

General Terms and Conditions of Business (GTC) of *aconso* AG

GENERAL TERMS AND CONDITIONS FOR CLOUD USE AND OTHER SERVICES

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These General Terms and Conditions of Business ("GTC") apply to the license of *aconso* AG ("*aconso*") Software as a Service. *aconso* and Customer may be referred to individually as "Party" and, collectively, as "Parties."

Definition

1. **Affiliate** means a company in which a Party has 50% or more effective control by voting rights, board membership or similar factors or a parent company which owns or has effective control of a Party.
2. **Customer** means an individual Customer licensed or authorized to use *aconso*'s Software, including its Affiliates if specified in the Offer, and Customer's Authorized Users.
3. **Cloud Service (*aconso Cloud*)** means a digital platform service for the provision of *aconso*'s Software or Services.
4. **Documentation** means the specifications, technical policies or other Information *aconso* provides to Customer to facilitate the Customer's use of the Software as a Service.
5. **Fees** includes Provision Fees for the Software as a Service and Implementation Fees.
6. **Services** means the provision by *aconso* to Customer of its Software as a Service (defined term 9 below) which *aconso* provides to Customer on an ongoing basis during the Term. **Implementation Services** mean Services designed to implement or configure the Software for Customer's access and use.
7. **Term** means the Fixed Term and the Renewal Term(s).
8. **Contract** means signed Offer or Contract by the Customers and the resulting order confirmation by *aconso*.
9. **Software as a Service ("SaaS")** means *aconso*'s software program and Documentation protected by Intellectual Property Rights or as Confidential Information and licensed to Customer in accordance with the Agreement.
10. **Intellectual Property Rights** means a Party's rights in any patent or similar right such as a utility model, copyright, rights to Information protected as trade secrets, trade or service marks, trade names or other intangible property rights, whether registrable or not. *aconso*'s Intellectual Property Rights means said rights which relate to or concern the *aconso* Software as a Service.

11. **Authorized Users** means the employees, agents or other representatives of either Party who are authorized to use or access the Software as a Service, subject to being bound by the obligations of this Agreement.

12. **SLA** means the service level agreement for the Services, which *aconso* may update, modify or change from time to time.

Validity

- 1.1. Unless agreed otherwise, our GTCs shall apply exclusively to the sale, rental, hosting, Cloud Services or other Contracts with us, *aconso* AG or another company of the *aconso* Group, for software, for Services agreed within the scope of such Contracts and for pre-contractual obligations in business dealings. Any terms and conditions of Contract of our Customers or other third Parties shall not become part of the Contract, even if we do not expressly object to them.
- 1.2. Even if this is not referred to again when concluding similar Contracts, these GTC and our other terms and conditions of business shall apply exclusively in the version current at the time of submission of our Customer's declaration to conclude the Contract, unless the contracting Parties agree otherwise in writing.
- 1.3. All our offers are subject to change. The presentation of our products and Services in catalogs, on the Internet or on other sales media shall not constitute a binding offer.

2. Subject of agreement and scope of Services

- 2.1. The scope, type and quality of the deliveries and Services shall be determined by the Contract signed by both Parties or our order confirmation, otherwise by our Offer. Other Information or requirements shall only become part of the Contract if the contracting Parties agree in writing or we have confirmed them in writing. Subsequent changes to the scope of performance shall require our written agreement or written confirmation.
- 2.2. The Customer has verified that the specifications of the software meet the Customer's wishes and needs before concluding the Contract. The Customer is aware of the essential functional features and conditions of the software.
- 2.3. We are entitled to further develop the software, to adapt it to technical and legal progress and in particular to add new functions. If justified interests of the Customer are adversely affected to a considerable degree by a change in performance that affects the owed quality of the software, we shall notify the

Customer of the change at least three months before it takes effect. In this case, the Customer may object to the change of service within one month of its announcement. If we do not immediately allow the Customer to use the software in the unchanged form after the Customer's objection, the Customer may terminate the Contract extraordinarily with immediate effect within a period of two weeks from the effective date of the change in performance.

