

// General Terms and Conditions of FNT GmbH (FNT) for Software as a Service

1. Scope / Service Level Agreement / Client's General Terms and Conditions / Severability Clause / Electronic Commerce

1.1. Scope

The following General Terms and Conditions („GTC“) shall apply to all - including future – agreements between FNT and a company within the meaning of § 14 BGB (German Civil Code) (hereinafter „Client“) initiated and / or concluded regarding the provision of FNT software for use as Software as a Service („FNT Software as a Service“) in the public cloud or in the private cloud.

These GTC shall also apply to all future FNT Software as a Service agreed upon with us, even where reference is not expressly made to these GTC, and also to services that we provide in addition to the FNT Software as a Service.

1.2. Service Level Agreement / Operations Manual

The offer, the service level agreement „FNT Software as a Service Private Cloud / Public Cloud“ („Service Level Agreement“) and the operations manual customized for the Client shall apply for all FNT Software as a Service in addition to the present GTC. In the event of a contradiction between the present GTC, the offer, those of the Service Level Agreement or the operating manual, the following order of precedence shall apply: offer, operating manual, Service Level Agreement, the present GTC.

1.3. Client's General Terms and Conditions

Client's general terms and conditions shall apply only to the extent that no provision has been stipulated in the present conditions.

1.4. Severability Clause

Should a provision of the present conditions be or become ineffective or inexecutable, then this shall not affect the validity of the remaining conditions.

1.5. Electronic Commerce

§ 312i (1) nos. 1, 2 and 3 German Civil Code BGB, which impose additional obligations upon FNT regarding contracts in electronic commerce, shall be excluded.

2. FNT Software as a Service

2.1. Cloud Variants / Operating Hours

FNT Software as a Service is available in the variants:

Public Cloud Standard and Public Cloud Enterprise, Managed Private Cloud and Unmanaged Private Cloud.

The services to be provided by FNT for the operation of the respective cloud, including variants that can be additionally booked, including the additional support packages, are specified in the Service Level Agreement and in the operating manual and shall be provided during the operating hours specified in the section „Service Levels“ for every variant.

2.2. Start of FNT Software as a Service

The start of the FNT Software as a Service depends on the variant selected by the Client and is specified in the Service Level Agreement in the section „Start of the FNT Software as a Service“.

3. Term / Termination

3.1. Term

The FNT Software as a Service shall start with the provision of the FNT Software as a Service. The FNT Software as a Service Agreement shall be concluded for the fixed term specified in the offer („basic term“) and shall automatically renew for another 12 months („renewal term“) if the Agreement has not been terminated by either party according to Section 3.2.

3.2. Termination

The Agreement for the FNT Software as a Service can be terminated with a notice period of 3 months to the end of the basic term or a renewal term. The right to termination for good cause shall remain unaffected. The notice of termination must be in text form.

3.3. After termination of the FNT Software as a Service

Upon termination of the respective agreement, the FNT Software as a Service will be suspended for the Client and further use shall no longer be possible and the Client's access data will be deactivated.

FNT shall send the Client a form within 14 days of termination of the FNT Software as a Service for the public cloud, in which the Client either instructs the deletion of his data stored on the FNT servers, the transfer of a database dump to his postal address or alternatively the retention of the database dump at FNT. The remuneration for each of these services shall depend on the FNT price list valid at the time of instruction.

If the Client does not return the completed form to FNT within a deadline despite a reminder or if he does not otherwise give instructions as to how to handle his data, FNT shall be entitled to create a database dump and to deposit it at a depository office at the expense of the Client pending payment of the fee for this database dump.

4. Remuneration and Payment Terms

4.1. Remuneration

The remuneration for the FNT Software as a Service arises from the offer from FNT or a framework agreement concluded with the Client.

4.2. Invoicing / Due Dates

The FNT Software as a Service shall be invoiced monthly in advance at the beginning of a month. At the request of the Client, an invoice can also be issued over the entire term.

The invoiced amount shall be payable 14 days after receipt of an invoice without deduction. A collective invoice over the entire Agreement term is possible at any time at the request of the Client - invoicing shall then be annually in advance.

4.3. Payment Arrears

In the event of Client's payment arrears and justified doubts regarding Client's solvency, FNT shall be entitled without prejudice to other rights to demand payment in advance for future services, to revoke payment periods granted, and to immediately call payable all claims arising from the business relationship.

As long as the Client is in arrears with a due payment, FNT shall not be obliged to provide the FNT Software as a Service. The Client being in arrears shall be obliged to compensate FNT for all reasonable dunning costs, collection costs and costs for obtaining information.

5. Granting Right of Use

5.1. Right of Use

Against payment of the remuneration agreed upon, the Client shall receive, limited to the term of the contracted FNT Software as a Service, the non-exclusive and non-transferable right to access the FNT software specified in the offer and to use the FNT software on the number of concurrent users, named users, functions and quantities agreed upon and specified for use in the certificate exclusively for performing his commercial or self-employed activity.

