

General Terms and Conditions of Business for Software Solutions

1 Subject matter of the contract and scope of application

- 1.1 smart-TEC GmbH & Co. KG, Kolpingring 3, 82041 Oberhaching (hereinafter referred to as „Provider“ or „we“) operates online platforms „and offers various software-based applications via them as its software-as-a-service solution, (hereinafter referred to collectively as „software solution“ or „software solutions“).
- 1.2 The Provider offers the use of software solutions only to entrepreneurs (Section 14 BGB) as customers (hereinafter „Customer“). Use as a consumer (Section 13 BGB) is excluded.
- 1.3 The Provider offers the necessary software solution for use by the Customer via a remote data connection.
- 1.4 These Software General Terms and Conditions of Delivery apply to the contractual relationship between the Supplier and its customers concerning the access granted by the Supplier to the software solution and the possibility of use granted within the framework of the functionalities offered as well as further specific services ordered in this context. The Software General Terms and Conditions of Delivery shall also apply to all future business relationships with companies, insofar as legal transactions of the same or a related kind are concerned, even if they are not expressly agreed again. At this point in time we object to inclusion of a Customer's general terms and conditions that contradict the Software General Terms and Conditions of Delivery.
- 1.5 The software solution is used exclusively on the basis of these General Terms and Conditions of Business, insofar as no differing or supplementary agreements have been agreed in writing (Section 126 BGB) by the Provider and the Customer in individual cases. Conflicting, supplementary or varying terms and conditions of the Customer shall not become part of the contract unless this is expressly agreed between the Provider and the Customer in writing (Section 126 BGB).
- 1.6 The subject matter of the contract is not domain administration, the operation of an e-mail system or access to the internet.
- 1.7 Our currently valid General Terms and Conditions of Business can be viewed and printed on the website <https://www.smart-tec.com/en/terms-and-conditions>

2. Entering into a contract

- 2.1 The presentation of functionalities on the internet or in other media by the Supplier does not constitute a binding offer by the Provider. This merely opens up the possibility of making a binding offer to enter into a contract for the use of the software solution. We do not undertake to accept such an offer.
- 2.2 The contract shall be entered into on the basis of an individual order. For this purpose, the Customer can request an individual offer from the Provider, which is based on these terms and conditions.

3. Services from the provider

- 3.1 The Provider shall host the software solution ready for operation on external web servers for the Customer and shall make the software available to the Customer for use via the internet during the term of the contract.
- 3.2 The functional scope of the software solution is set out in the service catalogue, which is made available by the Provider at any time, as well as any optional functionalities stated in the individual order.
- 3.3 The Customer is given the opportunity to use the platform stored and executed on the servers of the provider or third parties for his own purposes via an internet connection during the term of the contract to the extent agreed in each case.
- 3.4 The Provider shall perform a daily backup of the server system. The backup shall be made on a rolling basis in such a way that backups are overwritten after one week. According to the same principle, a weekly backup will be made which will be overwritten after four weeks.
- 3.5 The Customer receives an access authorization for the administrator, consisting of a user ID and a password. User ID and password can be changed by the Customer, whereby passwords must consist of at least eight characters, composed of upper and lower case letters, numbers and special characters.
- 3.6 Use of the software solution also regularly requires services in connection with the maintenance of contents and products of the Customer as well as other services for graphic or visual design. The Provider does not provide such services as part of the technical setup and these are not part of the transfer of use either. The Customer can, however, agree on a corresponding individual support in the individual order with the Supplier, which shall be remunerated separately.
- 3.7 The Provider is not required to provide any instruction or training for the use of the software solution. The Customer may, however, commission a workshop, which shall be remunerated separately.
- 3.8 Adaptation of the software solution in line with the Customer's individual needs as well as any further developments of the software solution according to the Customer's ideas shall, at all times, require a corresponding agreement in the individual order and is only required subject to an additional fee according to the price list.
- 3.9 The Customer has no claim to the surrender of the source code of the software solution or individual applications of the software solution.
- 3.10 The Supplier is entitled, but does not undertake, to change the software solution and the services offered via the software solution during the term of the contract, in particular to adapt them in line with technological progress. This also includes the addition of new functionalities, changes to the user interface and adjustments to the back end. In this context, the Provider reserves the right to change services offered via the software solution without prior notice in order to offer the Customer a correspondingly optimized range of services provided the suitability of the software solution for the agreed purpose is thereby maintained and the optimized offer is reasonable for the Customer, taking into account mutual interests. In addition, the Provider is entitled to make changes, adjustments, restrictions, the removal of functionalities of the software solution and the services offered with it, if changed legal regulations or standards or new technical or scientific findings necessitate this. The type of implementation is the responsibility of the Provider. The Customer has no claim to the maintenance of individual specific functionalities or to their introduction.
- 3.11 The software solution, the computing power required for the use of the software solution and the storage and data processing space required to operate the software solution and the storage of the data entered by the customers

