

# General Terms and Conditions for the Provision of Software as a Service

## Preamble

The Provider shall provide the Client with the software application "Control Cloud" (hereinafter: "Software") via the internet, which can be used via a current and common browser ("Software as a Service"). The Client wishes to purchase a licence for the rental use of the Software via the internet. The following General Terms and Conditions govern the acquisition of the licence and the scope of the permitted use.

## 1. Scope

**1.1** All deliveries and services of the Provider provided to the Client within the scope of Software as a Service (hereinafter "SaaS") shall be made exclusively on the basis of the following General Terms and Conditions in the version valid at the time of the order. Unless expressly agreed in writing, deviating Terms and Conditions shall not apply.

**1.2** Notwithstanding the provisions of paragraph 1, the Provider may provide services that are additionally subject to special conditions and specific rules of the manufacturer. Where these services are offered, these additional conditions will be referenced in the proposal and will also become part of the contract.

**1.3** Clients within the meaning of these Terms and Conditions cannot be consumers. For the purposes of the Terms and Conditions, these are natural or legal persons or partnerships with legal capacity who are acting in the exercise of their commercial or independent professional activity when concluding the contract with the Provider.

## 2. Services offered by contract -SaaS services-

**2.1** The services offered by the contract are

- the leasing of Software by the Provider for use by the Client via the internet. The contractual Software is defined in the proposal.
- the provision of computing power and storage space by the Provider for the processing of data in accordance with the proposal.

(together hereinafter "Objects of Performance")

**2.2** The establishment and maintenance of the data connection between the point of transfer defined in Section § 3(3) and the Client's IT systems are not part of the services offered.

**2.3** The Software source code is also not part of the services offered.

**2.4** The number of generation orders is principle unlimited. However, the Provider reserves the right to limit the number of generation orders placed by the Client in the event of excessive use that does not serve normal project purposes and places an excessive burden on the Provider's systems.

## 3. Software licensing

**3.1** Upon payment, the Software shall be supplied to the Client via the internet for the duration of this contract in the respective current version. For this purpose, the Provider shall make the Software available on a server for retrieval. Retrieval shall be carried out via the internet by means of a current and commonly used browser. Version changes with change notices shall be announced to the Client in good time in advance.

**3.2** The description of the functions in the proposal is conclusively significantly regarding the properties of the Software.

**3.3** The transfer point for the Software is the point at which the data leaves the data centre.

**3.4** The Provider shall adapt the Objects of Performance to market-relevant technical changes for the duration of the contract period to the extent necessary. However, the Client shall not be entitled to specific improvements.

**3.5** In the further development of the platform, the Client may expect backward compatibility of its existing orders for at least 12 months. The Client must ensure that the projects are brought up to date.

## 4. Allocation of storage space

**4.1** The Client shall be provided with storage space on a server for the processing of the data. Depending on the service, the Client may process or store data up to the extent of a scope in accordance with the technical specification set out in the proposal. If the storage space is not sufficient, the Client may expand the storage space subject to a charge, subject to existing availability.

**4.2** The Provider shall ensure that saved data can be accessed via the internet. Uninterrupted accessibility is not owed by the Provider.

**4.3** The Provider is obliged to implement appropriate precautions against data loss and to prevent unauthorised access to client data by third parties. For this purpose, the Provider shall make a daily backup of the Client's data for a period of at least two weeks. The Provider must be notified immediately of any loss of data. In the event of data loss, the Provider will restore the current backup. If the Client is responsible for the loss of data, it shall reimburse the Provider for any expenses incurred as a result.

## **5. Support**

**5.1** The Provider shall accept inquiries from the Client regarding the use of the Software by email during normal business hours and shall respond to them as soon as possible.

## **6. Access**

**6.1** After the start of the contract, the Client shall receive the access data for administrative access to the Client-specific area of the Software from the Provider. The Client must nominate a person who will receive this access.

**6.2** If the Client wishes to create users, it must inform the Provider of this by providing the user data.

## **7. Rights of use to the Software**

**7.1** The Client is granted the non-exclusive, non-transferable right, exclusively during the time period covered by this contract, to access the Software via the internet and to use the Software as intended.

**7.2** The Software may only be used by a certain number of defined users at the Client's premises at the same time ("concurrent user"). The number of concurrent users is specified in the proposal.

**7.3** The Client is not entitled to use the Software or have it used by third parties beyond the rights granted in the above paragraphs. Use is permitted within the the extent of the company's own business operations. In particular, the Client is not permitted to reproduce or exploit the Software or parts thereof, whether by sale, lease or other forms of exploitation.