The number of "concurrent users" determines the maximum number of users that are allowed access to the software at the same time. The number of „named users“ determines the maximum number of users that can access the software with an access account registered to the name. The number of „quantities“ defines the number of objects to be managed by the Client using the software. With the „function“ type of use, the Client is entitled to use the specified function of the software with any number of users.

5.2. Update and Upgrades

In the context of the release upgrades (see Service Level Agreement section „Automated Release Upgrade“), FNT shall grant the Client the same rights of use to updates or upgrades that the Client has been granted to the original version of the software.

5.3. Application Documentation

The application documentation may be duplicated by the Client for internal purposes only. The Client shall not be allowed to edit, circulate or make the application documentation public.

5.4. Third-Party Software

Third-party software (software not developed by FNT, such as Office products used to display reports) shall be subject to the terms and conditions of use of the respective third-party software manufacturer.

6. Suspension of FNT Software as a Service, Back-Ups

6.1. Suspension of FNT Software as a Service

FNT shall be entitled to suspend the FNT Software as a Service or can initiate such suspension by the provider if there is reasonable suspicion that the data stored by the Client is illegal and / or infringes the rights of third parties. Reasonable suspicion of illegality and / or infringement of rights is given, in particular, where a court or public authority or a third party informs FNT or the provider of the infringement. FNT shall immediately inform the Client about the suspension and the reason for the suspension. The suspension shall be lifted as soon as the suspicion has proven to be unfounded.

6.2. Back-Ups

Depending on the variant selected by the Client, data backup in the context of FNT Software as a Service shall be performed either at the Client's data center or within the public cloud of FNT. The details of the data backup depending on the variant shall be specified in the Service Level Agreement in the section „Scope of Service“.

7. Client's Obligations

7.1. Participation by the Client / Provision of Hardware and Software by the Client

The participation activities incumbent upon the Client and the hardware and software to be provided by the Client are specified in the Service Level Agreement.

The Client must report defects in a comprehensible and detailed manner, stating in written form all relevant information that is needed to detect and analyze the defect. To be specified in particular are the work steps that led to the occurrence of the defect, the manifestation and the effects of the defect.

If the Client does not participate or only insufficiently, then FNT shall have the right to postpone the completion of the services affected by the participation to a later date or to terminate the affected service where participation was repeatedly not rendered despite a reminder by FNT. The expenditure of time incurred until the notice of termination shall to be remunerated by the Client.

7.2. Protection of Passwords

The Client shall be obliged to keep secret his access data and his password for using the FNT Software as a Service and to protect it against misuse by third parties. When choosing the password, the Client must observe the generally accepted rules for the use of passwords in terms of the length and complexity of the password. Changing the password is only possible online within the Client account. The Client must immediately inform FNT in the event that access data or the password is lost or when it is suspected that his data has been misused.

7.3. Indemnification of FNT by the Client

The Client agrees to indemnify FNT against all third-party claims based on FNT storing Client's data on FNT's servers.

7.4. Inability of the Client

In the event of economic inability of the Client to fulfill his obligations vis-a-vis FNT, FNT can terminate the Agreement with the Client by rescission, in the case of continuous obligations, by termination without notice. The same shall also apply in the event of Client's petition for insolvency. § 321 BGB and § 112 InsO (German Insolvency Regime) shall remain unaffected. The Client shall inform FNT in due time and in writing about an impending insolvency.

8. Material defects / Defects of Title

8.1. Warranty

FNT warrants that the FNT Software, during the term of the assigned FNT Software as a Service, has the properties, in particular the scope of performance, the approved deployment environment and the use options of the FNT software for the Client, which arises in the subsequent ranking from the offer and the respective application documentation.

FNT warrants that FNT Software as a Service will be available at 98.5% of time in the calendar year during the operating times agreed upon in the Service Level Agreement. Scheduled maintenance is part of the availability and shall not be counted and charged as downtime.

The warranty of availability can be expanded by ordering additional support packages.

8.2. Claims for Defects

Defects or malfunctions (hereinafter „incident“) of the FNT Software as a Service can be reported via the FNT Service Desk to the support of FNT by those employees of the Client which have been agreed upon between the Client and FNT as being employees in charge.

Defects of the software and third-party software and systems made available by FNT for providing the FNT Software as a Service can be rectified by FNT at their discretion by way of a new delivery or repair.

FNT shall rectify the defect within a reasonable time. FNT shall be entitled to bypass the defect by way of a workaround solution if the usability of the FNT Software as a Service is not substantially impaired.

8.3. Remuneration by FNT for „defects“ asserted by the Client

FNT shall be entitled to charge a customary fee for the costs incurred by a defect being reported, provided that

- FNT takes action as a result of a defect being reported without there being any defect, for example because the report was only based on a user error or a lack of knowledge in terms of the application technology, or
- a reported defect is not reproducible or otherwise demonstrable by the Client as a defect, or
- additional costs are incurred due to Client's failure to participate according to Section 7.1 of the present GTC.

8.4. Warranty of Title

FNT shall warrant that the use of the FNT Software as a Service and the use of the FNT software in the Client's country does not infringe any third-party rights, in particular copyrights.

