

## Terms and Conditions for Software as a Service (SaaS)

### 1. Scope

- 1.1** These Terms and Conditions apply to the provision of the Software as described at <https://doc.nexusgroup.com> ("**Software**") under the software as a service model (hereinafter "**SaaS**"), i.e. where software functions are made available to the Customer, ordered by the Customer from Nexus by way of individual agreements ("**Individual Contracts**"). These General Terms and Conditions govern the business relationship between the Customer and Nexus (the "**Parties**"), even if not explicitly agreed upon in the individual case.
- 1.2** To the extent an Individual Contract does not contain any explicit deviating stipulations, the stipulations of these Terms and Conditions shall apply to all SaaS Services rendered by Nexus to the Customer. For the avoidance of doubt, any deviating stipulations in an Individual Contract shall prevail over these General Terms and Conditions.
- 1.3** Any general terms and conditions of the Customer that deviate from or supplement the provisions of these Terms and Conditions shall not become part of any Individual Contract unless agreed by both Nexus and the Customer in writing.
- 1.4** Nexus's offers are non-binding, unless explicitly stated otherwise in the respective offer; therefore, the respective Individual Contract is concluded if the Customer accepts Nexus' offer and Nexus has confirmed the order by way of an order confirmation (as a rule in writing).
- 1.5** Specific performance obligations shall only arise in connection with Individual Contracts.
- 1.6** Object of the contract is the provision of the Software as described at <https://doc.nexusgroup.com> ("**Software**") under the software as a service model (hereinafter "**SaaS**"). Nexus shall run the Software on its own data processing systems (servers) in order to make it available to the Customer who may access the Software via the Internet and use the functionalities of the

Software as described herein. If Nexus software is needed for this purpose, Nexus shall provide the Customer with the client software (hereinafter "**Client Software**") under the GTC for Software. If third party software is needed for this purpose, the Customer shall obtain and install it.

- 1.7** The object code of the Client Software shall be made available for download via the internet. The Customer shall install the Client Software itself and shall not be entitled to obtain a copy of the source code of the Client Software or any other means of access to the source code.

- 1.8** Services for the establishment of interoperability of the SaaS with other applications than those stated as supported application versions at <https://doc.nexusgroup.com>, shall only be rendered under a separate written contract to be concluded between Nexus and the Customer.

### 2. Service Level Agreement

- 2.1** Nexus shall provide the Customer with the SaaS in accordance with **Annex 2.1 "Service Level Agreement"** at the Internet connection point of Nexus.
- 2.2** The Customer shall be responsible to ensure its connectivity to the Internet, including the required data transmission rates.

### 3. Rights of use

- 3.1** Nexus grants the Customer a non-exclusive, non-transferable right, limited to the duration of the contract, to use the Software functions for its own purposes. The use for the Customer's own purposes shall permit the use at the legal entity of the Customer and such entities explicitly indicated in the Individual Contract (if any).
- 3.2** The Customer shall not be granted the right to copy or reproduce the Software and shall not be entitled to download and/or execute the Software operated and made available by Nexus on its own systems. Nexus's Software is protected by copyright and all pertaining

intellectual property rights, rights of use and other protected rights shall remain with Nexus.

**3.3** Nexus warrants that the use of the SaaS by the Customer does not infringe any third-party rights. Should the contractual use of the SaaS be affected by third-party industrial property rights, Nexus shall be entitled to reasonably modify the SaaS in such a way that it no longer falls under the protection of such rights while at the same time preserving its essential usage functions, or to obtain authorisation that the SaaS may be used without restrictions and without additional costs.

**3.4** The Customer shall not be entitled to grant any third parties access to the SaaS.

**3.5** The access to the download of the Client Software made available to the Customer must be protected against unauthorised third-party access. The Customer shall instruct its employees to comply with the provisions of this agreement. The removal of serial numbers, copyright notices or other programme identification features from the Client Software is not permissible. The same applies with respect to the suppression of the on-screen display of such features.