- 2.4. If and insofar as the subject matter of the services/modules/functionalities commissioned with the customer in connection with the *aconso Cloud* are - at least in part - AI applications, i.e. elements of so-called artificial intelligence, the customer hereby commissions us not only with the provision of the respective AI application for the agreed purposes of the customer, but also with the training, general further development and general improvement of both the AI applications and other software products (already existing, still under development or new/future) at our discretion; this includes the evaluation and use of the derived data (models) from the training of the AI applications by means of the customer's uses. Our services in this respect are covered by the agreed remuneration; the customer does not owe any separate remuneration for this further development. Conversely, the customer shall not be entitled to any payment or remuneration claims with regard to any use of the derived data.
- 2.5. Product descriptions, portrayals, test programs are no guarantees.
- 2.6. We operate the software as a Software as a Service (hereinafter, the "*aconso Cloud*"), thus offering the Customer its use in one or more data centers selected by us via a telecommunications connection. The Customer shall receive the technical possibility and authorization to access our software, which is to be hosted on one or more central servers, via the Internet during the term of Contract and to use the functionalities of our software via this within the reached scope of agreement.
- 2.7. The service transfer point shall be the connection of the data center we use to the Internet. The Customer must

ensure the connection to the Internet, the provision or maintenance of the network connection to the data center and the procurement and provision of network access components for the Internet on the Customer side. The Customer's requirements for the use of the software shall be stipulated in the offer and in the performance specifications. The Customer shall be obliged to use up-to-date anti-virus programs on its local systems on an ongoing basis and to take appropriate precautions against hacker attacks, virus infestations and comparable disruptions during the entire term of Contract.

- 2.8. The Customer shall receive online access to the manual together with other Documentation (hereinafter, the "user documentation") with the software. To the extent necessary for the intended use of our software, the user documentation provided may be reproduced. The Customer shall have no right to be provided with our software in source code or as a computer program executable on the Customer's own hardware.
- 2.9. The user documentation shall enable the Customer to use the software properly. The user documentation refers to our standard software.

3. Our performances

- 3.1. As of the agreed date, we shall keep our software available on one or more central data processing systems for use by the Customer to the agreed extent. and in particular in accordance with our SLA. The respective current, generally released version of our software shall be available for use in the *aconso Cloud*.
- 3.2. We provide our Cloud Service to the Customer on the contractually agreed platform.
- 3.3. We ensure that the data of individual Customers shall be managed separately in the *aconso Cloud*, so as to rule out access to the data by unauthorized third Parties.
- 3.4. The data collected via the *aconso Cloud* shall be backed up by us on a regular basis and as required by the risk, but at least once a day, in order to ensure reconstruction of the data and Information in the event of a loss of data and Information in the sense of a daily system recovery. Data changes, whether intentional (e.g. data entry) or unintentional (e.g. data deletion), between backups shall not be saved. The Customer alone shall be responsible for compliance with retention periods under commercial, professional and tax law. Long term data backup for archiving purposes shall not form part of our scope of performance.

4. Rights

- 4.1. Our software (program and user documentation) is protected by law. We shall be exclusively entitled to the copyrights, patent rights, trademark rights and all other ancillary copyrights to the software and other objects which we provide or make available to the Customer as part of the origination and Implementation of the Contract. Insofar as third Parties are entitled to the rights, we shall have the corresponding exploitation rights.
- 4.2. We shall grant the Customer a non-exclusive right to use the software via the *aconso Cloud* during the term of Contract.
- 4.3. The Customer and its Affiliates is only entitled to use our software for the Customer's own purposes and for handling the internal processes of the Customer's enterprise. Further contractual usage rules (e.g., limitation to a number of workstations or persons) must be set up technically and complied with in practice. The use of the software is limited to the number of licensed master instances for which the Customer has paid the agreed compensation. If the Customer requires a higher number of master instances, this shall require subsequent agreement/licensing. The Customer shall take the necessary precautions to prevent the use of the software by unauthorized persons.
- 4.4. The Customer is not entitled to rent, lend or otherwise make our software temporarily available to third Parties. Employees of the Customer and its Affiliates who need access to our software to fulfill their contractual duties are not to be counted as third Parties.
- 4.5. Insofar as the Customer uses in its software environment components of SAP Deutschland SE & Co. KG and its affiliated companies (hereinafter, "SAP"), our software will integrate itself therein. This integration may require separate usage rights from SAP. It is the Customer's responsibility to procure such rights. Customer shall be responsible for ensuring that it has sufficient licenses and corresponding rights of use from SAP. The provision of rights to use SAP software does not form part of the subject of our Services. This shall also apply if the Customer uses components from other manufacturers in its software environment. Our software accesses these under certain circumstances and provides integration functions where applicable. It cannot be ruled out that this integration will require separate usage rights from the third-Party manufacturers concerned. Any required rights of use must be procured exclusively by the Customer.

