

# **General Terms and Conditions - Software Usage** **Agreement - SaaS Services** **(“GTC-SaaS”)**

the  
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Germany

hereafter referred to as the “**Company**”.

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## § 1 Scope of application

- § 1.1.1 These “General Terms and Conditions - Software as a Service” (**GTC-SaaS**) apply to all contracts for the area of Software as a Service (“**SaaS**”) concluded between the Company and their contractual partner.
- § 1.1.2 The area of validity of the GTC-SaaS is limited to the B2B sector and is only applicable to contracts with consumers to the extent that the GTC-SaaS can be used to interpret the respective individual contract within the framework of the statutory provisions.
- § 1.1.3 Unless otherwise stated, references in this contract always refer to the GTC-SaaS.
- § 1.1.4 In addition, the General Terms and Conditions of the Company general part (“**GTC-GP**”) as well as the respective additionally relevant pertinent GTC shall apply.

## § 2 Fundamental

### § 2.1 Subject matter

- § 2.1.1 The Company provides services to its customers in the area of Software as a Service (“**SaaS**”).
- § 2.1.2 Thereby the Company provides the contractual software to the customer for the agreed period of use through an external computer center via the internet (“**SaaS Service**”).
- § 2.1.3 It is explicitly pointed out that the Company does not owe the establishment and maintenance of the data connection between the IT system of the customer and the external data center.

### § 2.2 Definition of the contractual software

- § 2.2.1 The contractual software (“**Contractual Software**”) consists of the OMNITRACKER components of the OMNITRACKER platform selected by the Customer in accordance with § 2.2.3 and the selected OMNITRACKER applications in accordance with § 2.2.4, unless otherwise expressly agreed in the contract (e.g. individual software).
- § 2.2.2 “**OMNITRACKER**” consists of the OMNITRACKER platform and the OMNITRACKER applications.
- § 2.2.3 The “**OMNITRACKER Platform**” includes all components listed in the respective current price list of the Company under the article groups “**OMNITRACKER License Packages**”, “**OMNITRACKER Individual Licensing**”, “**OMNITRACKER Interface Bus**” and “**Third-party Licenses**”.
- § 2.2.4 The “**OMNITRACKER Applications**” include all components listed in the current price list of the Company under the article group OMNITRACKER applications in the unchanged version provided by the Company (“**Standard Applications**”).

### § 2.3 Scope of services

- § 2.3.1 The “**Scope of Services**” of the contractual software results from:
- a.) the test version made available to the customer before conclusion of the contract,
  - b.) the license model underlying the use and described in the offer, and
  - c.) the user documentation in its current version.
- § 2.3.2 The OMNITRACKER client software included in the contractual software, as far as it is part of the subject matter of the contract, is described in the offer.

### § 2.4 Further contractual components

- § 2.4.1 The “**Service Parameters**” for the SaaS Service are an essential part of the contract and, if not already part of the Offer on which the Contract is based, are available at the following link: <https://www.omnitracker.com/de/ressourcen/dokumentendatenbank/>
- § 2.4.2 The “**OMNITRACKER Price List**”, the “**OMNITRACKER System Requirements**” and the “**Technical-Organisational Measures of the Company**” shall, as far as applicable, apply in the respective current version and can be requested from the Company if required.

## § 3 Transfer of contractual software

### § 3.1 Access regulations

- § 3.1.1 During the term of the contract, the Company shall provide the customer with a “cloud-based” access to the contractual software. The contractual software itself is located on the server of the data center infrastructure described in the service parameters and is made available to the customer for use from there. In addition, the database system obligatory for the use of the contractual software is made available to the customer by the Company as well as all maintenance tasks necessary for the operation of the database are configured. All monitors necessary for monitoring by the Company shall be prepared.
- The expenses for this are included in the setup fees mentioned in the offer.

### § 3.2 Provision of access

- § 3.2.1 The provision of the access required for software use, e.g. local client software and web access, as well as data connection is described in the service parameters.

## **§ 4 Rights of use regarding the contractual software**

### **§ 4.1 Right of use**

§ 4.1.1 The Company gives legal admission to the customer regarding the non-exclusive and non-transferable use of the contractual software and, if needed, applications for the respective agreed period of use within the scope of the SaaS Service as intended.

