

# General Terms and Conditions

**B. SUPPLEMENTARY TERMS AND CONDITIONS FOR SERVICES REGARDING THE SOFTWARE-BASED PROVISION OF INFORMATION AND/OR SERVICES INCLUDING STORAGE AND INFRASTRUCTURE**

**1. General**

- 1.1 These SUPPLEMENTARY TERMS AND CONDITIONS shall apply for SaaS/ IaaS SERVICES - hereinafter the „SaaS/IaaS SUPPLEMENTARY TERMS AND CONDITIONS“.
- 1.2 The SaaS/IaaS SUPPLEMENTARY TERMS AND CONDITIONS shall apply in addition to the GENERAL TERMS AND CONDITIONS set forth in chapter A. above.
  - Hierarchy level 1: The provisions of the ORDER SHEET
  - Hierarchy level 2: The provisions of the SUPPLEMENTARY TERMS AND CONDITIONS referred to in the ORDER SHEET
  - Hierarchy level 3: The provisions of these GENERAL TERMS AND CONDITIONS
  - Hierarchy level 4: The provisions of any ANNEX
  - Hierarchy level 5: The provisions of any ATTACHMENT.
- 1.3 In case of any conflict between these SaaS/IaaS SUPPLEMENTARY TERMS AND CONDITIONS and any other document being part of this AGREEMENT, section A. 1.2 shall apply mutatis mutandis.

**2. Definitions**

Capitalized terms used in these SUPPLEMENTARY TERMS AND CONDITIONS REGARDING THE SOFTWARE-BASED PROVISION OF INFORMATION AND/OR SERVICES INCLUDING STORAGE AND INFRASTRUCTURE shall have the meaning set out either in the GENERAL TERMS AND CONDITIONS, in this section 2, elsewhere in these SUPPLEMENTARY TERMS AND CONDITIONS REGARDING THE SOFTWARE-BASED PROVISION OF INFORMATION AND/OR SERVICES INCLUDING STORAGE AND INFRASTRUCTURE or in the ORDER SHEET:

GENERAL TERMS AND CONDITIONS	means the terms and conditions set out in lit. A. of the AGREEMENT.
RETURN PERIOD	means a period of time of 15 calendar days after CLIENT has received a link to download all its CLIENT data stored in the SaaS/IaaS SERVICE.
SaaS/IaaS SERVICES	means the software-based provision of information, and such SERVICES also including storage and infrastructure.

SaaS/IaaS SUPPLEMENTARY TERMS AND CONDITIONS has the meaning set out in section 1.1 of these SUPPLEMENTARY TERMS AND CONDITIONS REGARDING THE SOFTWARE-BASED PROVISION OF INFORMATION AND/OR SERVICES INCLUDING STORAGE AND INFRASTRUCTURE.

USER(s) means individuals identified by CLIENT for use of the SaaS/IaaS SERVICES.

**3. Provision of SaaS/IaaS SERVICES**

During the TERM, VWD will make available the SaaS/IaaS SERVICES to CLIENT for the usage by USER(s) as specified in the ORDER SHEET and/or SERVICE DESCRIPTIONS.

**4. Right to access SaaS/IaaS SERVICES**

During the TERM and subject to CLIENT's full and unconditional payment of agreed FEES due under this AGREEMENT, VWD grants to CLIENT a limited, non-exclusive, non-transferable, and non-sublicensable right to allow its User(s) to access the software services, to access the infrastructure services and to store data as further specified in the SERVICE DESCRIPTIONS for respective SaaS/IaaS SERVICES and in line with the terms of this AGREEMENT for CLIENT's internal business purposes. The USERS may access the SaaS/IaaS SERVICES as specified in the SERVICES DESCRIPTIONS.