5. Compensation

- 5.1. The contractually agreed annual Provision Fees must be paid in advance at the beginning of each accounting period for a period of one year. Unless agreed otherwise, the Customer shall pay the contractually agreed Provision Fees for one year in advance.

Any agreed lump compensation sums (fixed prices) shall be due in full at the end of the month in which the Services are rendered. Agreed daily Service Fees shall be based on a duration of 8 hours, whereby the compensation is to be adjusted on a *pro rata temporis* basis in the event of over- or underutilization. Without prejudice to any acceptance, invoicing shall always take place at the end of each month for the Services rendered during that period.

- 5.2. All invoices shall be due for payment immediately in the net amount (without any deductions), unless agreed otherwise. Even without a reminder, the Customer shall be in default of payment at the latest two weeks after the due date and receipt of the invoice.
- 5.3. All prices do not include the statutory value added tax.

6. Term, termination and cessation of Contract

- 6.1. The start of the Fixed Term is the date defined in the Contract. After the Fixed Term, the Contract will be automatically renewed for a period of 12 months if and so long as it has not been duly terminated by one of the Parties at least three months in advance within a written notice to the end of a contractual year.
- 6.2. The contractual relation may also only be terminated by either Party without notice for good cause. "Good cause" entitling us to terminate the Contract shall be deemed to exist particularly in the event the Customer is in default with payment of the monthly fee for a period of more than two months in an amount at least equal to the agreed fee for the use of a two-month period.
- 6.3. The Customer is obliged to export its user data stored in the *aconso Cloud* by means of the functions provided for this purpose at the latest upon termination of the Contract. The Customer shall ensure the prerequisite for a retransfer of the user data and its storage on its own systems. The user data shall be made available to him in the standard data formats used by us via export functions in the *aconso Cloud*. We are entitled and obligated to delete the Customer's data stock in the *aconso Cloud* immediately after the end of the Contract and to destroy all copies made. The Customer is

obligated to confirm the handover of the user data and its completeness in writing to *aconso*. If the written confirmation is not received, the contractual relationship shall be automatically extended by a further 12 months.

7. Defects, notice of defects, liability for defects, reimbursement of expenses

- 7.1. We warrant that our software is not defective. In the case of all performances and Services, deviations from the performance specifications shall be deemed to be defects insofar as these impair the value or suitability for the usual use described therein to a more than insignificant degree or if we were unable to effectively grant the Customer the rights required for the contractually agreed use.
- 7.2. Defects must be reported to us immediately. The Customer shall provide us with details of the circumstances of the occurrence of the defect, its effects and possible causes.
- 7.3. The Customer shall make best efforts to support us in the search for the cause of the defect and ensure that all cooperation performances of the Customer or its vicarious agents required for the elimination of the defect are provided in due time and free of charge for us. This shall include, in particular, Information provided by suitable personnel.
- 7.4. The defect shall be remedied at our discretion either by
- 7.4.1. troubleshooting;
 - 7.4.2. providing a new program level / a defect-free *aconso Cloud*;
 - 7.4.3. pointing out ways to avoid the effects of the defect until the defect is definitively corrected;
 - 7.4.4. providing a workaround that does not unreasonably impede the runtime and response time performance of the software until the defect is definitively corrected; or
- 7.5. if we are repeatedly unable to remedy a defect within a reasonable period of time, the Customer may reduce the compensation (abatement) or rescind the Contract after a further grace period of at least four (4) weeks set in writing has expired without result. An insignificant defect in the contractual Services shall not give rise to defect claims.

- 7.6. We shall not be liable for defects if the Customer has modified the software (including the program parameters (customization)) without our prior written approval.
- 7.7. The Customer shall only be entitled to damage compensation claims due to defects insofar as our liability is not excluded or limited in accordance with Section 10.
- 7.8. Defect claims shall lapse within a period of 12 months. This does not apply if the corresponding defect was fraudulently concealed, concerns a warranted feature, and does not apply to damage pursuant to Section 10.3.

