased or loaned by Customer.
- 10.3** Provider is entitled to take appropriate technical measures to prevent use of the services in violation of the contract, on the condition such measure do not materially impair contractually compliant use of the services.
- 10.4** In case of any contract violation by a specific user, Customer is obliged to supply Provider with any available information that Customer might request in order to support Provider's claims against such user.
- 10.5** In case of material breach of the contract Provider may revoke Customer's access to the software and/or terminate the contract. In this context, Provider may suspend Customer's access (in full or in part) to the contractual services. Provider must grant Customer a reasonable period to remedy such breach. Revocation of access rights by itself shall not constitute termination of the of the contract. Revocation of access without prior notice may only last for a reasonable period of time not exceeding 3 months.
- 10.6** Provider's right to be compensated for damages or loss suffered in connection with any breach of the contract by Customer remains unaffected.
- 10.7** Customer has the right to regain access to the software if it can demonstrate to the satisfaction of Provider that the non-contractual use of the software has ceased.



## 11. SERVICE DISRUPTION

- 11.1** If a deadline for the provision of services by Provider may not be adhered for any cause ("Disruption") lying beyond Provider's reasonable control, such as – but not limited to - strikes and lockouts, , such deadline shall be extended for as long as the Disruption lasts, plus an additional time period reasonable required for resuming performance. Each Party shall promptly notify the other of any Disruption it becomes aware of. As well as for the relevant deadline(s) extension time.
- 11.2** Should Provider incur any additional expenses as a result of a Disruption, Provider shall be entitled to be compensated therefor, unless such Disruption also falls beyond Customer's reasonable control.
- 11.3** In case that Customer is entitled to terminate the contract due to Provider's improper performance and / or can claim damages instead of the service or claims such, Customer will, upon Provider's request, declare in writing within a reasonable period of time whether Customer will assert such rights or continue to procure the services. In the event of termination, Customer must pay to Provider the compensation corresponding to the use of the services until the time when termination comes into effect options; the same applies to deterioration through proper use. In the event of a delay in the provision of the services Customer's sole and exclusive remedy for such delay shall be the payment by Provider for its full week of delay of an amount equal to 0.5% of the price of the services that may not be used to the delay. In no event will the amounts payable by Provider to Customer for delayed services exceed 5% of the compensation corresponding to services that may not be used due to the delay.; in the case of continuing obligations, it is based on compensation for the relevant services for the full calendar year. Applicable as a supplement with priority is a percentage of the compensation agreed on contract conclusion. The provisions of this paragraph shall not apply as regards delays arising out of Provider's gross negligence or willful misconduct.

## 12. INCIDENT MANAGEMENT

- 12.1** Incident reports have to be created at <https://slascone.com/support/>. Provider shall receive Customer's incident report and assign an ID to each report. On request by Customer, Provider shall acknowledge receipt of a report also notifying Customer of the ID assigned to it.
- 12.2** Incident reports will be categorized and handled according to an assigned severity level. The incident severity level is selected by Customer at time of submission, and will be updated by Provider as follows:

### Level 1 - Critical

Critical production issue affecting all Users, including system unavailability and data integrity issues with no workaround available.

### Level 2 – High

Major functionality is impacted or performance is significantly degraded. Issue is persistent and affects many Users and/or major functionality. No reasonable workaround is available.

## Level 3 – Normal

System performance issue or bug affecting some but not all Users. Short-term workaround is available, but not scalable.

## Level 4 – Low

Incidents that do not fall into Level 1 - 3 are assigned to Level 4. Other reports shall be handled by Provider in accordance with the specific agreement reached thereon by the Parties.

- 12.3** Provider will use commercially reasonable efforts to respond to each case within the applicable response time described in the table below, depending on the severity level set on the case.

Severity Level	Target Initial Response Time	Target Resolution or Workaround Time
<b>1</b>	2 hours (24x7)	12 hours
<b>2</b>	6 hours (24x7)	48 hours
<b>3</b>	1 business day	5 business days
<b>4</b>	2 business days	5 – 10 business days

The business hours are defined in Section 13.3. Target resolution times are goals. Depending on the volume and severity of tickets submitted, response times and time to resolution may vary.

- 12.4** In the case serious disruptions and other disruptions, Provider shall promptly initiate relevant procedures according to the circumstances reported by Customer, in order to first identify the cause of the defect.

If a reported incident does not turn out to be a defect in the contractual services, especially in the software, Provider shall promptly inform Customer about this.

Otherwise Provider shall initiate appropriate measures and exercise reasonable endeavors to further analyze and correct the reported defect or - in the case of third-party software - send the incident report, including the analysis results, to the supplier or manufacturer of the third-party software with a support request.

A workaround or remedy of a defect in the contractual services, especially the supplied software, Provider shall within reasonable time supply Customer with available measures such as procedural instructions or corrections to the supplied software. Customer shall promptly implement such measures and notify Provider with no delay of any remaining defects upon deployment of such measures.