§ 4.1.2 Modifications of any kind to the contractual software are only permitted for the OMNITRACKER applications and only through the mechanisms and procedures provided and documented by the Company.

### **§ 4.2 Scope of use**

§ 4.2.1 The customer shall only use the contractual software to the extent contractually agreed. Duplication of the contractual software beyond the below is not permitted.

§ 4.2.2 The customer may only reproduce the user documentation for the customer's own purposes.

§ 4.2.3 The customer is not entitled to make the contractual software including the user documentation and any other accompanying material available to third parties for use against payment or free of charge. This applies in particular to subletting.

§ 4.2.4 In the event of a breach of § 4.2.3

- a) a contractual penalty of € 25,000 shall be agreed for each case of offense without any special proof of damage by the Company being required. Several cases of offenses shall also exist if all offenses are covered by a uniform intent of the customer;
- b) the Company is entitled to claim compensation from the customer, in particular the license fees customary in this respect.

§ 4.2.5 Insofar as the amount of the contractual penalty does not stand up to legal scrutiny, the contractual penalty shall be adjusted or reduced by the court to the extent that it corresponds to the legal situation applicable at the time of the decision.

## **§ 5 Renumeration**

### **§ 5.1 Calculation of remuneration/Adjustment of prices**

§ 5.1.1 The Company is entitled to adjust the remuneration according to its current price list at the beginning of the extension of a contractual term and even without an adjustment of the use made (see § 9 and the offer). The Company shall notify the customer of such a change of the remuneration at least three (3) months in advance in text form (also by email). If the remuneration increases by more than fifteen (15) percent, the customer shall be entitled to terminate the contract at the end of the contractual year within a period of one month after receipt of the request for increase.

§ 5.1.2 Furthermore, explicit reference is also made to § 1.4 GTC-GP.

### **§ 5.2 Measures regarding delay**

If the customer is in default in payment, the Company is entitled to block the access to the SaaS service until proof of fulfillment of the undertaking to pay.

## **§ 6 Additional services**

§ 6.1.1 All services provided at the request of the customer but not expressly included in this contract and its annexes are considered "**Additional Services**".

§ 6.1.2 Additional services shall be remunerated separately by the customer.

§ 6.1.3 Unless the parties have made an explicit written agreement in this respect, additional services including any incidental expenses shall be remunerated in accordance with the Company's price list valid at the time.

## **§ 7 Maintenance**

### **§ 7.1 Scope of service**

§ 7.1.1 The Company shall provide the maintenance services described below for the contractual software.

### **§ 7.2 Support**

§ 7.2.1 The Company shall process the errors of the contractual software and the provided user documentation reproducible within the test environment of the Company due to error messages of the customer within the period stated in the service parameters. In doing so, the Company shall use its best endeavors either to inform the customer how the error can be eliminated or when this will be done (in particular by means of an update) or to inform the customer of measures to circumvent or temporarily bypass errors.

§ 7.2.2 The Company provides software support exclusively for the contractual software as well as for the versions of the OMNITRACKER platform provided within the scope of the update subscription (see § 7.3), unless otherwise explicitly agreed in writing..

§ 7.2.3 Software support includes answering the customer's questions regarding the mechanisms and procedures provided and documented by the Company, in the case of OMNITRACKER the OMNITRACKER platform

for customizing the OMNITRACKER applications.

- § 7.2.1 In the event of unplanned ad-hoc calls for short-term tasks which are to be processed immediately upon request of the contractual partner and which are also processed immediately by the Company, the duration shall be calculated per two working hours or part thereof per call, unless there is an express agreement to the contrary. This takes into account the additional expenses incurred by the Company. Short-term tasks which are within the Company's sphere of responsibility and lead to several minimum call-offs or invoiceable planned project regulation activities (e.g. meeting participations) shall not be taken into account in this respect.

