

# **General terms of use for Software-as-a-Service**

## **Services (SaaS) of**

Ingentis Softwareentwicklung GmbH  
Raudtener Str. 7  
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(referred to below as **Ingentis**)

### **1. Material scope and subject matter of the contract**

The terms and conditions set out below ("General Terms of Use") apply to the use of and operational support for standard software programs offered by Ingentis with and without charge ("Contractual Software"), which Ingentis produces and provisions in the form of Software-as-a-Service (SaaS) via the Internet.

The subject matter of the Agreement is as follows:

- the licensing of the software programs and services, set out at [orginio.de](http://orginio.de), for use via the Internet
- the storing and processing of the Customer's data on servers in the computer center, and hence the surrendering of memory space on servers in the computer center

This Agreement does not cover customized software programs.

Only the General Terms of Use of Ingentis shall apply. Conflicting terms and conditions, or terms and conditions of the user that deviate from these General Terms of Use, even upon knowledge thereof, shall not be an integral part of the Agreement unless the validity thereof is expressly approved in writing by authorized representatives.

## **2. Nature and scope of the services**

- 2.1. The specific performance and function scope of the SaaS is set out in the respective Performance Description applicable at the time of the Agreement being concluded. Use of the SaaS does not include any licensing of the software for local installation on the user's system.
- 2.2. Ingentis shall be entitled to have the SaaS provisioned through third parties in the capacity of sub-contractors. Ingentis shall be liable for the services of sub-contractors to the extent that they had been provisioned by itself.

## **3. Conclusion of the contract**

- 3.1. All quotations from Ingentis are non-binding and subject to confirmation.
- 3.2. The Customer declares its offer of contract as binding by filling out and sending the online order form.
- 3.3. The Agreement is deemed concluded on receipt of the order confirmation or the login data, the latest time being the provision of services by Ingentis.

## **4. Technical requirements, service interface**

- 4.1. Use of the provisioned SaaS requires fulfilment of the technical requirements set out at [orginio.de](http://orginio.de).
- 4.2. The transfer point for the SaaS is the router interface of the computer center used by Ingentis to the Internet. The user is responsible for its own connection to the Internet, the provision or maintenance of the network connection to the computer center, and also for the procurement and provision of network access components for the Internet.

## **5. Access and authentication**

- 5.1. The SaaS and other services offered at [orginio.de](http://orginio.de) can be used only following successful registration by the user. Use of the SaaS and other services, which are subject to registration, requires a user to have been registered by an authorized natural person. The user undertakes in this respect to provide correct and complete details as specified by the registration form and to keep the data up-to-date even following registration.
- 5.2. Upon use of the SaaS and other services, which are subject to registration, the users named by the user beforehand are authenticated by means of procedures such as verifying the user name and password.
- 5.3. The user is responsible for keeping their login data - especially user names and passwords - secret and for refraining from disclosing such data to third parties. The user must also ensure that the SaaS and other services, which are subject to registration, are used only by them and in compliance with these Terms of Use. If login data or passwords become lost or such data are suspected of having being misused, the user must notify Ingentis immediately. In case of misuse, Ingentis shall also be entitled to disable the offered SaaS and other services.
- 5.4. The user shall be liable for any use carried out by means of their login data, unless such user is able to prove that they are not in breach of their duties of care.

## **6. Availability of the SaaS and other services**

- 6.1. The offered SaaS and other services are essentially provisioned to the user at the transfer point 24 hours per day, 7 days per week.
- 6.2. Ingentis handles the daily monitoring of the basic functions of the SaaS and other services. Ingentis shall be entitled to interrupt the SaaS for maintenance purposes or in order to meet other technical requirements at any time. Ingentis shall endeavour to minimize interruptions for the user and to send advance email notification to the user of prolonged interruptions in due time.
- 6.3. Moreover, Ingentis shall be entitled to restrict access to the SaaS and other services, insofar as this is essential to the security of the network operation and the maintenance of the network integrity, software or stored data. Ingentis shall send advance email notification to the user of any foreseeable interruptions caused thereby in due time.