## 13. CONTACT POINT (HOTLINE)

- 13.1** Provider shall make available to Customer a contact point (hotline) to process Customer's inquiries in connection with technical requirements and conditions for use of the supplied software, as well as individual functional aspects. Inquiries have to be created at <https://slascone.com/support/>.
- 13.2** The hotline shall process properly submitted inquiries as part of normal business routine and answer such as soon as possible. In its responses, the hotline can refer Customer to available documentation and other training material for the software. If the hotline is not able to answer an inquiry at all or in a timely manner, Provider – on the condition that this has been expressly agreed in writing by the Parties - shall forward the inquiry for further processing, especially in case of inquiries regarding software or other components not developed by Provider.

Additional hotline services such as extended contact hours and periods as well as on-call service or the provision of services on-site at Customer's premises must be explicitly agreed in advance and in writing.

- 13.3** Business hours: All working days (calendar days with the exception of Saturdays and Sundays, and December 24 and December 31 each year) from 7:00 a.m. to 8:00 p.m. (CET or CEST).

## 14. MATERIAL DEFECTS AND REIMBURSEMENT OF EXPENDITURE

- 14.1** Provider warrants that the services shall be of such quality as contractually stipulated. Provider shall not be liable to Customer
- i. for any quality deviations caused by negligence;
  - ii. for defects caused by the excessive or improper use of the software, natural wear and tear of the software, failure of components in the system environment where the software runs,
  - iii. software defects which cannot be reproduced or otherwise proven by Customer; or
  - iv. defects arising out of special external causes which are not a prerequisite under the contract.
  - v. defects arising out of any intervention or modification to the software (or any component thereof) made by Customer or any third party, , unless this does not hinder analysis and removal of the material defect.

Section 16 applies as a supplement to claims for compensation of damages and expenditure.

- 14.2** The limitation period for claims based on material defects is one year from the statutory beginning of limitation. The statutory periods for recourse according to § 478 of the German Civil Code remain unaffected. The same applies insofar as longer periods are prescribed, pursuant to § 438 Paragraph 1 Item 2 or § 634a Paragraph 1 Item 2 of the German Civil Code, in case of intentional or grossly negligent breach of duty by Provider, fraudulent concealment of defects, harm to life, body or health, as well as claims based on the product liability act.

Notice of a material defect by Customer and Provider's processing thereof shall not suspend the limitation period for such defect, unless relevant legal requirements for such suspension are met. Consequently, the limitation period shall not be renewed due to the submission or processing of a defect notice.

In all events, Supplementary performance (new delivery or reworking) by Provider may only impact the limitation period for the defect which triggered such supplementary performance.

- 14.3** Provider shall be entitled to be compensated for any expenses incurred due to
- a) action taken following a report without there actually being a defect, unless Customer could not have recognized by exercising reasonable effort that no defect existed, or
  - b) the defect reported may not be reproduced or otherwise proven by Customer, or
  - c) Provider has incurred additional expenses due to Customer's not fulfilling or not properly fulfilling its obligations (also refer to Sections 4.2, 4.3 und 15.2).

## 15. INDEMNIFICATION

- 15.1** Provider shall be liable to Customer for infringement of third-party rights by Provider's service, but only insofar as the service is used unmodified and in accordance with the contract and, in particular, in the contractually agreed or otherwise intended environment.

- 15.2** If a third-party claims that Providers' service infringe upon their rights, Customer shall promptly notify Provider. Provider and, if applicable, its suppliers shall be entitled to, not obliged, to take control of the defense against such claims, to the extent permitted by law, at their own expense.

Customer must not and is not authorized by Provider to recognize third-party claims, without Provider's prior written consent.

- 15.3** In the event that a third-party claim for infringement is upheld, Provide shall, at its own expense and discretion
- a) cure the infringement by acquiring the rights that will allow the non-infringing use of the service by Customer pursuant to the contract;
  - b) replace or amend the relevant software and services in order to cure the infringement on which the claim is based; or
  - c) withdraw the service and refund the compensation paid by Customer (minus a reasonable reimbursement for use) if Provider cannot achieve any other remedy with reasonable effort.

Customer's interests are to be considered adequately.

- 15.4** Claims of Customer regarding defects in title shall be time barred according to Section 14.2. Item 16 applies additionally to Customer's claims for damage. Section 14.3 applies accordingly to Provider's additional expenditures.

## **16. GENERAL LIABILITY OF PROVIDER**

**16.1** Provider is always liable to Customer

- a) for damage caused by Provider or their legal representatives or vicarious agents intentionally or through gross negligence,
- b) according to the product liability law and
- c) for damage which arises from harm to life, body or health, and for which Provider, their legal representatives or vicarious agents are responsible.

**16.2** Provider is not liable for slight negligence unless they have breached an essential contractual obligation which is a prerequisite for the proper performance of the contract, or which sets at risk the contractual objective and on which Customer relies or is expected to rely on.