#### **4. Further obligations of the Customer**

**4.1** The Customer shall reasonably cooperate with Nexus and shall in particular

**4.1.1** take appropriate precautions to protect access to the SaaS and the Client Software against unauthorised third-party access. To this purpose, it shall store the login data entrusted to it and administrated by it in a secure location and instruct its employees and other dependent persons entitled to use the SaaS accordingly. In the event the Customer reasonably suspects that its access credentials have been obtained by unauthorised third parties or are being improperly used by them, it shall immediately notify Nexus thereof in textual form;

**4.1.2** comply with all applicable legal and statutory provisions when using the SaaS. In particular, the Customer shall be prohibited to store, transmit or otherwise publish any content that

infringes statutory provisions, especially in connection with industrial property rights or intellectual property rights of third parties;

**4.1.3** protect its IT environment against malware with state-of-the-art anti-virus programmes prior to making use of the SaaS; and

**4.1.4** in accordance with the Service Level Agreement immediately report any defect concerning the SaaS, state the circumstances in which such error or defect occurs, and actively support Nexus in troubleshooting.

**4.2** Should a third party assert any claims vis-à-vis Nexus in connection with the violation of the Customer's obligations under this agreement, the Customer shall hold Nexus harmless from such claims and shall at its own cost defend Nexus against such claims. Nexus shall immediately notify the Customer of the assertion of any claims and provide it with all necessary information.

**4.3** Access to the SaaS shall be restricted to the registered and logged-in users using their respective personal account. Group accounts are not permitted.

#### **5. Claims for defects**

**5.1** Nexus warrants that for the duration of the contractual term the SaaS is provided in the quality agreed pursuant to the Individual Contract and the present Terms and Conditions and the SaaS is available as set out in the Service Level Agreement.

**5.2** In case of non-fulfilment of the Service Level Agreement, the Customer shall be entitled to reduce remuneration as set out in Section 2 of the Service Level Agreement. Other remedies are excluded, unless Nexus has caused the non-fulfilment with intent or negligence.

**5.3** The Customer shall immediately notify Nexus of all defects of the SaaS. To the extent Nexus is unable to fulfil its performance obligations due to lacking or delayed cooperation by the Customer, Nexus shall be released from its performance obligations.

- 5.4** Nexus shall be obliged to remedy any problem regarding availability after receipt of a notice of any such problem within a reasonable deadline. Only problems with availability which can be reproduced are remediable. To the extent a problem with availability is caused by defective third-party software employed by Nexus to provide the SaaS, Nexus shall only be obliged to rectify availability by installation of available third-party software upgrades or by way of service calls.
- 5.5** If, for reasons attributable to Nexus, a defect is not successfully rectified within a reasonable deadline of at least four (4) weeks, the Customer shall be entitled to reduce the agreed remuneration by an adequate amount. The right to reduce the remuneration shall be limited to the amount reasonable in view of the restrictions of use caused by the defect.
- 5.6** The Customer shall cooperate in the remediation of any problems with availability and shall, in particular, provide all required information that Nexus needs for purposes of analysis and remediation of the defect.
- 5.7** The right to rescind from the Individual Contract regarding the SaaS due to problems with availability shall be excluded. The Customer's right to termination for good cause shall remain unaffected.
- 6. Remuneration, terms of payment, delay of payment**
- 6.1** Unless otherwise agreed in the Individual Contract, the Customer shall pay the agreed remuneration in advance and Nexus shall issue quarterly invoices. Should an Individual Contract commence or end in the course of a calendar year, the respective partial amount of the annual remuneration shall be paid to Nexus respectively be reimbursed to the Customer.
- 6.2** Nexus shall charge the remuneration as agreed in the respective Individual Contract plus VAT as applicable. For the avoidance of doubt, any taxes applicable to the Customer which apply in connection with the business relationship between the Customer and Nexus (e.g. sales taxes or source taxes) are to be borne by the Customer.
- 6.3** The Customer shall pay the due remuneration in full within thirty (30) calendar days from receipt of the respective invoice.
- 6.4** Should the SaaS be used by more users than agreed, the Customer shall inform Nexus prior to such increase and pay the remuneration for additional users as stipulated in the Individual Contract. The annual remuneration shall be adjusted *pro rata temporis*. Any access to the SaaS, e.g. login of or API access by a user, shall constitute a use of the SaaS.
- 6.5** Nexus shall be entitled to increase its remuneration in correspondence with the evolution of the German consumer price index (Verbraucherpreisindex) published by the Federal Statistical Office (base 2020 = 100, Statistisches Bundesamt). This evolution shall be calculated as the percentage change between the two most recent published indexes for the month of January. Such increase may only take place at maximum once per calendar year. Nexus shall notify the Customer of any price adjustments at least three (3) months prior to their taking effect. If the index mentioned cannot be used for a reason whatsoever, reference shall be made to the closest index. For instance, if Nexus decides to increase its remuneration on February 1<sup>st</sup>, 2023, it will need to notify it at latest on November 1<sup>st</sup>, 2022. At that time, since the index of January 2023 has not been published, the last published indexes are January 2022 (105.2) and January 2021 (101.0). The index has increased by 4,1%. As a result, in this example, the remuneration due on February 1<sup>st</sup>, 2023 cannot increase by more than 4,1%.
- 7. Data protection and data security**
- 7.1** Nexus regards data protection as a significant prerequisite for successfully conducting business, and we are committed to take any necessary measures to assess and safeguard the personal data we process. Therefore, we continuously review and update our practices in accordance with applicable data protection rules and regulations (including EU Regulation 2016/679, more commonly referred to as the GDPR). We have for instance implemented technical and organizational measures to ensure that such data protection related requirements are applied both by us as well as by our external service providers and other suppliers. For