**7.4** The Client grants the Provider the rights of use to the data necessary for the execution of the contract, which the Client shall transfer to the storage space provided in connection with the use of the Software. This includes the right to make the Client's data accessible for queries via the internet, to duplicate and transmit it for this purpose and to duplicate it for the purpose of data backup. The Client shall in any case remain the sole owner of such data and may at any time, in particular after termination of the contract, demand the surrender or deletion of individual or all data without any right of retention on the part of the Provider.

## **8. Interruption of availability**

**8.1** Adaptations, changes and additions to the Objects of Performance by this contract, as well as measures employed to identify and remedy malfunctions, shall only result in a temporary interruption of availability if this is absolutely necessary for technical reasons. Planned and announced maintenance works are not considered downtimes. The Provider shall endeavour to announce maintenance works at least seven days in advance of their commencement.

**8.2** The Provider shall strive to ensure a high availability of the Objects of Performance. However, there is no concrete claim to minimum availability.

## **9. Obligations of the Client**

**9.1** The Client has the following obligations in connection with the use of the "Control Cloud" Software:

- The Client shall monitor the alert function at all times. If the Client deactivates the alert function, the Provider shall not be liable for this.

- The Client shall be responsible for maintaining functioning transmission technology, and in particular for ensuring a continuous connection to the internet.
- The Client must ensure correct operation of the monitored equipment (e. g., switch off all pumps of a pumping station if necessary or close the throttle device manually and put it back into operation if necessary).
- The Client must correctly configure the setting values (e. g., correctly select the switch-on point of a pumping station).
- The Client shall ensure that access to the transmission technology is sufficiently physically secured, as it would otherwise be possible for the transmission technology to be tampered with or for unauthorised intrusion into the software to occur (e. g., parameter changes at local operating points).

**9.2** The Client not to process any data in connection with the use of the Software that violates laws, official requirements or the rights of third parties. If the Client recognises that there is a breach of this obligation, it must inform the Provider immediately and put a stop to the breach. The Client shall indemnify the Distributor in this respect against all claims of third parties upon first request. The provider is not obliged to proactively check the content uploaded by the customer. However, if the provider becomes aware of potentially unlawful content, whether through a notice or other information, it shall examine the circumstances immediately.

If there is sufficient suspicion of the existence of illegal content, the provider is authorised to temporarily block the customer's access to the content concerned. The customer shall be informed immediately and requested to make a statement without delay.

If the suspicion cannot be dispelled by the customer, the provider is authorised to permanently block or delete the content in question. The provider is also authorised to suspend the use of the software by the customer altogether if the customer repeatedly violates the ban on the use of illegal content despite being requested to do so.

**9.3** The Client is obliged to prevent unauthorised third-party access to the secure areas of the Software by taking appropriate precautions.

**9.4** Notwithstanding the Provider's obligation to back up data, the Client itself is responsible for entering and maintaining its data required to use the Objects of Performance.

**9.5** The Client is obliged to check its data for viruses or other harmful elements before storing it on the storage space provided and to use state-of-the-art virus protection programs for this purpose.

**9.6** The Client is obliged to keep its access data secret and not to make it accessible to third parties.

**9.7** The Client shall require its users to comply in turn with the provisions and obligations applicable to the use of the Objects of Performance under this agreement.

**9.8** During the contract period, the Client shall ensure the generally necessary technical requirements for the use of the Objects of Performance (e. g., sufficient bandwidth, common up-to-date browser). Failure to do so may result in faulty operation for which the Provider is not responsible. The Provider shall bring any special technical requirements to the attention of the Client during the proposal phase.

**9.9** In the event of faults, functional failures or restrictions to the Objects of Performance, the Client is obliged to inform the Provider immediately and in as much detail as possible. If the Client fails to give such notice, § 536c of the German Civil Code (BGB) shall apply. If access to the Client's account by means of remote maintenance is necessary to remedy the fault, the Client shall grant the Provider such access.

**9.10** The data stored by the Client on the storage space provided may be protected by copyright and data protection laws. In particular, the Client grants the Provider the right to make the contents stored on the server accessible via the internet in the event of queries and to reproduce them for the purpose of data backup.

**9.11** As far as the Client's data stored on the storage space provided contains personal data, the Client shall conclude the order processing agreement with the Provider.

## **10. Fees**

**10.1** For the provision of the Objects of Performance, the Client is obliged to pay the fees agreed in the proposal. The fees are due in advance for a period of one year at a time.

**10.2** The Client shall only be entitled to use the Objects of Performance beyond the scope agreed in the proposal with the Provider's prior written consent. If additional use is made without consent, the Provider shall be entitled to demand additional fees based on the rates agreed in the proposal.

**10.3** All price quotations are given in euros and do not include the statutory value-added tax applicable at the time the service is provided.

**10.4** The Provider shall be entitled to adjust the fee at most once a year to take account of additional functionality, inflation, increased operating costs, etc. An increase may only take place after one year has passed since the conclusion of the contract. The Client shall be informed of the increase in good time, at least one month before it comes into effect. It has the right to terminate the lease within six weeks of receiving notice of the price increase if the increase is more than 20 % within three years.