shall be provided by the Supplier. The Provider is not required to establish and maintain the data connection between the IT systems of the Customer and the Provider. The Provider draws the Customer's attention to the fact that there may be restrictions or impairments in the use of the platform that lie outside the Supplier's sphere of influence. This includes, in particular, actions by third parties not acting on behalf of the Provider, technical failures beyond the Supplier's control and force majeure.

- 3.12 The Supplier shall provide the Customer with storage space within the scope of the contractually agreed use of the software solution. The scope of the storage space shall be agreed in individual contracts.

4. Obligations of the Customer

- 4.1 In the event of malfunctions in the use of the Software Solution, the Customer shall notify the Provider thereof without undue delay.
- 4.2 The Customer undertakes to handle the data provided, such as access data to the server, with care and prevent misuse of the dial-up data by third parties. The Customer does not undertake to allow third parties to use the software solution. Should the Customer receive indications of improper use of the software solution by third parties, it must inform the Provider without delay.
- 4.3 The Customer shall not store any illegal content, content that violates the law, official requirements or the rights of third parties on any storage space provided or use such content in any other form when using the software solution and shall not use any programmes containing viruses or other malware in connection with the software solution.
- 4.4 The Customer shall refrain from any activity that is likely to impair and/or excessively burden the operation of the software solution, the server or the data centre or other infrastructures. This includes, in particular, the use of software, scripts or databases in connection with the use of the software as well as the automatic reading, blocking, overwriting, modifying or copying of data, unless this is necessary for the intended use of the software solution.
- 4.5 The Customer is not entitled to transfer any storage space made available to a third party for use, in part or in full, against payment or free of charge.
- 4.6 The Customer shall take its own measures to ensure the local backup of its own content, irrespective of any data backup by the Provider.
- 4.7 The Customer is responsible for checking the ratings, comments, uploaded content entered by the users of the software solution, if applicable, and for releasing them for online display.
- 4.8 The Customer undertakes to provide the Provider with the best possible and comprehensive support in the provision of the contractual services. This obligation includes, in particular, the timely provision of necessary information, documents and content or information requested by the Provider, in particular for the adaptation of content on the software solution.
- 4.9 The Customer is responsible for ensuring that the technical requirements for access to the software solution are met, in particular with regard to the hardware used, the operating system, the connection to the internet and the browser software, taking into account any technical specifications issued by the Supplier. In the event of further development or modification of the technical components by the Supplier or third parties (e.g. operating system software, browser software), it shall be incumbent on the Customer to make the necessary adjustments to the software and hardware used by the Customer.