more information about how Nexus processes personal data, please visit our webpage: [www.nexusgroup.com/privacy-policy](http://www.nexusgroup.com/privacy-policy).

Nexus processes personal data as a data processor for the purposes of providing the Software as a Service outlined in the Agreement. Further information about the provisions of these processing activities can be found in the data processing agreement, visible on the following webpage: [www.nexusgroup.com/terms-and-conditions](http://www.nexusgroup.com/terms-and-conditions).

## 8. Term, termination and exit management

**8.1** The Individual Contract shall enter into force upon signing by the Parties. The minimum lease period for the SaaS shall be thirty-six (36) months and shall commence on the date agreed in the Individual Contract.

**8.2** The Individual Contract may be terminated by both Parties upon expiry of the minimum period at the earliest with a notice period of three (3) calendar months. If not terminated, the contractual period shall automatically be extended by twelve (12) months on each occasion and may be terminated with a notice period of three (3) calendar months to the expiry of the contractual term.

**8.3** Each Party shall be entitled to extraordinary termination of the agreement for good cause. Important cause shall in particular mean that:

- (a) Performance under the contract becomes legally or factually impossible or economically unreasonable for reasons not attributable to the terminating Party.
- (a) The respective other Party, despite prior warning, fails to fulfil its material contractual obligations within a reasonable deadline. A violation of material contractual obligations shall in particular include a significant default in payment.
- (b) Fulfilment of the obligations under the Individual Contract is jeopardised due to deterioration of the financial situation of the respective other Party. Deterioration of the financial situation shall in particular mean a repeated delayed performance for more than twenty (20) days other than in cases of a *bona fide* dispute,

or an unsuccessful enforcement attempt at the respective other Party.

**8.4** Should the Customer be in default of payment pursuant to clause 8.3 (c), Nexus shall be entitled to claim damages in form of an immediately payable lump-sum in the amount of one quarter of the remaining monthly prices up to the end of the ordinary contractual term, unless Nexus is able to prove higher damages or the Customer is able to prove lower damages. Nexus's right to assert further claims for delayed payments shall be reserved.

**8.5** Any declarations of termination shall require the written form (email suffices).

**8.6** Each Party undertakes to immediately hand back to the other Party (or if requested delete) upon that Party's request all documents and documentation, records or concepts made available in the course of the contractual term upon termination of the Individual Contract.