## **7. Duties and obligations of the user**

- 7.1. The user must fulfil the following duties and obligations:
- Provide to Ingentis the data required to use the SaaS in a manner that meets the technical specifications of Ingentis
  - Ensure compliance with all applicable laws and other statutory provisions of the Federal Republic of Germany and during use of the SaaS and other services
  - Refrain from transferring any data or contents to computer center servers that infringe laws or other statutory provisions or violate third-party trademarks or copyrights or any other third-party rights
  - Ensure that no data or contents are retrieved by the user or unauthorized third parties without permission
  - Prevent manipulation and hacking of programs, SaaS and other services or data networks of Ingentis
  - Immediately notify deficiencies and shortcomings of the SaaS and other services, and provide all the information relevant to the rectification thereof
- 7.2. If the user collects, processes or employs personal data in the absence of permission to use, the requisite consent must be obtained from the parties concerned. Insofar as Ingentis processes sensitive data as defined by Section 9 of the GDPR, the Customer must notify the provider immediately in writing accordingly.
- 7.3. Ingentis and its vicarious agents must be indemnified against all third-party claims asserted for the illegal use of the SaaS and other services by the user or with the consent thereof, or which ensue in particular from disputes concerning data protection, copyright or other laws. If the user recognizes the threat of such a violation, the user must notify Ingentis immediately in writing accordingly.
- 7.4. Ingentis shall be entitled, in case of serious breaches of the user's obligations in accordance with para. 7.1 – 7.3, and also if such a breach is justifiably suspected, to disable the SaaS and other services at the user's expense.

## **8. Rights of use**

- 8.1. Ingentis shall grant to the Customer and the affiliates thereof, pursuant to Section 15 AktG [Companies Act], the non-exclusive and non-transferrable right, which cannot be sub-licensed and which is limited to the contractual term, to use the SaaS and other services via the Internet. The user shall have no other rights.
- 8.2. The user shall not be entitled to use the SaaS and other services beyond the

permitted use as specified in the Performance Description, or to allow third-party use of such services, or to disclose such services to third parties that are not vicarious agents of the user. Specifically, the user is not permitted to duplicate, "reverse engineer", decompile, disassemble or assign the software or any parts thereof. Moreover, the user is not permitted to use any part of the software for the purposes of creating a separate application.

- 8.3. The user must provide to Ingentis immediately and upon request all the information required to assert third-party claims ensuing from unauthorized use, in particular the name and address, as well as the nature and extent of the unauthorized use.

## **9. Data hosting**

- 9.1. Ingentis shall provide the user, following activation of the SaaS and other services concerned, with memory space on a server in a computer center. The memory space is provided optionally on servers of certified computer centers in western Europe or USA. The user is able to choose upon registration.
- 9.2. The memory space may be used exclusively as part of the SaaS and other services provided for such purpose. In particular, the user shall be entitled to upload and download data only if provision for such data transfer is made as part of the envisaged functionalities.
- 9.3. The customer has no rights in rem to the servers and is not, in principle, entitled to demand access to the premises in which the servers are located. This shall be without prejudice to the access rights of a data protection officer of the user following written announcement and at the expense thereof for verification and compliance with the requirements in accordance with the GDPR, as well as any other legally and contractual compliant handling of personal data by Ingentis.

## **10. Terms of payment**

- 10.1. The level of remuneration for the SaaS and other services agreed with Ingentis under the terms of the order is based on the Performance Description and price overview provided to the user. The user is afforded the opportunity to calculate in advance the costs they will incur by means of an integrated price calculator. The user is also able to check out at any time, with their permissions, the services it has assigned and used and view the latest billing data.
- 10.2. Ingentis shall be entitled to send bills via email and/or provision such bills to the

customer online. If the user demands that bills are sent by post, Ingentis shall be entitled to demand processing fees and postal charges for each invoice.