5. Rights of use of the Customer

- 5.1 The software solution is provided as-a-service. The possibility of use for the Customer is therefore limited to the use of the software solution via the internet. Further rights of use or exploitation under copyright law are not granted. Accordingly, the Customer is not entitled to reproduce or modify the software solution outside the scope necessary for operation of the software or to grant third parties access to the software outside the agreed contractual purpose.
- 5.2 This restriction of use shall not apply insofar as it concerns the use of software the use of which is permitted under another licence (e.g. open source software). Further rights of use or exploitation under copyright law are not granted.
- 5.2 Duplications are only permissible to the extent that is necessary for the intended use of the software solution. The Customer may not make any other reproductions, including in particular the printing or storage of the program code.
- 5.3 The Customer is not entitled to transfer the software solution or individual contents of the software solution to third parties against payment or free of charge, temporarily or permanently.
- 5.4 The Customer is not entitled to make adjustments or further developments to the software solution. The Customer may not make any changes to the software solution. This does not apply to changes that are necessary for the elimination of errors, provided the Supplier is in default with the elimination of the error, refuses the elimination of the error or - in particular due to the application for or institution of insolvency proceedings - is unable to eliminate the error. Furthermore, the Customer is not entitled to reverse engineering.
- 5.5 Decompilation of the software provided is not permitted. Exceptions to this are reproductions of the code or translations of the code form, which are indispensable to obtain the necessary information for establishing the interoperability of an independently created computer program with the provided software or with other computer programs provided the requirements specified in Section 69 e (1) Nos. 1 to 3 of the German Copyright Act are met.
- 5.6 Insofar as the Provider designs internet sites for the Customer, the Supplier shall transfer to the Customer a non-exclusive, time-limited right of use to the pages created for the duration of the contractual relationship. If the Customer realises or delivers the design itself, the Supplier can continue to use the geometries and the basic functions of the software solution, but all rights to the design remain with the Customer.
- 5.7 The Customer hereby acknowledges trademark, name and patent rights with respect to the supplier of the software solution and any related documentation. The Customer shall not remove, alter or otherwise modify any copyright information or other similar proprietary notices in the software solution and any related documentation.

6. Granting rights to the Provider for data processing

- 6.1 The contents stored by the Customer on the storage space intended for the Customer may be protected by copyright. The Customer grants the Supplier the right to make the content stored by the Customer on the server accessible for queries via the internet for the purpose of executing the contract, in