**8.7** Upon termination of the SaaS, irrespective of the reason thereof

- all of the Customer's rights of use in the Client Software shall expire. All rights granted by Nexus to the Customer granted hereunder shall revert to Nexus,
- the Customer shall be obliged to delete all access data and any printouts of pertaining documentation. Nexus shall be entitled to request respective proof.

**8.8** In case of ordinary termination, the Customer shall, prior to expiry of the SaaS, delete and store elsewhere all data stored on the servers of Nexus as part of the SaaS. The Customer shall be entitled to instruct Nexus to keep data available beyond the foregoing provided the Parties agree on a reasonable remuneration.

**8.9** In case of extraordinary termination, the Customer's data shall, after termination of the licensing relationship, be deleted by Nexus, unless the Customer instructs Nexus to keep its data stored beyond such period and pays a reasonable remuneration for such service.

## 9. Changes and Amendments

**9.1** Nexus shall be entitled to reasonably change the SaaS, in particular if any changes in underlying software of third parties occur.

**9.2** Any amendments of the Individual Contract shall be deemed accepted by the Customer, if the Customer does not object to such amendment within a period of six (6) weeks after receipt of a respective notification in textual form, provided however that Nexus has informed the Customer about the consequences of its non-objection in advance.

**9.3** If the Customer objects to the envisaged amendment in due time, Nexus shall be entitled to terminate the respective Individual Contract at the earliest permissible date of ordinary termination or with effect to the date of the implementation of the change if a continuation of the previous system is not feasible, in any event at the earliest three (3) months after the Customer has received the change notification.

## **10. Withholding of Performance and Set-off**

**10.1** The Customer shall be entitled to withhold or refuse performance with regard to claims that are undisputed or have been acknowledged by a final court decision or which are counterclaims from the same contractual relationship with Nexus. Other withholding rights are excluded.

**10.2** The Customer shall only be entitled to set-off claims against those claims of Nexus if the Customer's claims are undisputed or have been acknowledged by a final court decision or are counterclaims from the same contractual relationship with Nexus. Other set-off rights are excluded.

## **11. Force Majeure**

**11.1** Malperformance shall not constitute a breach of contract to the extent it is caused by unpreventable occurrences, in particular epidemics and pandemics, earthquake, deluge, flooding, fire, explosion, blackout, embargos, governmental restrictions, riots, terrorist attacks, war or other military action, civil unrest, rebellion, vandalism, sabotage, strike at Nexus's or sub-supplier's plant, or other causes not attributable to the affected Party ("**Force Majeure**"). The obligations of

the affected Party shall be suspended for the duration of Force Majeure.

**11.2** The performance period shall be extended by the delay caused by the occurrence of Force Majeure plus an adequate restarting period.

**11.3** In the event concrete indications exist that the impediment of performance due to Force Majeure will continue for more than one hundred and twenty (120) calendar days, either Party shall be entitled to terminate in writing any Individual Contract. If a one-off Individual Contract has not yet been performed, each of the Parties shall be entitled to rescind from the contract. All further rights shall be excluded in case of Force Majeure.

## **12. Liability**

**12.1** All rights of the Customer to claim damages or compensation for wasted expenditure shall, regardless of their legal nature, be subject to this Section 12.

**12.2** Nexus shall be fully liable for damages caused by an intentional violation of its obligations.

**12.3** Nexus shall also be fully liable for damages caused by a grossly negligent violation of its obligations, with the following exception: If the violation has been committed by a simple vicarious agent and has caused other damage than damage to life, body or health, Nexus' liability shall be limited to the foreseeable typical damage (as provided for in Section 12.5).

**12.4** In case of simple negligence (i.e. not gross negligence), Nexus shall be liable as follows:

**12.4.1** Nexus shall be fully liable for damages (i) to life, body or health, (ii) caused by a violation of a contractual guarantee or (iii) in case of claims under the Product Liability Act.

