

## Terms and Conditions for Process Booster

### 1 Scope

- 1.1 In the field of industrial AI solutions, Vernaio GmbH ("Vernaio") offers software applications software-as-a-service basis (hereinafter "Software-as-a-Service" or "SaaS"), i.e. Vernaio's software applications are run on a cloud infrastructure of a contracted provider ("Hosting Provider") and the functionalities of the software application are made available to the customer remotely via an internet connection.
- 1.2 These Terms and Conditions ("T&C") for Process Booster apply to contracts concluded for the provision of the software application "Process Booster" as a software-as-a-service solution (hereinafter referred to as "Service"). The Process Booster software application is used to increase the productivity of production systems.
- 1.3 These T&C shall only apply to entrepreneurs, legal entities under public law, or special funds under public law within the meaning of paragraph 310 subsection (1) of the German Civil Code (*BGB*). They shall apply exclusively. Additional, deviating or conflicting standard terms and conditions of the customer shall not become part of the contract, unless Vernaio expressly agrees to them in writing. This also applies if the customer refers to terms and conditions in a standard order form or otherwise in connection with an order.
- 1.4 Offers from Vernaio shall be non-binding, unless they are expressly designated as binding. A contract between Vernaio and customer is concluded by Vernaio providing an order confirmation in text form or by mutual signing of an agreement between Vernaio and the customer.
- 1.5 The specific nature of the Service is set out in the Product Description for Process Booster as available on the Vernaio website. The Service is provided without custom features, unless otherwise agreed in writing. Vernaio will provide the Service to the customer with the availability set forth in the Service Level Agreement for Process Booster ("SLA") that will be provided to customer with the binding offer documentation.
- 1.6 The usability of the Service requires the provision of further services by Vernaio, such as data analysis, AI model creation and maintenance and configuration of the Service. These services are also covered by these T&C and are described in the binding offer documentation. They are

included in the Service Fees (as defined in Section 6.1) up to the amount of time specified in the offer documentation. Any additional time spent will be charged at the hourly rate agreed for services.

## **2 Use of Service**

- 2.1 Vernaio will provide the customer with remote access to the Service for the agreed term and in accordance with the provisions of these T&C and the Product Description. The scope of use is limited to one (1) production line of the customer as agreed with Vernaio in the order documentation.
- 2.2 The customer is entitled to the productive and commercial use of the Service for the agreed production lines exclusively for its own internal business transactions by its own employees and/or its affiliated companies within the meaning of §§ 15 et seq. of the German Stock Corporation Act (*AktG*) as well as by commissioned third parties.
- 2.3 The customer is not entitled to use the Service beyond the contractually permitted use or to have it used by third parties or to make it available to third parties. In particular, customer is not permitted to reproduce, decompile, modify, dispose of, or make available the Service or any part thereof. Except for the limited use expressly granted herein, no rights to the Service and any further developments are granted by Vernaio.
- 2.4 The customer is obliged to ensure that user and access permissions and identification and authentication safeguards assigned to the customer and its authorised users cannot be accessed by third parties and are not transferred to unauthorised users. Vernaio must be informed immediately, if the customer has reason to believe that user and/or access permissions may have been wrongfully obtained or misused by a third party.

## **3 Customer's Co-operation Obligations**

The customer is obliged to provide any assistance required for the provision of the Services free-of-charge and on a timely basis. If the co-operation on the part of the customer's personnel is required for the performance of the Services, the customer will provide sufficiently qualified personnel.

In addition, the customer will, in particular:

- a. ensure that the technical requirements for the Service are met, which will be provided to customer with the binding offer documentation,
- b. inform Vernaio immediately if customer becomes aware that the Service is unavailable or is otherwise not being provided properly and provide Vernaio with reasonable assistance in identifying and rectifying disruptions, and
- c. oblige its authorised users to comply with the provisions listed for the use of the Service in Section 7.

#### **4 Integration, Support, Consulting and Training**

- 4.1 Any additional services, including consulting and training services, shall be agreed separately and invoiced in accordance with Section 6.2. The customer's warranty rights under Section 8 remain unaffected.