- particular to reproduce and transmit it for this purpose and be able to reproduce it for the purpose of creating data backups, insofar as this is necessary to provide the services required in accordance with the contract. To eliminate disruptions, the Supplier is also entitled to make changes to the structure of the data or the data format.
- 6.2 The Supplier is entitled to grant the rights in accordance with paragraph 1 to a third party (e.g. data centre operator) to the extent necessary for the performance of this contract.
- 6.3 The Customer shall, in any case, remain the sole owner of the data and may therefore demand from the Provider surrender of individual or all data at any time without the Provider having a right of retention. Surrender of the data shall be effected by electronic transmission via a data network or, by separate agreement, by handing over data carriers. Furthermore, the Customer is not entitled to receive the software suitable for use of the data. In the event of termination of the contract, sub-section 9.4 of these Terms and Conditions of Business shall apply.
- 7. Remuneration**
- 7.1 The Customer shall pay the Provider a one-off amount for the initial set-up of the software solution in accordance with the current price list.
- 7.2 The Customer shall also pay the Supplier a monthly fee for the use of the software solution, which shall be based on the current price list.
- 7.3 For other Customer-specific services, the Customer shall pay the remuneration agreed in the individual order, the determination of which is also governed by the current price list.
- 7.4 The current price list can be requested from the Supplier at any time. The prices stated in the price list are net prices plus the statutory value added tax applicable at the time.
- 7.5 The remuneration shall fall due for payment monthly in advance by the 1st workday.
- 7.6 The Provider is entitled to adjust the remuneration for the use of the software solution at its reasonable discretion (Section 315 BGB) and increase the agreed prices if further provision of the service without price adjustment is unreasonable for the Provider when weighing the interests of both parties. The Provider shall be entitled to further price increases if the last price increase was at least 6 months ago. The Supplier shall give the Customer one month's notice of the price increases in writing or by e-mail. Insofar as the price adjustment is not solely aimed at passing on a cost increase to the Customer for necessary advance services, the Customer may object to a price adjustment. If the Customer does not object to the price increase in writing or by e-mail within 2 weeks after the announcement of the planned price increase, this shall be deemed as consent to the announced price increase. The Supplier shall point this out separately in the announcement.
- 8. Suspension**
- 8.1 If and to the extent that the Customer uses the Software Solution contrary to its obligations in accordance with paragraph 4 or in excess of its rights in accordance with paragraph 5 or in the event of other serious breaches of duty as well as in the event of justified substantial suspicion of a culpable breach of duty, the Supplier shall be entitled to temporarily suspend the Customer's access to the software solution. The Customer will be notified without delay after the suspension of access.
- 8.2 Sub-section 1 shall apply mutatis mutandis if the Customer is in default of payment of the remuneration due for two consecutive dates or in default of payment of a substantial part of payments due.
- 8.3 If and to the extent that the Provider becomes aware that third parties are misusing the Customer's access, the Provider shall be entitled to block access to the extent necessary to prevent misuse by the third party. The Provider is already entitled to do this in the event of justified suspicions of misuse by third parties. Misuse by third parties is understood to mean access to the Customer's software solution by a third party. The Provider shall notify the Customer of such blocking without delay and at the same time give the Customer the opportunity to unblock the access in question by selecting new access data. The Provider shall only lift the blocking if it can be proven that there is no longer a risk of misuse by third parties. In case of doubt, the Customer shall be responsible for this.
- 8.4 Furthermore, suspension shall not result in the suspension of due payment obligations.
- 9. Term and termination**
- 9.1 The contract for the use of the software solution is entered into for a term of 12 months. It shall be extended by a further year in each case if it is not terminated with a notice period of three months before the expiry of the contract term.
- 9.2 If the subject of the contract is the use of a data processing service within the meaning of Art. 2 No. 8 of Regulation (EU) 2023/2854 („Data Act“) by the customer, the customer may terminate the contract prematurely with a notice period of one month to the end of the month. The date of receipt by the provider is decisive for the timeliness of the termination.
- 9.3 In addition and beyond this, the right of the parties to terminate the contractual relationship by extraordinary termination for good cause shall not be affected.
- 9.4 Good cause for extraordinary termination shall apply to the Provider in particular if a) the Customer persistently breaches its obligations in accordance with paragraph 4 or in the event of other serious breaches of duty; b) the Customer uses the software solution beyond the rights of use granted in accordance with paragraph 5; c) in the event of less serious breaches of duty, the Customer continues or repeats the conduct complained of despite a warning; d) the Customer is in default with the payment of a due payment or with the payment of a not insignificant part of due payments for two consecutive dates.
- 9.5 Termination must be made in writing to be effective. Compliance with this form is a prerequisite for the effectiveness of the termination. Fax and e-mail do not satisfy this written form requirement.
- 9.6 In the event of termination of the contract, the Customer shall no longer have access to the software solution and its contents. However, the Customer may ask the Provider to make its content available temporarily by remote data transmission, however for a maximum of two weeks. This shall not affect any rights of retention. After expiry of four weeks after termination of the contract, the Provider shall be entitled to delete the Customer's content without further notice.
- 9.7 If - project orders have not yet been completed at the time of termination, including beyond the time of termination of the contract, the Provider shall continue to provide the commissioned services.
- 10. Compensation in the event of termination during the term of the contract**
- 10.1 If the customer terminates the contract in accordance with Clause 9.2 in order to:
- switch to another provider of data processing services;
 - switch to its own information and communication technology infrastructure (ICT infrastructure); or