- 10.3. The agreed remuneration will fall due for net payment immediately upon billing, and can be settled by credit card or PayPal.
- 10.4. Any costs incurred for returned debits shall be paid by the user, insofar as the user is responsible for such returned debits.
- 10.5. If the user defaults with payment, Ingentis shall be entitled to demand default interest in the amount of 4% above the base rate applied by the ECB.
- 10.6. If the user defaults with payment, Ingentis shall also be entitled to disable access to the SaaS and other services until such times as all claims, no matter what the legal grounds thereof, have been settled by the Customer.
- 10.7. The user shall be entitled to offset only claims acknowledged by Ingentis or established with legal effect.

## **11. Liability**

- 11.1. Ingentis shall be liable to the user for all loss caused by intent or gross negligence.
- 11.2. In case of slight negligence, Ingentis shall be liable for loss of life, personal injury and harm to health.
- 11.3. Ingentis cannot be held liable without fault for loss caused by deficiencies existing at the time of the contract being concluded.
- 11.4. As technology currently stands, it is not possible to eliminate all risks arising in connection with use of the Internet. For this reason, Ingentis cannot be held liable for data losses, interrupted data transfers or other such problems caused by technical failures which are beyond its control (force majeure, third-party negligence). This liability waiver applies in particular to damaging events on transmission paths of telecommunication service providers, or in case of disruptions within the Internet.
- 11.5. Ingentis shall not be liable for the accuracy, relevance or completeness of data and contents transferred by the user, or that such data are free of third-party rights or that the user is acting lawfully in transferring the data and contents to the computer center or to Ingentis.
- 11.6. All liability regulations also apply in favor of employees, representatives and vicarious agents of Ingentis.
- 11.7. Any liability in accordance with the provisions of the Product Liability Act shall remain unaffected.

## **12. Changes in performance**

- 12.1. Ingentis shall be entitled to make changes or additions to the SaaS and other services at any time, either in whole or in part, by means of updates, upgrades, new versions etc.
- 12.2. Ingentis shall notify the user about new versions of the SaaS and other services. Information about the changes and additions contained in the versions can be requested from Ingentis in writing.

## **13. Non-disclosure**

- 13.1. Ingentis and the user undertake to refrain from disclosing any confidential information made available to them by the other party under the contractual relationship, and to use such information only for the purposes of the contractual collaboration. This includes in particular data, drawings, drafts, sketches, plans, descriptions, specifications, measurement results, calculations, experiences, procedures, models, knowledge and processes, confidential expertise, as well as other as yet undisclosed industrial property right applications.
- 13.2. Confidential information must not be passed on to third parties, insofar as the contracting party concerned does not use third parties in order to accomplish the tasks ensuing from the contractual relationship.
- 13.3. The contracting parties shall ensure that all the employees and vicarious agents they deploy in order to furnish the contractual services observe and strictly comply with this non-disclosure clause.
- 13.4. Exceptions from the non-disclosure clause:  
This non-disclosure clause does not apply to information which, verifiably,
  - was known to the receiving contracting party prior to disclosure
  - was public knowledge or generally accessible prior to disclosure
  - was public knowledge or generally accessible following disclosure without the involvement or negligence of the receiving contracting party
  - is essentially equivalent to information which was disclosed or made accessible to the receiving contracting party at any point in time by an authorized third party
  - which the receiving contracting party developed or had developed independently, regardless of being aware of such information

The burden of proof for the existence of the aforementioned exceptions rests with the receiving contracting party.