For material and pecuniary damages, this liability is limited to the damages which are typical and foreseeable under the contract. The same applies to loss of profit and savings which failed to materialize. Liability for other remote consequential damage is excluded.

For an individual instance of damage, liability is limited to the contract value; for ongoing remunerations, liability is limited to the amount of remuneration per contract year, but not less than € 50,000. Section 14.2 applies accordingly to the statute of limitations. On contract conclusion, the Parties can agree further liability in writing, usually in exchange for a separate remuneration. An individually agreed liability amount shall take precedence. Liability as per Section 16.1 is not affected by this paragraph.

Notwithstanding anything to the contrary in these terms and conditions, Provider's liability due to slight negligence arising from the respective contract and its execution with regard to compensation of damage and expenditure - irrespective of the legal grounds – shall be limited to the percentage rate agreed in this contract with respect to the remuneration agreed on contract conclusion. Liability as per Section 16.1 b) is not affected by this paragraph.

- 16.3** On the basis of a guarantee declaration, Provider is only liable for damage compensation if this was explicitly accepted in the guarantee. In case of slight negligence, this liability is subject to the limitations set forth in Section 16.2.
- 16.4** If recovery of data or components (e.g. hardware, software) becomes necessary, Provider is liable only for the expenditure required for recovery given proper data backup and failure precautions by Customer. In case of slight negligence by Provider, this liability arises only if Customer implemented appropriate data backup and failure precautions for the type of data and components before the disruption. This does not apply if agreed as performance to be delivered by Provider.
- 16.5** Section 16.1 to 16.4 apply accordingly to claims for compensation of expenditure and other liability claims of Customer against Provider. Section 11.3 remains unaffected.

## 17. DATA PROTECTION

- 17.1** To the extent that Provider can access personal data belonging to Customer or present in their domain, said Provider shall act exclusively as a processor and only process and use these data to execute the contract. Provider shall observe Customer's instructions on handling such data. Customer shall bear any negative consequences of such instructions for contract execution. Customer and Provider shall agree details on handling of Customer's data by Provider in accordance with legal requirements concerning data protection.
- 17.2** Customer remains the data controller generally in the contractual relationship and in the context of data protection legislation. If Customer processes personal data in connection with the contract (including collection and use), said Customer assures that they are entitled to this according to the applicable provisions, in particular, those concerning data protection, and exempts Provider from claims by third parties in the event of a breach.
- 17.3** The following applies to the relationship between Provider and Customer: Customer is responsible for processing (including collection and use) of personal data vis-à-vis the data subject, unless Provider is answerable to any claims by the data subject as regards breaches of duty attributable to them. Customer shall review, process and answer any enquiries, requests and claims by the data subject. This also applies to claims raised by the data subject against Provider. Provider shall support Customer as part of their duties.

- 17.4** The software and any data processing is operated on servers within the EU or the European Economic Area. Provider uses the services of Microsoft Corporation, One Microsoft Way, Redmond, WA 98 USA to provide the service. The contractual partners are aware that the transfer of personal data to the USA cannot be ruled out when using Microsoft's services.
- 17.5** Employees of Provider as well as third parties who work on the behalf or have access to personal data have been obliged in writing to maintain confidentiality and to maintain data secrecy in accordance with Section 53 of the Federal Data Protection Act (BDSG).

## **18. NON-CONTRACTUAL USE, DAMAGE COMPENSATION**

For each case involving unauthorized or excessive use of a contractual service by Customer's, Customer shall be liable to pay damages to Providers equal to the compensation which would have been due for contractually compliant use over the minimum contractual period applicable to this service. Customer reserves the right to prove it is not responsible for unauthorized use, or that there is no damage or that damages is less than the amount set forth above, Provider remains entitled to assert further damage claims.

## **19. REFERENCE**

Customer grants Provider the right to use the logo and name of Customer as a reference on its website and in sales and promotional material documents. Customer can revoke this approval at any time.

## **20. MISCELLANEOUS**

- 20.1** Customer is responsible for complying with import and export regulations applicable to deliveries and services, in particular those associated with the United States. For cross-border deliveries and services, Customer shall cover customs, fees and other charges. Customer is responsible for carrying out all arrangements and legal and official procedures in connection with cross-border deliveries and services, unless expressly agreed otherwise.
- 20.2** The contract shall be governed by German law. Application of the CISG is excluded.
- 20.3** Provider renders their services based on their general business terms. Customer's general business terms do not apply, even if Provider has not expressly contradicted them. Acceptance of services by Customer is regarded as recognition of Provider's general business terms, waiving Customer's general business terms. Other conditions are binding only if Provider has recognized them in writing; in this case, Provider's general business terms apply as a supplement.
- 20.4** Amendments and supplements to this contract may only be made in writing.
- 20.5** All disputes arising out of the contract shall be submitted to the courts of Provider's registered seat. Provider may also file suit against Customer at Customer's seat.