

**General Terms and Conditions (GTC) of VTA Software & Service GmbH**  
**for Customers**

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**1. Subject Matter of the Contract**

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

**2. Scope**

- 2.1. These GTC apply exclusively within the territory of the Federal Republic of Germany.
- 2.2. Services and offers are provided solely based on these GTC. They shall also apply to all future transactions with the customer, provided they are legal transactions of the same or a related nature.
- 2.3. The customer's terms and conditions of business and purchase are hereby rejected.
- 2.4. These GTC apply exclusively to entrepreneurs within the meaning of section 14 of the German Civil Code (BGB) as well as legal entities under public law or special funds under public law within the meaning of section 310 (1) sentence 1 BGB. VTA may require the customer to provide sufficient proof of their entrepreneurial status before concluding the contract, e.g. by providing their VAT ID number or other suitable evidence. The required data must be provided completely and truthfully.

**3. Scope of Services and Content**

- 3.1. VTA shall provide the customer with the software in accordance with the service description for the contract term specified in the offer and shall grant the customer the access rights required for contractual use in accordance with the offer or contract and these GTC.
- 3.2. VTA is responsible for the maintenance of the software provided and provides support services to the customer. The maintenance services and scope of customer support can be found in the respective service description.
- 3.3. Use/Access Privileges
- 3.3.1. The software is operated by VTA on a central server in a secure data centre, unless otherwise agreed in the offer. Access to the functions of the software is provided via the Internet as SaaS (Software as a Service) based on user name and password (use of web services or file interfaces).

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3.3.2. The functionality of the software is deemed to have been proven when all interfaces at the customer's site operate without errors.

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

**3.4. Support Services/'Customer Support'**

3.4.1. VTA provides the customer with the following customer support services:

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

3.4.2. Error handling includes localisation of the cause of the error, error diagnosis and services aimed at error rectification, provided the error is due to the software.

3.4.3. Not covered by customer support:

- Services outside the agreed periods of on-call support availability;
- Services that become necessary because the customer does not fulfil their obligations to cooperate.

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

3.4.5. After receipt of a sufficiently specified error description, which includes error behaviour, affected components of the software and steps already taken, the VTA response times specified in the respective service description shall apply. Response time refers to the period of time within which VTA commences work.

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

3.5. The service obligations in connection with other one-off services in accordance with clause 1.2. are to be taken from the respective individual offer.

**4. Cooperation Obligations of the Customer**

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

4.1.1. The customer shall provide VTA with all documents, documentation and information required for the proper provision of services, which are necessary for the fulfilment of VTA's service obligations.

4.1.2. The customer shall provide VTA with test data if available.

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- 4.1.3. The customer shall document errors that are detected during testing or live operation in a reproducible or at least comprehensible form and shall inform VTA immediately of the documented errors.
- 4.2. The customer shall nominate at least one employee to VTA as a contact person (VTA shall be informed of any changes thereto without delay). The contact person must have experience in using the software. Only the contact person or a representative designated by them shall be authorised to submit error reports.
- 4.3. Prior to reporting an error, the customer shall analyse the system environment as far as possible to ensure that the error is not caused by system components which are not subject of the contract with VTA.
- 4.4. If the customer does not fulfil their obligation to cooperate and VTA is therefore unable to provide customer support properly or only with disproportionate additional effort, VTA shall be released from its obligation to perform. Additional expenses caused by the above-mentioned non-compliance with the duty to cooperate shall be reimbursed to VTA in addition to the agreed remuneration on the basis of the remuneration agreement separately concluded with the customer.

## **5. Remuneration**

- 5.1. The remuneration for the services is based on the price list, which is provided with the offer.
- 5.2. Services outside the scope of the contract as well as other one-off services in accordance with clause 1.2. shall be remunerated separately in accordance with the respective offer.
- 5.3. The prices can be adjusted based on changes in the price-forming factors. An adjustment is then made in relation to the respective changes. VTA shall inform the customer of a price adjustment, providing the adjusted price list and notification of the changed price-forming factors. The new price list shall apply from the billing period following the handover of the adjusted price lists. If the customer requests an adjustment to the price list due to changes in the price-forming factors, VTA shall adjust the price list accordingly as soon as the customer so requests. Price-forming factors are in particular: wage, material, and financing costs, levies/surcharges etc., licence costs, hardware costs and costs for data centres. In case of a price change of more than 5%, both contracting parties have a special right of cancellation with a notice period of one month.
- 5.4. The customer is obliged to sign off on submitted acceptance reports immediately, but at the latest within 10 days of receipt. If the customer does not agree with the acceptance reports, they shall state any reservations in detail in writing within this period. The parties shall then immediately endeavour to bring about clarification. Once agreement has been reached, the customer must sign the acceptance reports without delay.