8. Duties and obligations of the Customer

- 8.1. As a technical service provider, we store and process content and data for the Customer that the Customer provides when using the software via the *aconso Cloud*. The Customer shall be obliged not to post/use any content and data that is punishable by law or otherwise illegal in absolute terms or in relation to specific third Parties and not to use any programs containing viruses or other malware in connection with the software. The Customer shall remain the responsible Party with regard to personal data and must therefore always check whether the processing of such data via the *aconso Cloud* is supported by the relevant permissions.
- 8.2. The Customer alone shall be responsible for all content used and data processed as well as for any legal positions required for this. As a matter of principle, we shall not assume any responsibility for checking the data entered by the Customer.
- 8.3. The Customer shall be obliged to indemnify us against claims of third Parties that are based on an unlawful use of the *aconso Cloud* by the Customer or that arise from data protection, copyright or other legal disputes caused by the Customer that are connected with the use of the *aconso Cloud*.

9. Force majeure

- 9.1. We shall be released from the obligation to perform based on the Contract if and to the extent the non-performance of Services is due to the occurrence of circumstances of *force majeure* after the conclusion of Contract.
- 9.2. Circumstances of *force majeure* include, for example:

- 9.2.1. fire, explosions, and floods, insofar as we are not responsible,
- 9.2.2. labour disputes lasting more than 6 weeks that have not been negligently brought about by us,
- 9.2.3. technical Internet problems beyond our control.

10. Liability

- 10.1. In all cases of acontractual and non-contractual liability, we shall provide compensation and reimbursement futile expenses exclusively in accordance with the following limits:
 - 10.1.1. in the event of intentional action and gross negligence in the full amount, likewise in the event of the absence of a warranted feature;
 - 10.1.2. in other events: only based on the breach of a material duty, but always only in the amount of the foreseeable damage. Liability shall be limited to EUR 50,000.00 per damage event and to a total of EUR 250,000.00, but in the case of breaches of duty in connection with a continuing obligation shall amount to at least the compensation payable to us by the Customer in the last 12 months before the occurrence of the respective damage event in connection with the continuing obligation and in the case of breaches of duty related to purchase or other Contracts shall amount to at least the total compensation agreed for the obligation concerned; a "material duty" within the meaning of this Section 6 shall exist in the case of duties the breach of which jeopardizes the achievement of the purpose of Contract or the fulfillment of which makes the proper performance of the Contract at all possible and compliance with which the Customer could reasonably expect;
 - 10.1.3. moreover, insofar as we are insured against the damage that has occurred, within the scope of the insurance coverage, subject to the condition precedent that the insurance company pays out the benefit.
- 10.2. In particular, we shall not be liable in the event of a slightly negligent breach of ancillary duties that are not material duties. In the event of initial impossibility, we shall only be liable if we were aware of the impediment to performance or we were not aware due to gross

negligence, provided no material duty is affected thereby.

- 10.3. The above exclusions of liability shall not apply in the event of fraudulent concealment of defects or in the event of the assumption of a guarantee or a procurement risk or for liability based on the Product Liability Act or for bodily injury (life, limb, health). No change in the burden of proof to the detriment of the Customer shall be associated with the above provisions.
- 10.4. If our liability is excluded or limited, this shall also apply to the personal liability of our employees, wage workers, salaried workers, representatives and vicarious agents.
- 10.5. With the exception of claims in tort, damage compensation claims by the Customer shall lapse, insofar as our liability is limited in accordance with this Section 10, one year after the statutory commencement of the limitation period.

11. Cooperation and Information requirements of the Customer

- 11.1. The Customer has informed itself about the essential functional features of the software and shall bear the risk as to whether the software meets the Customer's wishes and needs; the Customer has sought advice to answer questions of doubt from our employees or from expert third Parties before concluding the Contract.
- 11.2. The Customer alone shall be responsible for setting up a functional hardware and software environment that is sufficiently dimensioned for the use of the *aconso Cloud*.
- 11.3. The Customer shall observe the instructions given by us for the installation and operation of the software; the Customer shall inform itself at regular intervals about current instructions on the websites accessible via the Internet at www.aconso.com and take them into account during operation.
- 11.4. Insofar as we are obliged to provide further Services beyond the provision of the *aconso Cloud*, the Customer shall cooperate to the necessary degree free of charge, e.g., by providing employees, office space, hardware and software, data and telecommunications equipment.

12. Confidentiality

- 12.1. The Parties undertake to treat the Information they receive from the other Party as confidential. The term Information is, in this regard, to be understood broadly and irrespective of the type of transmission (e.g., in

writing, verbally, electronically or by viewing business documents). It includes, in particular, any illustrative material, such as documents, papers, records, notes, dossiers and data carriers, including the data stored thereon, as well as the Contract concluded based on these GTCs and all annexes and amendments referring thereto. Only Information that – according to the reasonable judgement of a prudent businessperson – is irrelevant and therefore does not need to be kept confidential is not considered confidential Information. If in doubt, the Party receiving the Information is obligated to agree on the status of the Information with the other Party. Their decision concerning the confidentiality of this Information – which is to be made at their reasonable discretion – is then binding.