 - request the deletion of its exportable data and digital assets; the customer shall be obliged to pay appropriate compensation to the provider.
- 10.2 The amount of compensation shall be determined on a case-by-case basis, taking into account the remaining term of the contract, and may not exceed the loss incurred by the provider as a result of the premature termination.
- 11. Change of data processing service, data transfer and deletion**
- 11.1 By declaring the termination of a contract for the use of data processing services within the meaning of Art. 2 No. 8 Data Act, the customer shall be entitled to the transfer of the data and digital assets they have stored in a common machine-readable format (e.g. CSV, XML) or to deletion of the data at the end of the termination period. The return shall be made against payment of the fee actually incurred.
- 11.2 The customer shall inform the provider by the end of the termination period whether they wish to transfer or delete the data. If the data is transferred to a specific other provider, the customer shall provide the contact details of the target provider. Otherwise a transfer shall be made to the customer.
- 11.3 The provider shall make the data and digital assets available to the customer immediately, but no later than 30 days after the end of the termination period („transition period“). Within the transition period, the provider shall
- provide the customer and third parties authorised by the customer with appropriate support in executing the switch,
 - act with due care to maintain the continuity of the customer's business operations and to continue to provide the functions or services under the contract,
 - clearly communicate any known risks to the uninterrupted provision of the functions or services that can be traced back to the original provider of the data processing services, and
 - provide the customer with the relevant information for the switch.
- 11.4 A list of all categories of data and digital assets that can be transferred during the switch, including at least all exportable data, can be found in the description of services. Data categories excluded from the transfer within the meaning of Art. 25 (2) (f) Data Act are also listed in the description of services.
- 11.5 The provider shall be entitled to extend the transition period to up to 7 months within 14 working days of notification of the switch if it is technically not feasible to provide the data during the period specified in Clause 11.3. The provider shall justify the extension to the customer in writing, stating an alternative transition period.
- 11.6 The customer shall be entitled to extend the transition period once by a period that is more appropriate for them.
- 11.7 After the end of the transition period in accordance with Clause 11.3, the data shall be made available to the customer for retrieval for 30 calendar days (hereinafter referred to as the „retrieval period“).
- 11.8 Further support services in connection with data migration, formatting, transfer to third parties or the creation of customised exports shall be available from the provider for separate payment in accordance with the applicable price list. Such services shall be requested by the customer in writing and confirmed by the provider in writing.
- 11.9 After the end of the retrieval period and expiry of any statutory retention periods, the provider shall delete all exportable data and digital assets of the customer immediately, completely and in compliance with data protection regulations. The provider shall confirm the deletion to the customer in writing. Prior to the expiry of the retention period, the customer may request in writing an extended retention period for separate payment.
- 12. Warranty**
- 12.1 With regard to the granting of the possibilities of use of the software solution, the the warranty provisions of tenancy law shall apply. No-fault liability in accordance with Section 536a (1), old version 1, BGB, is excluded. A warranty period of one year shall apply unless the Provider has fraudulently concealed a defect.
- 12.2 The Provider shall endeavour to offer trouble-free operation of the software solution and Customer access to the stored data. This is naturally limited to services over which the Provider has an influence. However, the Customer acknowledges that complete and uninterrupted availability of the software solution is not technically feasible. The Provider shall, however, endeavour to keep the software solution available as permanently as possible. However, there is no entitlement to this.
- 12.3 The Provider shall be at liberty to restrict access to the software solution in full or in part, temporarily or permanently, due to maintenance work, capacity concerns and due to events beyond the Provider's control.
- 13. Liability**
- 13.1 The Provider shall be liable without limitation for intent and gross negligence, for breach of a contractually granted guarantee and in accordance with the German Product Liability Act. The Provider shall be liable for minor negligence in the event of damage resulting from loss of life, physical injury or detrimental effects on the health of persons.
- 13.2 In the event of minor negligence, the Provider shall otherwise only be liable in the event of a breach of a material contractual obligation, the fulfilment of which is a prerequisite for the proper performance of the contract and the observance of which the Customer may regularly rely on (cardinal obligation), and the amount of such liability shall be limited to the damage that was foreseeable and typical for the contract at the time of conclusion of the contract.
- 13.3 This limitation of liability shall also apply in favour of the Provider's vicarious agents.
- 13.4 The Provider shall not be liable for the loss of data insofar as the damage is due to the fact that the Customer has failed to perform sufficient data backups and thereby ensure that lost data can be restored with reasonable effort, unless the Provider undertakes to back up data in accordance with these Terms and Conditions of Business. Insofar as the Customer is responsible for loss of data, the Provider shall therefore be liable exclusively for the cost of duplicating the data from the backup copies to be made by the Customer and for restoring the data that would have been lost even if the data had been properly backed up.
- 14. Exemption**
- 14.1 The Customer shall indemnify the Provider and its employees or agents against all claims of third parties upon first request in the event of a claim for alleged or actual infringement of rights and/or violation of rights of third parties asserted by third parties in connection with the use of the software solution by the Customer.
- 14.2 The Customer undertakes to reimburse all possible costs incurred by the Provider as a result of third-party claims. Reimbursable costs also include the cost of a reasonable legal prosecution and legal defence which the Provider should incur to defend itself against claims by third parties.
- 14.3 This shall not affect any further claims for damages.