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5.5. VTA shall invoice the remuneration in accordance with the price list or the respective offer. Invoices are due for payment without deduction within 30 days of the invoice date. If the customer is in default of payment, the outstanding amount shall bear interest at the statutory base rate. This does not affect the assertion of further rights.

5.6. Unless otherwise expressly agreed, all amounts stated in the price list are net amounts, i.e. plus statutory VAT. VTA shall show the tax rate and the amount of VAT separately on the invoice.

5.7. The parties agree that the customer is the sole debtor of the remuneration for VTA, also regarding the agreed use by the companies listed conclusively in the order processing agreement attached to the offer. However, at the customer's request, VTA agrees to invoice the individual companies listed conclusively in the order processing agreement in accordance with the actual use by these companies.

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

6.1. VTA guarantees that the software essentially corresponds to the product description. Claims for defects do not exist in the case of an insignificant deviation from the agreed or presumed quality and in the case of only insignificant impairment of usability. In the event of version changes/updates, VTA shall consider the criteria for the functionality of the system in accordance with clause 3.3.3.

6.2. If the customer demands supplementary performance due to a defect, VTA shall have the right to choose between rectification, replacement delivery or compensatory service. If the customer has set VTA a further reasonable period of grace after an initial deadline has expired without result and this has also expired without result, or if a reasonable number of attempts at rectification, replacement delivery or compensatory service have been unsuccessful, the customer may, subject to the statutory requirements, either terminate the contract or reduce the remuneration and demand financial compensation or reimbursement of expenses. Supplementary performance can also be effected by installing a new version of the programme or a workaround. If the defect does not impair the functionality or does so only insignificantly, VTA shall be entitled to rectify the defect by installing a new version or an update as part of its version, update and upgrade planning, to the exclusion of further warranty rights.

6.3. Defects must be reported by the customer in text form by means of a comprehensible description of the error symptoms, as far as possible proven by written records, screenshots or other documents illustrating the defects. The notification of defects should enable the reproduction of the defect. The customer's statutory obligations to inspect and give notice of defects remain unaffected.

6.4. Claims for damages are subject to the restrictions of section 8.

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

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

- 7.1. VTA warrants that the software supplied or made available by it is free from third-party rights that would prevent its use in accordance with the contract. This does not apply to customary retentions of title.
- 7.2. If third parties are entitled to such rights and assert them, VTA shall do everything in its power to defend software against the asserted rights of third parties at its own expense. The customer shall inform VTA immediately in writing of the assertion of such third-party rights and shall grant VTA all powers of attorney and authorisations required to defend the software against the asserted third-party rights.
- 7.3. If there are defects of title, VTA shall be entitled to take lawful measures to eliminate the rights of third parties that impair the contractual use of the software, or to enforce such rights, or to modify or replace the software in such a way that it no longer infringes third-party rights (if and to the extent that this does not significantly impair the owed functionality of the software). VTA is obliged to reimburse the customer for the necessary recoverable costs of prosecution.
- 7.4. If the indemnification pursuant to clause 7.3. fails within a reasonable grace period set by the customer, the customer may, subject to the statutory requirements, either terminate the contract or reduce the price and claim compensation.

## **8. Liability, Compensation**

VTA's liability - regardless of the legal grounds - is limited in accordance with the following provisions, insofar as fault is involved.

- 8.1. VTA shall not be liable in the event of simple negligence on the part of its legal representatives, employees or other vicarious agents, insofar as this does not involve a breach of a material contractual obligation ('cardinal obligations'). Cardinal obligations are the essential obligations that form the basis of the contract, which were decisive for the conclusion of the contract and on the fulfilment of which the customer may rely. These also include those obligations of VTA that are intended to protect the life and limb of the customer's personnel or third parties or the customer's property from significant damage.
- 8.2. VTA shall only be liable for the loss of data up to the amount that would have been incurred to restore the data if they had been properly and regularly backed up.
- 8.3. Insofar as VTA is liable for damages on the merits pursuant to clause 8.2., this liability shall be limited to the extent of the damage that VTA foresaw as a possible consequence of a breach of contract at the time the contract was concluded or should have foreseen if it had exercised due diligence, taking into account the circumstances of which it was aware or should have been aware. Clause 8.5. applies accordingly.