#### **14. Data privacy and data security**

- 14.1. Ingentis shall furnish the offered services, insofar as processing and use concerns personal data, by way of order data processing pursuant to Section 28 ff. GDPR for the user. The user remains, both contractually and under data protection laws, the data owner and is responsible for assessing the legality of the data processing, for safeguarding the rights of the parties concerned and for complying with the provisions of the GDPR and other data protection provisions.
- 14.2. Ingentis will use and/or process personal data solely as instructed by the user and for the purpose of fulfilling the terms of this Agreement. Ingentis is forbidden, without the user's written consent, to disclose to third parties any data which are not used for furnishing the contractual services. With respect to personal data, Ingentis will observe and follow all instructions of the user it deems reasonable. In particular, Ingentis will immediately comply with and double check instructions of the user regarding the correction, deletion and blocking of personal data. Any consequences of instructions thus issued shall be borne by the user. The instructions must be given in writing.
- 14.3. Ingentis undertakes not to make any copies or records of the data surrendered to it, or to pass on such data to third parties. Exceptions are copies or other records that are essential to proper data processing.
- 14.4. Ingentis shall ensure that the technical and organizational measures and safety precautions pursuant to GDPR are implemented.
- 14.5. In order to furnish the SaaS and other services, Ingentis shall use only employees and sub-contractors who are bound to data protection and compliance with the obligations ensuing from the aforementioned regulations.
- 14.6. Ingentis shall warrant the use of current and secure encryption technologies at all times for data interchange processes and for storing the user's data while furnishing the SaaS and other services.

Ingentis hereby expressly makes the user aware that, as technology currently stands, data protection cannot be fully guaranteed for transfer over open networks such as the Internet. The user is aware that Ingentis has the technology to view the pages stored on the web server and, under certain circumstances, also other data of the user stored there. Other Internet users may also have the technology to hack into the secure network and control communication traffic. Therefore, the user makes its



own provision for the security of the data it transfers to the Internet.

- 14.7. The user consents to personal data (master data) and other information concerning its usage behavior (connection data) (e.g. time, number and duration of connections, login passwords, uploads and downloads), being stored by Ingentis for the contractual term, insofar as this is required to fulfil the contractual purpose, in particular billing purposes. The master data also includes the user's telephone numbers, the aim being to ensure swift contact with the user in case of urgent enquiries, to confirm orders and for general communication with the customer. The user can object to their data being used in such a manner.
- 14.8. The user consents that data relevant for payment via credit card or PayPal are transferred to PayPal, Inc. in third countries as well. Ingentis affirms that only data which are required for the payment process are transferred.
- 14.9. The User and Ingentis are obliged to conclude a contract for order processing in order to safeguard all rights and obligations of the User, Provider and the circle of possibly affected persons according to the GDPR. Use of the offered SaaS services and services is only possible after conclusion of the corresponding contract for order processing. In order to conclude the corresponding agreement, the user will be asked to confirm the corresponding agreement after his registration. Further use of the offered SaaS services and services is not permitted without confirmation.

## **15. Term and termination**

- 15.1. Unless otherwise agreed, the contractual term begins when the order confirmation is communicated to the user.
- 15.2. The Agreement is initially concluded for a period of 1 month and will automatically be extended by further one month periods unless cancelled in writing with a one month period of notice to the end of the extension period.
- 15.3. The right of either party to terminate for good cause exists for Ingentis in particular if the Customer is in breach of its obligations and duties.
- 15.4. Ingentis is not entitled to continue using the Customer's data once this Agreement has come to an end. The user will therefore download the customer data stored under the terms of the Agreement by way of an online transfer prior to the end of the contractual term. Upon confirmation of successful data transfer by the user, Ingentis will immediately delete the user's data and destroy any copies made. Moreover, the provider will return to the Customer or delete, within the aforementioned period, all documents and records it has surrendered to the Customer for the purpose of performance.

- 15.5. Market surveys and the data thereof created during the contractual term with the Customer's involvement do not constitute customer data and remain the property of Ingentis.
- 15.6. Ingentis explicitly reserves his right to delete free of charge accounts of users after notification and announcing a deadline via email. In such cases Ingentis doesn't assume liability for loss of data of any kind.

## **16. Final provisions**

- 16.1. The place of jurisdiction for all disputes ensuing, either directly or indirectly, from the contractual relationship is the place of business of Ingentis. Ingentis is, however, also entitled to sue the customer at its place of business.
- 16.2. The contractual relationships existing between the parties are governed by the law of the Federal Republic of Germany to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).