### **§ 7.3 Update subscription (only applies to OMNITRACKER)**

- § 7.3.1 The customer shall receive the user documentation associated with a version update in electronic, printable form in each case.
- § 7.3.2 The Company guarantees release compatibility of the OMNITRACKER platform in such a way that in case of a version update of the OMNITRACKER platform all functions of earlier versions of the OMNITRACKER platform described in the user documentation and thus the functionality of all OMNITRACKER applications (standard applications, applications newly created by the Company or the customer or third parties, applications adapted by the Company or the customer or third parties) remain compatible, i.e. functionally identical. Excluded from this are such components of the OMNITRACKER platform that are permanently withdrawn from the product range by the Company within the scope of its product strategy or no longer gets supported/updated.
- § 7.3.3 Bug fixes within the OMNITRACKER platform as well as changes to the user interface, for example in the form of adjustments to improve manageability (usability), visualization or similar, do not constitute a breach of release compatibility. This also applies if the functions can only be maintained by making additional adjustments. A claim for the restoration of an error is excluded.
- § 7.3.4 With regard to the third-party licenses (article group "Third-party Licenses" in the respective current price list of the Company), the assurance of release compatibility shall only apply to the products named in the document "OMNITRACKER System Requirements", in its respective valid version-dependent version, and the versions specified therein. This shall only apply as long as the respective product is actually offered by the respective manufacturer or support is provided by the manufacturer.
- § 7.3.5 A version update is carried out automatically as part of the program installation of the version update. A prerequisite for release compatibility is that only the features described in the user documentation are used in the adaptation ("Customizing").
- § 7.3.6 Furthermore, reference is made to the Contract for Software Maintenance ("GTC-SM").

### **§ 7.4 Rights of use**

- § 7.4.1 The customer shall receive a right of use to the versions and documentations delivered by the Company within the scope of paragraphs § 7.2 and § 7.3 for the intended use in accordance with paragraph § 4.

## **§ 8 Features of the SaaS service**

### **§ 8.1 Service parameter**

- § 8.1.1 Details of the individual technical features of the contractual SaaS service, in particular with regard to availability, continuity and security as well as the associated monitoring including reporting, are described in the "**Service Parameters**". This also applies to permissible service interruptions or impairments of the SaaS service.

## **§ 9 Adjustments to use**

### **§ 9.1 Server-side license components**

- § 9.1.1 An increase of the server-side license components is possible. In this case, the monthly usage fee and, if applicable, the setup costs (see offer) will be recalculated depending on any necessary expansion of the existing infrastructure.

### **§ 9.2 Connection licenses**

- § 9.2.1 In addition, the increase or decrease of the existing number of connection licenses is possible.
- § 9.2.2 In the event of an increase of the connection licenses, the Company may recalculate the costs for the monthly client usage. This is dependent on an expansion of the existing infrastructure becoming necessary.
- § 9.2.3 In the event of a reduction of the connection licenses, during the initial term of the contract (see paragraph 13.1) the quantity of connection licenses may not fall below the quantity initially specified when the SaaS services were commissioned.

### **§ 9.3 Deadlines**

- § 9.3.1 The customer shall notify the Company in writing or by email of any desired adjustments of use.
- § 9.3.2 In the event of an increase in connection licenses, the period shall be one (1) month to the end of the month; in the event of a reduction in connection licenses, the period shall be three (3) months to the end of the

month. The change shall then take effect in each case as of the month following the deadline.

## **§ 10 Data security and data processing**

### **§ 10.1 Duplication of data**

§ 10.1.1 The customer concedes to the Company the right to reproduce the data to be stored by the Company for the customer to the extent this is necessary for the performance of the services owed under the respective individual contracts. The Company shall also be entitled to keep the data in a backup data center.

§ 10.1.2 Access to the data stored at the Company after termination of the contract is described in the offer.

## **§ 11 Duty of customer**

### **§ 11.1 Commercial use**

§ 11.1.1 The contractual software is intended for commercial customers (B2B). The customer confirms to use the contractual software exclusively for commercial purposes.

### **§ 11.2 Network infrastructure**

§ 11.2.1 The customer is responsible for the proper functioning of its own network infrastructure as well as the network and internet connections required to access the contractual software. This includes, in particular, the availability, continuity, security and performance of the internet connection available at the customer's premises for access to the contractual software.

§ 11.2.2 The customer shall ensure that the hardware and software used, including workstation computers, network infrastructure, etc., comply with the minimum technical requirements for the use of the currently offered versions of the contractual software. In this context, the customer shall, insofar as this is necessary for new versions of the contractual software, carry out adjustments to the hardware and software system environment in good time at its own expense. This includes, in particular, updates of the operating system or other required third-party software. Details in this respect, insofar as OMNITRACKER is the subject of the contract, can be found in the document "OMNITRACKER System Requirements" in its respective valid version-dependent version.