**12.4.2** In all other cases than those addressed in Section 12.4.1, Nexus shall only be liable for the violation of such obligations that are material for the proper implementation of the Individual Contract and on the fulfilment of which the Customer relies and regularly may rely (essential duties). In such cases, liability shall be limited to the foreseeable typical damage as provided for in Section 12.5.



**12.4.3** Nexus liability for simple negligence in all other cases not addressed in Sections 12.4.1 and 12.4.2 is excluded.

**12.5** The Parties agree that the foreseeable typical damage shall not exceed the annual remuneration in case of the Individual Contract for SaaS.

**12.6** Unless explicitly agreed otherwise, the Customer shall be responsible to back-up its data in accordance with current technical standards. If any data is destroyed or lost, Nexus' liability shall be limited to such amount that would have been required for the recovery or replacement of such data if the Customer had made proper backups. Recovery expenses shall extend to the actually incurred additional costs for recovery and/or replacement of the data.

**12.7** All other liability of Nexus shall be excluded. The limitations of liability and exclusions of liability pursuant to this Section 12 shall not affect the liability of Nexus pursuant to the mandatory statutory provisions of the Product Liability Act, due to the fraudulent concealment of a defect or the assumption of a contractual guarantee for the quality of an item.

**12.8** The provisions of this Section 12 shall also apply in favour of Nexus' vicarious agents in case the Customer raises claims directly against any of them.

### **13. Marketing**

Each Party shall be entitled to reference the name and trademark and/or the logo of the respective other Party on its website and in presentations for the term of the contractual relationship, unless the other Party objects in writing.

### **14. Confidentiality**

**14.1** The Parties undertake not to disclose to any third party confidential information of the respective other Party of which they gain knowledge within the scope of negotiating and implementing any Individual Contract, and to likewise bind their respective employees within the scope of the applicable employment law to secrecy.

**14.2** Confidential information within the meaning of these Terms and Conditions is all information (whether in writing, electronically, orally, digitally embodied or in any other form) which is transferred from the holder to the recipient or to a person associated with the recipient within the meaning of Sects. 15 ff. AktG (German Stock Corporation Act) within the aforementioned scope. Confidential information includes, in particular, trade secrets, products, manufacturing processes, know-how, inventions, business relationships, business strategies, personnel matters, digitally embodied information (data), as well as any documents and information of the holder which are subject to technical and organizational secrecy measures and which are marked as confidential or are to be considered confidential due to the nature of the information or the circumstances of the transmission.

**14.3** This obligation does not apply to such confidential information,

**14.3.1** which were demonstrably already known to the other Party when the Individual Contract was concluded or which subsequently become known to the other Party by third parties, without this infringing any confidentiality agreement, statutory provisions or official orders.

**14.3.2** which are publicly known at the time of the conclusion of the Individual Contract or are made publicly known thereafter, unless this is based on a breach of the Individual Contract.

which must be disclosed by virtue of statutory obligations or by order of a court or authority. To the extent permissible and possible, the Party subject to the disclosure obligation shall give prior notice to the other party and the opportunity to take action against the disclosure.

### **15. Applicable law and Place of Jurisdiction**

**15.1** These Terms and Conditions and any Individual Contract shall exclusively be governed by German law. The regulations of the UN Convention on Contracts for the International Sale of Goods dated 11 April 1980 (CISG) shall be excluded.

**15.2** 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, the exclusive - also international - place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is Düsseldorf. The same applies if the Customer is an entrepreneur within the meaning of Sect. 14 BGB. Priority statutory provisions, in particular those relating to exclusive jurisdiction, shall remain unaffected.

**16. Miscellaneous**

- 16.1** All changes, amendments, supplements or substantiations to the provisions of these Terms and Conditions as well as special guarantees and arrangements shall require the written form. The aforesaid also applies to any amendments of this Section 16.1.
- 16.2** Should a provision of these Terms and Conditions or any Individual Contract be or become invalid, this shall not affect the validity of the remaining provisions.
- 16.3** Any oral agreements shall be confirmed in writing.