14.4 The Customer shall notify the Provider without delay of any third-party claims of which it becomes aware in connection with the use of the software solution. The Provider is entitled to take suitable measures itself to defend against claims by third parties or to pursue their rights. The Customer shall coordinate its own measures with the Provider in advance.

15. Data protection

- 15.1. When using the software solution, it may be necessary for the provider to process personal data. If the processing takes place on behalf of the customer, the separate order processing agreement concluded between the parties in accordance with Art. 28 GDPR shall apply.
- 15.2. The nature and scope of data use by the provider shall be communicated to the customer in more detail in a Privacy Policy, which shall be available at smart-TEC data protection declaration.

16. Adaptation of the terms and conditions

- 16.1 The Provider is entitled to amend or supplement provisions of these Terms and Conditions at any time, e.g. in the event of technical changes, functional extensions, adaptations or restrictions.
- 16.2 The Provider shall notify the Customer in text form of any amendments or additions to these Terms and Conditions at least six weeks before they come into force. The Provider shall provide a link where the new version of the General Terms and Conditions of Business can be viewed in its entirety with the notification of changes and amendments.
- 16.3 If the Customer does not object to amendments and supplements in text form within six weeks of notification, this shall be deemed to be consent to the amendment or supplement; the Provider shall make separate reference to this in the amendment notifications.

17. Contract takeover

The assignment of rights and obligations resulting from this contract or the transfer of this contract in whole or in part by the Customer to a third party require the written consent of the Supplier. This does not affect the provision of Section 354a HGB (German Commercial Code). The Supplier is entitled to transfer this contract, including any additional agreements, with all rights and obligations to a company of its choice. In the event of transfer of this contract

to a company which is not an affiliated company of the Provider (Section 15 AktG (German Company Law)), the Customer shall have a special right of termination which must be asserted in writing within 14 days of notification by the Provider. The Provider shall refer to this separately in the notification.

18. Form requirement

- 18.1 Ancillary agreements to these terms and conditions must be made in text form to be valid. This shall also apply to amendments to this text form requirement.
- 18.2 Unless otherwise provided for, contractual notices and declarations shall be made at least in text form.
- 18.3 Insofar as text form (Section 126b BGB) is agreed for the contractual relationship between the parties as a whole or for individual partial aspects, it shall be sufficient to send the declaration by e-mail or fax, whereby it shall be sufficient that the person making the declaration is named.
- 18.4 Insofar as written form (Section 126 BGB) has been agreed for the contractual relationship between the Provider and the Customer as a whole or for individual partial aspects, the transmission of the handwritten signed document by telecommunication, for example by email with a PDF document or by fax, shall suffice in case of doubt. However, the receiving party is entitled to receive the original of the document.

19. Final provisions

- 19.1 Should one or more provisions of these General Terms and Conditions of Business be or become invalid in full or in part, the legally effective provisions which the contracting parties would have agreed in accordance with the economic objectives of the contract and the purpose of these Terms and Conditions of Delivery if they had been aware of the loophole shall be deemed to have been agreed in order to fill the loophole.
- 19.2 These Terms and Conditions of Business apply exclusively on the basis of German law and exclude the UN Convention on Contracts for the International Sale of Goods.
- 19.3 If the Customer is a merchant within the meaning of the German Commercial Code (HGB), a legal entity under public law or a special fund under public law, Munich shall be deemed the place of jurisdiction for all disputes arising from or in conjunction with these Terms and Conditions.

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