**5. Restrictions and Additional CLIENT contributions**

- 5.1 CLIENT must not use and must ensure that USERS do not use the SaaS/ IaaS SERVICES in any manner that is not described in the documentation or in any manner that is prohibited by this AGREEMENT.
- 5.2 CLIENT shall procure that CLIENT and its USERS keep USER IDs and passwords confidential and shall take all necessary measures to ensure that no person gains unauthorized access through CLIENT or any of its USERS or USER IDs.
- 5.3 CLIENT will apply industry practice malware protection software, and other customary procedures to screen any Client Data to avoid introducing any malware, including viruses, malicious files or other harmful code, that could disrupt the proper operation of the systems used in the provision of Service. CLIENT also agrees that it shall use all reasonable endeavours to ensure that its USERS do not upload or distribute files that

contain malware on to, or disrupt or attempt to disrupt the systems and networks used for the provision of the SERVICES, e.g. by denial of services (DoS) attacks. If Client learns or suspects that its Users have introduced malware, CLIENT will notify vwd and cooperate in mitigating the effects of such virus.

5.4 The CLIENT shall also provide contributions specified in the ORDER SHEET.

## 6. Warranty

6.1 During the TERM, VWD warrants („gewährleistet“) that the respective SaaS/ IaaS SERVICE will materially conform to its SERVICE DESCRIPTION.

6.2 The warranty set forth in section B. 7.1 above shall not apply if

- the respective SaaS/IaaS SERVICE is not used in accordance with its documentation;
- the defect is caused by data provided by CLIENT;
- the defect is caused by a third party service, content or product provided that the respective third party providing such service, content or product is not acting as a vicarious agent for or on behalf of VWD; or
- the defect is caused by any modification or customization to the SaaS/ IaaS SERVICE made by CLIENT or by a third party commissioned by CLIENT.

6.3 CLIENT shall provide VWD with prompt written notice of any defect of the SaaS/IaaS SERVICE. VWD shall then, at its option, correct the non-conforming SaaS/IaaS SERVICE that way that it materially complies with its respective SERVICE DESCRIPTION, provide a replacement with substantially equivalent functionality, or terminate this AGREEMENT and refund a pro-rata portion of the prepaid FEES based on the number of months remaining in the TERM as of the date that CLIENT provided written notice to the warranty claim.

6.4 If VWD's final attempt to remedy a defect has failed and the defect makes the access to the respective SaaS/IaaS SERVICE impossible, or limits its use to such an extent that its use for CLIENT's day-to-day business is either impossible or is possible only at unreasonable expense, the CLIENT may – subject to any agreed regulations within the ORDER SHEET – claim damages in accordance with section 16 of the GENERAL TERMS AND CONDITIONS and section 8 of these SaaS/IaaS SUPPLEMENTARY TERMS AND CONDITIONS below. Any right of the CLIENT for recession („Rücktrittsrecht“) and any right of the CLIENT to remedy defects or defects in title, on its own or with the assistance of a third party („Selbstvornahmerecht“), shall be excluded.

## 7. Liability

7.1 For limitations of liability, sections 16.1 to 16.2 of the GENERAL TERMS AND CONDITIONS shall apply.

7.2 In any other case, the total aggregate liability of VWD, irrespective of its cause, in particular contract, tort, pre-contractual breach of obligations or liability under section 536a section 1, 1. Alt. BGB, shall be limited to an amount of EUR 200.000,00.

7.3 Sections 8.1 and 8.2 of these SUPPLEMENTARY TERMS AND CONDITIONS shall also apply to VWD's vicarious agents.

7.4 In case of loss or corruption of CLIENT data, VWD shall only be liable for costs related to the restoration of respective CLIENT data based on proper CLIENT back-ups regularly performed by CLIENT.

## 8. Consequences of termination

Upon termination of a SaaS/IaaS SERVICE, the following shall apply in addition to section 18 of the GENERAL TERMS AND CONDITIONS above:

- VWD shall return to CLIENT any files uploaded or stored by CLIENT in the SaaS/IaaS SERVICE. VWD shall return such CLIENT data in a standard file format to be determined by VWD. In the purpose of returning CLIENT data, VWD shall provide CLIENT with a download link bringing CLIENT in the position to download its files.
- CLIENT shall download all its CLIENT data stored in the SaaS/IaaS SERVICE within the RETURN PERIOD.
- If CLIENT does not download all its CLIENT data stored in the SaaS/IaaS SERVICE within the RETURN PERIOD, VWD will archive such CLIENT data only on request of the CLIENT against CLIENT's payment of additional fees.

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