#### **5 Service Modifications**

- 5.1 Vernaio is entitled to replace or modify the Service's functionalities at any time. Vernaio will inform the customer no later than three (3) days before the implementation of new or significantly modified functionalities. The implementation will take place on a date stipulated in advance and within the agreed maintenance window. Error corrections, data protection and security patches ("hot-fixes") may be deployed at any time in order to keep the Service operational.
- 5.2 If Vernaio significantly reduces the Service during the term, the parties shall mutually agree on a proportional adjustment of the Service Fees. Any other claims of the customer are excluded.

#### **6 Remuneration, Terms of Payment**

- 6.1 All fees and rates are subject to the applicable statutory value added tax. To the extent that the customer is legally obliged to deduct withholding tax from its payments to Vernaio, and to the extent that Vernaio is not entitled to offset this withholding tax against Vernaio's income tax on the basis of an official or court decision based on an applicable double taxation agreement

or the tax laws applicable to Vernaio, the customer may deduct the withholding tax from the payments to be made to Vernaio only to the extent that the customer, taking into account the withholding tax to be deducted, increases the remuneration for Vernaio in such a way that Vernaio receives the amount that Vernaio would have received if no withholding tax had to be deducted from the payments. To the extent that the customer deducts withholding tax, the customer shall provide Vernaio with official tax certificates from the competent tax authorities evidencing the payment of withholding tax by the customer on behalf of Vernaio.

6.2 The invoice amount is due within 30 days of the date of the invoice without any deductions.

6.3 If the customer defaults on payment, Vernaio is entitled to terminate the contract immediately without notice period. Vernaio reserves the right to assert further claims for late payment.

## **7 Intellectual Property Rights, Non-contractual Use of the Service**

7.1 The customer is obliged to ensure that its usage of the Service complies with the applicable laws and regulations. The customer is prohibited from using the Service to transfer data, content or information that violates statutory law or other legal provisions, in particular intellectual property rights and/or copyrights, rights under competition law, data protection law or other moral rights. The customer is responsible for any data, content or information it makes available or which is made available by its authorised users.

7.2 Unless authorised to do so, the customer, and any third parties acting on behalf of the customer, are prohibited from downloading data, content or information or accessing or allowing access to programs or systems operated or hosted on the Service or other devices or networks associated with the Service and from intruding into Vernaio's data. Moreover, the customer is prohibited from performing any actions likely to interfere with the smooth operation of the Service, and in particular from overburdening its systems.

7.3 The customer shall indemnify Vernaio against all third-party claims based on unlawful use of the Service by the customer or its authorised users or with its approval, or arising from disputes under data protection law, intellectual property law, copyright law or other legal disputes associated with the use of the Service. If the customer recognises or can reasonably be expected to recognise that such an infringement is imminent, the customer must inform Vernaio without undue delay.

- 7.4 Vernaio may block access to the Service and its data and delete the data, content and information concerned if the customer or its authorised users infringe essential obligations set out in the T&C. In this case, the customer remains obliged to pay the Service Fees.

## **8 Warranty**

- 8.1 Vernaio solely warrants that the Service complies with the Product Description throughout the contractual term and that no third-party rights oppose the contractual use of the Service. Vernaio will resolve any defects in the Service that may occur during the contractual term within a reasonable period of time. The warranty shall not cover downtimes during which the cloud server cannot be reached due to technical or other problems that are beyond the control of the Hosting Provider or Vernaio (e.g. cases of force majeure). The customer recognises that the Hosting Provider may also restrict access to the Services if the security of the network operation, the maintenance of the network integrity, in particular the avoidance of serious disruptions to the network, the software or data operated or stored on the cloud server require this.
- 8.2 The customer shall immediately notify Vernaio of any defects that occur via the ticket system provided by Vernaio in accordance with the SLA, describing the defect and its occurrence. The customer shall support Vernaio in remedying the defects and in particular provide all necessary documents, data, etc. that Vernaio requires to analyse and remedy the defect.
- 8.3 If the agreed availability in accordance with the SLA is not met, the customer shall be entitled to claim the Service Credits listed in the SLA. Any further claims by the customer for defects in the Service are excluded.
- 8.4 Vernaio shall be entitled to remedy a defect in the Service by deploying a new version of the Service or providing a workaround solution, provided the contractual scope of functionalities is retained.