8.5. Infringement of Third-Party Rights

If the intellectual property rights of third parties are infringed by the FNT software and if the Client is thereby barred from using the software or the FNT Software as a Service in whole or in part by a third party, then FNT shall at their discretion either provide the Client with the right to use the FNT software or the FNT Software as a Service or to design the FNT software free of intellectual property rights. Further rights of the Client shall exist only if FNT is unable to implement one of these measures at reasonable terms or if they fail.

8.6. Third-Party Assertion of Claims against the Client

If a claim is asserted by a third party against the Client for the infringement of intellectual property rights and FNT is liable vis-a-vis the Client for this, then FNT shall upon their written request indemnify the Client against these claims.

If the Client ceases to use the FNT software for reasons of mitigation or other important reasons, then he shall be obliged to inform the third party that cessation of use does not constitute acknowledgment of any property right infringement.

8.7. Exclusion of Claims Due to Defects in Title

The Client shall not be entitled to assert claims for defects of title if he has accepted these claims vis-à-vis a third party without the prior consent by FNT.

9. Liability of FNT

9.1. MiLoG (Minimum Wage Act)

FNT is committed to ensuring that their employees and the subcontractors engaged by FNT in Germany are remunerated in accordance with the statutory provisions, in particular in compliance with the Minimum Wage Act (MiLoG).

9.2. No-Fault Liability

No-fault liability of FNT for initial defects shall be excluded.

9.3. Negligent Behavior

Liability by FNT for damage caused by simple negligence shall

be excluded, unless damage to life, limb or health or the breach of essential contractual obligations is at issue.

9.4. Essential Contractual Obligations

In the event of simple negligence, FNT shall be liable for breach of essential contractual obligations limited to the damage foreseeable at the time of conclusion of the Agreement, but only up to a maximum of € 1,000,000.

9.5. No Liability for Interception of the Data Stream

FNT shall not be liable for wiretapping or interception of data by third parties which occurred after the transfer of the data to the router output at the data center used by FNT, even if the Client uses supposedly secure encryption mechanisms. Third-party attempts to gain access to the Client's data shall be communicated by FNT to the Client immediately upon discovery.

9.6. Product Liability Act

Liability under the Product Liability Act shall remain unaffected.

9.7. Further Liability

In all other cases, FNT's liability shall be unlimited unless a maximum liability is stipulated by law.

10. Confidentiality

FNT and the Client shall be obliged to treat information and knowledge (hereinafter „Information“),

a) which they have respectively obtained from each other and which is designated and marked as requiring confidentiality,

(b) which has been communicated verbally, provided that the recipient of such information is informed within 15 days of the verbal communication in writing that this information is in need of confidentiality; and

(c) which represents trade secrets as defined in Directive (EU) 2016/943 of the European Parliament and of the Council of June 8, 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure

as being confidential and secret and to not make it available to third parties without the written consent by FNT or the Client, respectively, or to use it for any purpose other than for the purpose for which it was communicated. This obligation shall not apply in the case of information that is or becomes generally known, or where the recipient of the information is ordered to disclose such information by court or regulatory measures.

11. Data Protection

11.1. Type of Data Processed

After the conclusion of an agreement regarding FNT Software as a Service, FNT shall process the following personal data of the Client:

name, address, e-mail address and telephone number of the Client,

name, e-mail address and telephone number of the authorized representatives of the Client and of the employees acting on behalf of the Client in concluding and implementing the Agreement, in particular of the employee in charge.

FNT shall process this data to the extent necessary for implementing the Agreement. This includes in particular processing the data for the collection of bank and credit information for the credit check of the Client, for issuing an invoice and for performing dunning and collection measures. The data shall be deleted automatically when the tax retention periods applicable to that data have expired.

11.2. Order Processing

If FNT processes and stores data of the Client (client data) other than that mentioned in Section 11.1 on servers of the data center in the context of FNT Software as a Service, the following shall apply: FNT shall process this Client data as an order data processor within the meaning of Article 28 DSGVO exclusively on behalf and according to the instructions of the Client and exclusively for the purpose of providing the FNT Software as a Service. FNT shall take appropriate technical and organizational measures to protect client data. The Client shall remain responsible for the legality of the collection, processing and use of Client data in accordance with the statutory provisions, in particular the BDSG-new (new Federal Data Protection Act) and the DSGVO. Further details shall be stipulated by the Parties in a separate order data processing agreement.

12. Set-Off, Right of Retention

The Client shall only be entitled to offset or assert a right of retention where a claim is undisputed or has been legally established. In the event of an undisputed or legally established notice of defects, a right of retention is permissible only in an appropriate and reasonable proportion in view of the defect and the purchase price.

13. Applicable Law, Jurisdiction

The legal relationships between the Client and FNT shall be subject to German Law while excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG).

The exclusive place of jurisdiction for any disputes between the Parties arising from or on the occasion of the business relationship shall be Ellwangen (Jagst), unless a different place of jurisdiction is necessarily prescribed by law.