### **§ 11.3 Security measures**

§ 11.3.1 The customer is obliged to prevent unauthorized access by third parties to the contractual software by taking suitable precautions.

§ 11.3.2 For this purpose, the customer shall, to the extent necessary, contractually oblige its employees to comply with copyright law.

§ 11.3.3 Notwithstanding the Company's obligation to backup data, the customer themselves shall be responsible with regard to the entry and maintenance of its data and information required for the use of the SaaS service.

§ 11.3.4 The customer is obliged to check the data and information for viruses or other harmful components before entering them and to use state of the art virus protection programs for this purpose.

## **§ 12 Defects/Errors**

### **§ 12.1 Error reports**

§ 12.1.1 The customer shall immediately notify the Company in writing of any defects or errors ("**Material Defect**" or "**Error**" for short) in an easily comprehensible and detailed form, stating all information relevant for the detection and analysis of the error, and shall record the use of the contractual software and any special incidents occurring in a suitable manner. If the first notification of a defect is made by telephone, the customer shall submit the error message in the form of sentence 1 of this paragraph. In particular, the work steps, which led to the occurrence of the error, the form of appearance and the effects of the error, shall be stated.

§ 12.1.2 A recording can only be considered suitable if it is made in a manner that is easily comprehensible for third parties or the Company, usually via the Company's portal, and in a common file format (Word/Excel/PDF or similar).

§ 12.1.3 Reports of any errors that are not easily comprehensible for an uninvolved third party or the Company shall not be considered as error reports.

### **§ 12.2 Deficiency term**

§ 12.2.1 A material defect or error exists if the contractual software does not have the contractually agreed quality or if it is not suitable for the contractually assumed use.

§ 12.2.2 The contractually agreed quality results from the scope of functions according to § 2.3.1

§ 12.2.3 A contractually presupposed use is only explicitly permissible between the contracting parties.

§ 12.2.4 Technical data, specifications and performance information in public statements, in particular in advertising material, are not quality information.

### **§ 12.3 Cooperation by the customer**

- § 12.3.1 The customer shall provide all necessary documents and information required by the Company to diagnose the defect and to remedy it and shall grant access to the premises, machines and to the contractual software also by remote access via WAN during the Company's hours of performance (see product note).
- § 12.3.2 Furthermore, the customer shall support the Company to the best of its ability in the search for the cause of the error. Upon the Company's request, the customer shall keep the defective software as well as the associated data files available and, if necessary, send them to the Company without delay.
- § 12.3.3 The customer shall ensure that a suitable employee (see paragraph 7.2) only uses the Company's service desk. This employee must subsequently also be available in a supporting capacity during the performance of maintenance services. Upon the Company's request, the customer shall exercise the utilization of the Company service desk (see paragraph 7.2) exclusively through two suitable employees to be nominated by the customer.
- § 12.3.4 The Company is entitled to reject insufficiently qualified employees as contact persons, in particular if otherwise avoidable support requests are made.
- § 12.3.5 An employee is suitable if the employee possesses the necessary knowledge and skills to use the contractual software within the scope of its contractual possibilities of use in a fully comprehensive and error-free manner without assistance by the Company and has comprehensive system administration and configuration skills regarding the contractual software ("**Suitable Employee**"). The suitability of the employees can be achieved by a successful participation in the corresponding trainings of the Company (see § 6).
- § 12.3.6 To the extent the Company provides maintenance services by means of remote data transmission techniques, the customer shall provide and maintain, at its own expense, the devices, equipment and programs required and suitable for the remote access by the Company - within the customer's area of responsibility - ready for operation.
- § 12.3.7 If the customer receives a new version of the contractual software or parts thereof from the Company, it shall be installed by the customer without delay.
- § 12.3.8 Insofar as the Company informs the customer at short notice via hotline/service desk (see paragraph § 7.2) of the information required for the provision of the maintenance services for the elimination and circumvention of errors, the customer shall carry this out without delay.