- 12.2. The Parties shall refrain from the unauthorised use, disclosure, publication or dissemination of the confidential Information and undertake not to reproduce, disseminate or disclose to third parties the Information either themselves or through other persons.
- 12.3. The Parties undertake to use the confidential Information only for the purpose for which it was made available to them. In particular, it is prohibited to use the confidential Information for the purposes of competing with the other Party (i.e., for the purposes of creating and/or offering services and/or products that are similar to those of the Party concerned) either itself or through third parties.
- 12.4. The disclosure of confidential Information or parts thereof to employees of the Parties who (i.) work in the area of activity of the Party in question that is affected by the cooperative relationship – either as salaried employees or freelancers or as external third parties (e.g. subcontractors, consultants or other service providers) who have been involved by the Party in question in the specific cooperative relationship with the other Party; (ii.) are involved in the cooperative relationship between the Parties; and who (iii.) have been informed of the confidentiality of the Information and the associated obligations under this Section (12) is permitted. The Parties expressly declare that they shall be liable for any breach of the provisions set out in this agreement committed by an employee in the same way as they would be as for their own breaches.

- 12.5. The above in this Section (12) shall not apply insofar as:

- 12.5.1. the confidential Information in question is public knowledge at the time it is provided by

the other Party for a reason other than a breach of this agreement;

12.5.2. the confidential Information in question becomes accessible to the Party concerned by means of a source other than the other Party, provided that (i.) the Party receiving the Information has no reason to believe that this source itself is prevented by a legal or contractual obligation from disclosing the confidential Information in question; and (ii.) the Party concerned proves to the other Party within a period of three (3) weeks that it has received the Information and which third party it has received the Information from (this period shall commence when the Information is used for a purpose that falls outside of the intended purpose based on the agreement made between the Parties);

12.5.3. the other Party has authorised the disclosure of certain confidential Information to a third party of the Party concerned by prior written consent;

12.5.4. the confidential Information in question was already in the lawful possession of the Party concerned before it was made available by the other Party; or

12.5.5. the Party concerned is obligated to disclose the confidential Information in question due to the order or decree of a competent court, a competent authority or a mandatory statutory provision; in this case, the Party concerned shall inform the other Party in writing immediately after receiving the order / decree concerning the required disclosure or immediately after becoming aware of the disclosure obligation otherwise regulated by law and shall not make any further disclosure and shall assist the other Party in protecting the confidential Information as far as possible or having it protected by court order.

12.6. In all other respects, Section 5 of the German Act on the Protection of Trade Secrets (GeschGehG) shall remain unaffected by this Section (12).

12.7. The Parties shall observe the confidentiality obligations set out in this Section (12) for a period of at least five (5) years after the cooperative relationship ends.

13. Data security, data protection

13.1. The Customer and we ourselves shall comply with the applicable provisions of data protection law, in particular those applicable in Germany, and shall oblige employees deployed in connection with the cooperation between the Customer and ourselves to maintain data secrecy, unless they are already under a general obligation to do so.

13.2. Details on data protection duties and regulations can be found in the annex on job data processing, which shall form part of the contractual agreement. Pursuant to the provisions of law, the data protection items to be stipulated are set out there.

13.3. If the Customer collects, processes or uses personal data, the Customer guarantees that the Customer is entitled to do so in accordance with the applicable provisions, in particular those of data protection law, and shall indemnify us against claims by third Parties in the event of a breach thereof.

14. Miscellaneous

14.1. The Customer may only set off claims that are undisputed by us or have been declared by non-appealable judgement. With the exception of § 354a of the Commercial Code, the Customer may only assign claims arising from this Agreement to third Parties with our prior written approval. The Customer shall only be entitled to a right of retention or the defense of non-performance of Contract within this contractual relation.

14.2. The law of the Federal Republic of Germany shall apply to the exclusion of the UN Convention on Contracts for the International Sale of Goods. The place of performance and jurisdiction for all disputes arising from and in connection with this Agreement shall be our registered office in the case of Contracts with merchants.

14.3. Any modifications of or additions to this Agreement must be made in writing. This shall also apply to the modification or rescission of this Section.

14.4. Our SLA are also part of these GTC.