## **9 Liability**

- 9.1 Vernaio shall be fully liable without restriction – regardless of the subsequent provisions of this section – for intentional or grossly negligent damage, for damages resulting from the injury to life, body or health, and as far as required under the German Product Liability Act (*ProdHaftG*).
- 9.2 In cases of slight negligence, Vernaio shall only be liable if cardinal obligations are violated and only to the extent the damages are foreseeable and typical for the type of contract. Cardi-

nal obligations are those whose fulfilment makes the proper execution of the contract possible in the first place and on the observance of which the contractual partners may regularly rely.

- 9.3 Vernaio's liability regardless of fault in relation to compensation for damages or expenses as set forth in paragraph 536a of the German Civil Code (*BGB*) for any defects present upon conclusion of the contract is excluded.
- 9.4 Vernaio is only liable for the loss of saved data if the customer has ensured that this data can be reconstructed at reasonable cost by means of a properly conducted data backup. In the context of the above limitation of liability and in terms of the amount, liability is limited to the costs of recovery.
- 9.5 These liability rules apply, irrespective of their legal basis, to all claims for damages and reimbursement, including pre-contractual and auxiliary contractual claims.

## **10 Term and Termination**

- 10.1 The contractual term shall be one (1) month and does not automatically extend.
- 10.2 The customer's right to extraordinary termination without notice if access to the Service as agreed herein is not provided in good time or is removed, whether in whole or in part, is excluded (§ 543 Section 2 (1) of the German Civil Code). Each Party is otherwise entitled to termination for good cause.
- 10.3 Notices of termination must be made in writing in order to be effective.

## **11 Confidentiality, Data Security and Data Protection, Reference**

- 11.1 The parties are obliged to treat as confidential business and trade secrets of the other party as well as information designated or identifiable as confidential that becomes known in connection with the execution of the contract and not to disclose them to third parties. Consultants of the parties who are professionally bound to secrecy shall not be deemed third parties within the meaning of this provision.
- 11.2 The customer is responsible for all customer data stored and processed in the Service. The customer agrees that Vernaio processes the customer's data required for the execution of the contract in compliance with data protection regulations. The customer is obliged to obtain the necessary consent from the data subjects whose personal data is stored and processed on

the cloud server within the framework of the applicable data protection laws. The customer shall indemnify Vernaio against all third-party claims and shall compensate Vernaio for all damages based on the lack of corresponding data protection consent or authorisation for data storage.

- 11.3 If Vernaio processes or uses personal data of the customer, its employees or contractual partners on behalf of the customer as part of the provision of the Service, the parties shall conclude a data processing agreement in accordance with the provisions of applicable data protection law, including but not limited to the General Data Protection Regulation (GDPR).
- 11.4 Vernaio may list in its marketing material, on its website or in other public communication the customer as a reference, as well as anonymised information from the provisions of the Service for the customer („use case description“) and use the customer's name and logo solely for the purpose of naming a reference customer.

## **12 Data Export and Deletion of Data**

- 12.1 From the effective date of termination, the customer may export the data from the Service within one (1) month.
- 12.2 After the customer has had the opportunity to export the data in accordance with Section 12.1, but no later than three (3) months after the end of the contract, Vernaio shall completely delete all data provided by the customer in the Service.

## **13 Final Provisions**

- 13.1 These T&C and the documents referred to herein conclusively regulate the contractual relationship between Vernaio and the customer. There are no ancillary agreements.
- 13.2 All amendments, supplements and terminations of the contractual relationship must be made in writing, including the waiver of this written form requirement.
- 13.3 Should individual provisions of these T&C be or become invalid, this shall not affect the validity of the remaining provisions. The invalid provision shall be replaced by a substitute provision which comes as close as possible to the purpose intended by the invalid provision; the same shall apply in the event of a loophole.

- 13.4 German law shall apply with the exception of the UN Convention on Contracts for the International Sale of Goods. Exclusive place of jurisdiction for all disputes arising from or in connection with this contractual relationship is Munich.