### **§ 12.4 Bug-fixing**

- § 12.4.1 The Company shall process the errors of the contractual software and the provided user documentation reproducible within the test environment of the Company due to error messages of the customer within the period specified in the service parameters. In doing so, the Company shall use its best endeavors either to inform the customer how the error can be eliminated or when this will be done (in particular by means of an update pursuant to paragraph 7.3) or to inform the customer of measures to circumvent or temporarily bypass the errors. The same applies to other disruptions of the possibility to use the contractual software.
- § 12.4.2 The Company shall only be liable for defects of the contractual software, which were already present at the time of their transfer to the customer if the Company is responsible for these defects.
- § 12.4.3 Insofar as the customer modifies the contractual software itself or has it modified by third parties, the claims due to defects shall lapse unless the customer proves that errors which have occurred are not due to this fact and that the error analysis and elimination by the Company is also not impaired thereby. This proof can be provided by the customer reproducing on a reference system the error in the originally delivered, unchanged version of the contractual software.
- § 12.4.4 If the Customer uses the Contractual Software together with hardware or software of third party manufacturers which (in the case of OMNITRACKER, in the document 'OMNITRACKER System Requirements' - in its respective valid version-dependent form) are not expressly described as compatible with the Contractual Software and which interfere with the operation of the Contractual Software, § 12.4.3 shall apply accordingly.
- § 12.4.5 The customer may only set off such claims against the Company, which are undisputed or have been finally determined by a court of law.
- § 12.4.6 The customer's right of termination for failure to provide use is excluded unless the production of use in accordance with the contract is considered to have failed.
- § 12.4.7 The customer shall notify the Company of any defects without delay. The claims for defects are subject to a limitation period of one (1) year.

### **§ 12.5 Legal deficiencies**

- § 12.5.1 If a third party asserts the breach of property rights against the customer due to the use of the SaaS service, the customer shall inform the Company thereof without delay and leave the defense against such claims to the Company as far as possible. In doing so, the customer shall provide the Company with all reasonable assistance. In particular, the customer shall provide the Company with all necessary information about the use and possible processing of the contractual software in writing, if possible, and shall provide the Company



with the necessary documents.

§ 12.5.2 If the customer fails to inform the Company without delay about a claimed defect of deficiency, the customer shall bear all expenses and costs resulting therefrom which could have been avoided by an immediate notification.

§ 12.5.3 To the extent that third party rights are violated, the Company may, at its option, remedy the defect by

- a) obtaining from the person entitled to dispose of the infringement of proprietary rights a right of use for the benefit of the customer sufficient for the purposes of this contract; or
- b) modifying the infringing software without any effects or only with effects acceptable to the customer on its function, or
- c) replacing the infringing software without effects or only with effects acceptable to the customer on its function with software whose use in accordance with the contract does not infringe any proprietary rights or
- d) supplying a new program version, the use of which in accordance with the contract does not infringe any third-party proprietary rights.

## **§ 13 Running time of contract, termination**

### **§ 13.1 Running time**

§ 13.1.1 The running time of this contract shall commence with the provision of the contractual software by the Company and shall be at least twelve (12) months ("Initial Contract Running Time").

### **§ 13.2 Extension of the contractual term**

§ 13.2.1 The contract shall be automatically extended by the term pursuant to § 13.1 if it is not terminated by one of the contractual partners with a notice period of 3 months to the end of the contractual term.

### **§ 13.3 Copy of the data base**

§ 13.3.1 At the end of the contractual term, the Company shall provide the customer with a copy of the database including attachments. This database can be integrated by the customer or a third party commissioned by it in a local installation of the contractual software and serve as a possible data source for the transfer into a third-party software. The Company shall make available to the customer all documentation created on configuration changes made in the application.

The Company shall support the customer in a handover project in the best possible way to enable a smooth handover.

§ 13.3.2 The services to be provided for this purpose shall be invoiced separately to the customer based on the price list valid at the time (see § 6).

### **§ 13.4 Written form**

§ 13.4.1 Terminations must be made in writing, by the customer by registered letter with return receipt.

### **§ 13.5 Termination for good cause**

§ 13.5.1 The right of each party to terminate the contract without notice for good cause remains unaffected.

§ 13.5.2 The Company shall be entitled to terminate without notice in particular if the customer fails to make due payments despite a reminder and setting of a deadline or if the customer violates the contractual regulations regarding the use of the SaaS service. A termination without notice requires in any case that the other party is warned in writing and requested to remedy the alleged reason for the termination without notice within a reasonable period of time.