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- 8.4. VTA shall only be liable for direct damage and not for indirect damage such as loss of profit or consequential damage resulting from defects in the services provided by VTA. VTA always adapts the software to the current customs regulations. VTA is also liable for this to the extent stated. However, VTA shall not be liable for damages incurred by the customer due to customs and/or tax regulations, and which are attributable to the use of the software or other services provided by VTA.
- 8.5. In the event of liability for simple negligence, VTA's obligation to pay compensation for damages shall in any case be limited to an amount equal to three times the annual remuneration, even in the event of a breach of material contractual obligations.
- 8.6. The above exclusions and limitations of liability shall apply to the same extent to personal liability in favour of VTA's executive bodies, legal representatives, employees and other vicarious agents.
- 8.7. Insofar as VTA provides technical information free of charge outside of existing contractual relationships or acts in an advisory capacity through recommendations or advice and this information or advice is not part of the contractually agreed scope of services owed by VTA, this is done free of charge and to the exclusion of any liability.
- 8.8. The limitations of this section 8 do not apply to VTA's liability for intentional acts, for guarantees given, for injury to life, limb and health or under the Product Liability Act.

**9. Confidentiality, Data Protection**

- 9.1. The parties undertake to treat as confidential all confidential information that become known to them during the execution of this contract and to use it only for contractually agreed purposes. Confidential information within the meaning of this provision is information, documents, details and data that are denoted as such or are to be regarded as confidential by their nature. VTA undertakes to grant access to the customer's confidential information only to those employees who are entrusted with the provision of services under this contract. Both parties are obligated, upon request of the other party, to have their employees sign a corresponding declaration of commitment and to present it to the other party. The parties shall not apply for industrial property rights for confidential information of the other party.
- 9.2. After prior agreement, VTA may use (publish) the fact that the customer is using the software as a reference.
- 9.3. If confidential information in the aforementioned sense is requested by a public body, the customer's consent must be obtained in advance.
- 9.4. The rights and obligations under clauses 9.1. and 9.2. shall not be affected by the termination of this contract.

9.5. Both parties are obliged to return confidential information to the other party upon termination of this contract or to destroy it at the other party's discretion, unless it has been properly used (e.g. data that has already been deleted due to the end of the retention period).

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

10.1. VTA offers are subject to change unless they are expressly designated as binding.

10.2. The acceptance of the offer by the customer shall be qualified as an offer to conclude a contract. The customer accepts the offer by sending a declaration in text form.

10.3. The contract is concluded when VTA confirms the customer's acceptance in text form (contract confirmation). VTA is not obliged to provide confirmation.

## **11. Term and Cancellation**

11.1. The contract has the term stated in the offer. If it is not cancelled at the end of the term, the contract is automatically extended for a further year. The cancellation period is three months in each case, unless otherwise agreed in the offer.

11.2. VTA has an extraordinary right of cancellation if

- a customer fails to fulfil a material obligation and this breach has not been remedied within 14 days despite a written reminder. A key obligation is, in particular, the timely and proper fulfilment of cooperation obligations,
- the customer ceases or threatens to cease business operations;
- the financial situation of the customer deteriorates significantly, which disturbs the basis of trust for the execution of the contract between the parties, in particular in the event of insolvency or over-indebtedness, foreclosure or protest of a cheque or bill of exchange,
- the customer fails to obtain or loses a required permit, licence or registration to conduct business under this contract.

11.3. The right to terminate the contract without notice for good cause remains unaffected.

11.4. Cancellations must be made in writing.

11.5. Upon termination of the contract,

- the customer must cease to use the software and remove all installed components from his computers.
- VTA must hand over the data and logs stored on behalf of the customer to the customer and subsequently delete them from the system.

## **12. Final Provisions**

12.1. VTA has the right to use subcontractors to fulfil this contract.

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- 12.2. Amendments to the contract must be made in writing for them to be effective. This also applies to the amendment of this written form requirement.
- 12.3. This contract shall be governed by the laws of the Federal Republic of Germany apart from the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980.
- 12.4. The place of business of VTA is the exclusive place of jurisdiction for all disputes arising from and in connection with this contract.
- 12.5. If personal data is processed and/or stored for the customer, the 'Agreement on Commissioned Data Processing' between the customer and VTA shall apply in its respective current version.