## **11. Warranty and liability**

**11.1** The Provider shall guarantee the agreed quality of the Objects of Performance and that the use of them by the Client to the extent agreed in the contract does not conflict with any rights of third parties.

**11.2** In the event of material defects, the Provider shall, at its discretion, either provide the Client with a new, defect-free Object of Performance or eliminate the defect within a reasonable period of time; elimination of the defect shall also be considered to have taken place if the Provider shows the Client reasonable options for avoiding the effects of the defect (workaround).

In the event of legal defects, the Provider shall, at its discretion, provide the Client with a legally sound option for use of the Objects of Performance or replaced or modified Objects of Performance of equal value.

The Provider is entitled to make the remedy of the defect dependent on the Client not being in payment arrears for the lease.

**11.3** Information on the properties of the Objects of Performance, technical data and specifications in the proposal or the statement of work as well as other documents relevant to the contract shall serve solely to describe the respective performance. They are not to be regarded as a guarantee (or warranted characteristic) within the meaning of the German Civil Code (BGB) The Provider does not give any guarantee promises. In the case of procedural designs, the determined values are not considered to be guaranteed values

**11.4** In all cases of contractual and non-contractual liability, the Provider shall pay damage exclusively as follows:

- unlimited in the case of intent and gross negligence;
- in the event of minor negligence, only in the case of the violation of an essential contractual obligation to the extent of foreseeable damage typical for the contract.

Any further liability is excluded.

**11.5** In the event of a violation of the Client's obligations under § 9.1 and 9.2, any liability on the part of the Provider with regard to the damages incurred in this respect is fundamentally excluded.

**11.6** The Provider assumes no liability for the data imported by the Client. The Provider does not perform any verification of the data.

**11.7** The strict liability of the Provider pursuant to § 536 a (1), 1st alternative of the German Civil Code (BGB) due to defects already existing at the time of the conclusion of the contract is excluded.

**11.18** The limitation of liability in compliance with the above paragraphs shall not apply to liability for personal injury and in the event of liability under the German Product Liability Law (Produkthaftungsgesetz).

**11.9** Claims of the Client arising from this contract under warranty shall be time-barred at the latest after 12 months from the due date and possible knowledge of the claim. This shall not apply in the case of intent and gross negligence as well as in the case of bodily injury, non-fulfilment of independent guarantees and fraudulent intent on the part of the Provider.

## **12. Force majeure**

**12.1** The Provider shall be released from the obligation to perform under this contract if and to the extent that the disruption in performance is due to the occurrence of circumstances of force majeure after the conclusion of the contract.

**12.2** Circumstances of force majeure include, for example, war, strikes, riots, expropriations, major changes in the law, storms, floods, pandemics, and other natural disasters as well as other circumstances for which the Provider

is not responsible. These include, in particular, water ingress, power outages and interruptions or destruction of data-carrying lines or infrastructure through no fault of their own.

**12.3** Each party shall immediately notify the other party in writing of any occurrence of an event of force majeure.

### **13. Contract term and termination**

**13.1** The contract begins as soon as the Provider carries out the activation and confirms it in writing. The contract shall be valid for one year and may be terminated by either party with three months' notice to the end of the contract. If the parties have agreed on a longer term, termination shall be possible at the earliest at the end of this term. The contract shall be extended by one year in each case if it is not terminated within the notice period.

**13.2** The parties' right to extraordinary termination for good cause shall remain unaffected. Exceptional circumstances for termination without notice include if:

- a party repeatedly breaches material contractual obligations under this contract; material contractual obligations include, in particular, the timely payment of fees.
- a party commits a criminal offence in connection with this contract.
- a party ceases business operations in full or in part and the immediate continuation of the contract is not secured by a legal successor.

**13.3** Notice of termination must be given in writing.

**13.4** Upon termination of the contract for whatever reason, the Client's contractual rights of use shall also end.

**13.5** The Client may demand that the Provider return the stored data in a common digital format up to one month after termination of the contract. After the end of the one-month period, all data will be permanently deleted without further notice. The data shall be released at the Client's discretion either by handing over data carriers or by transmission via a data network. The Client shall not be entitled to also obtain the Software for further use of the data.

### **14. Other items**

**14.1** The law of the Federal Republic of Germany applies. The exclusive place of jurisdiction for all disputes arising from this agreement shall be the registered office of the Provider.

**14.2** No additional verbal agreements have been made; amendments to this contract shall only be valid if agreed in writing between the contracting parties. This also applies to amendments to the written form clause itself.

**14.3** In the event that individual provisions of this contract are or become invalid, then this shall not affect the validity of the contract in its entirety.