

SaaS Agreement - T&C

IMPORTANT – READ CAREFULLY: This is a legal agreement (“Agreement”) between you (“You” or “Customer”) and 1000grad (“1000grad”) – “the Parties”. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, DO NOT INSTALL OR USE THE SOFTWARE, ASSOCIATED DOCUMENTATION, SERVICE OR ANY PORTION THEREOF AND DO NOT REQUEST OR ACCEPT SUPPORT SERVICES FROM 1000GRAD. WARRANTIES, SUPPORT, LICENSES, AND DAMAGES ARE DISCLAIMED AND/OR LIMITED BELOW, PLEASE READ ENTIRELY AND CAREFULLY.

By default the contractual partner is 1000° digital Gesellschaft für Multimedia u. E-Commerce mbH (hereinafter referred to as “1000grad”), Lampestrasse 2, 04107 Leipzig, Germany (registered with Leipzig District Court HRB 19362).

§ 1 Applicability of the Agreement

1000grad SaaS Agreement – Terms and Conditions (SAASATC) are applicable for all software-as-a-service sales of 1000grad. Any conflicting or deviating terms or conditions of the Customer are not applicable, as long as 1000grad does not explicitly accept them in writing.

The Customer may, at any point in time, also after the formation of a contract, open, print, download or save these SAASATC via the Link “SaaS Agreement – T&C” from www.1000grad.de/unternehmen/vertragsbedingungen/.

§ 2 Formation of the Agreement

(1) The formation of a service contract for services of 1000grad is triggered by;

a) the receipt of the letter of acceptance for a written quotation of 1000grad, or
b) the acceptance of the request via E-Mail by 1000grad, if the customer has previously used the booking functionality of the respective APPLICATION or SERVICE of 1000grad by entering complete and correct invoicing information along with the selection of the offering to be purchased and by pressing the button “Purchase”.

(2) The 1000grad websites solely represent a request to submit quotations.

(3) The Customer must be a corporation or entrepreneur within the meaning of § 14 BGB (German Civil Code), that is a natural or juristic person or a non-incorporated firm having legal capacity, which at the time of formation of the Agreement, solely acts as part of their commercial function.

§ 3 Prices

(1) The prices for 1000grad’s products and services are based on the current price lists or on the written quotation.

(2) The remuneration shall become immediately due for payment upon the rendering of the invoice for the entire contract term. The remuneration shall be payable for each calendar month commenced as from the provision of the use in operable condition. The Customer may settle the same by means of bank transfer or accepted credit cards. Subscriptions are payable in advance for each calendar month. The full monthly subscription price will be charged if the customer announces individual licenses before the end of the month, this does not apply to a denunciation for good reason. In this event the fee is to be repaid pro rata. In the case of default in payment, the statutory provisions shall apply.

(3) 1000grad shall be entitled to increase the remuneration for the first time after the expiration of 12 months following the commencement of the Agreement upon written notice of 4 weeks, with effect from the commencement of the month following thereon. The Customer shall have the right, within a period of 4

weeks following receipt of the notice, to terminate the contractual relationship in writing. 1000grad shall draw the attention of the Customer to this right of termination with each notice of increase.

(4) The Fee for the products or services shall be owed with the addition of any applicable tax.

(5) Additional services may be delivered by 1000grad according to then current rates for time and actual expenses incurred in the delivery of such service at a cost mutually agreed to in advance by the parties under a separate Statement of Work (SoW).

§ 4 Confidentiality

(1) The parties hereto shall maintain as confidential, all information which they receive from each other within the scope of this contractual relationship, and only use the same vis-à-vis third parties – irrespective for which purpose – with the previously obtained written consent of the respective other party. Information to be treated confidentially shall only include information which is expressly designated as confidential by the party providing the information and such information whose confidential nature unequivocally derives from the circumstances of the provision of the same. In particular the CLIENT DATA is to be treated confidentially by 1000grad, should 1000grad obtain knowledge of the same.

(2) The obligations under para. 1 shall not apply for such information or any parts thereof in respect of which the recipient party proves that

a) it had knowledge of the same or the information was generally accessible prior to the date of receipt, or

b) the information was in the public domain or generally accessible prior to the date of receipt, or

c) the information was in the public domain or generally accessible following the date of receipt without the party receiving the information being responsible therefore.

(3) The obligations under para. 1 shall also continue in existence beyond the end of the Agreement for an indefinite period of time for as long as the criteria of exception under para. 2 have not been proven.

§ 5 Insolvency or threatened insolvency of a party to the Agreement

Either party shall notify the other party without delay if

(1) it has made application for the opening of insolvency proceedings or intends to do so in the coming 14 calendar days,

(2) the opening of insolvency proceedings has been applied for by third parties,

(3) it must cease payments by reason of financial difficulties,

(4) in temporal connection with financial difficulties, measures have been taken against it for the satisfaction of claims of third party creditors, or

(5) in temporal connection with financial difficulties, it has consented to agreements for the satisfaction of claims of third party creditors.

§ 6 LIABILITY; LIMITATION OF LIABILITY

(1) THE PARTIES SHALL BE LIABLE TO EACH OTHER WITHOUT LIMITATION IN THE CASE OF DELIBERATE INTENT, WILLFUL MISCONDUCT OR GROSS NEGLIGENCE FOR ALL DAMAGE CAUSED BY THEM OR THEIR STATUTORY REPRESENTATIVES OR VICARIOUS AGENTS.

(2) IN THE CASE OF ORDINARY NEGLIGENCE, THE PARTIES SHALL BE LIABLE WITHOUT LIMITATION ONLY IN THE CASE OF INJURY TO LIFE, LIMB OR HEALTH.

(3) EXCEPT AS EXPRESSLY PROVIDED HEREIN A PARTY SHALL ONLY BE LIABLE FOR DAMAGES ARISING OUT OF THE BREACH OF A FUNDAMENTAL CONTRACTUAL DUTY, ANY BREACH OF WHICH WOULD JEOPARDIZE THE PURPOSE OF THIS AGREEMENT (A "CARDINAL DUTY"). LIABILITY FOR BREACH OF A CARDINAL DUTY SHALL BE LIMITED TO THE REIMBURSEMENT OF THE FORESEEABLE DAMAGES WHICH TYPICALLY ARISE OUT OF THE BREACH OF SUCH A DUTY.

PURSUANT TO § 536a BGB – German Civil Code, 1000GRAD EXPRESSLY DISCLAIMS ALL LIABILITY, IRRESPECTIVE OF FAULT, FOR DAMAGES ARISING OUT OF DEFECTS PRESENT AT THE TIME OF THE CONCLUSION OF THIS AGREEMENT, EXCEPT THAT SECTIONS 6(1) AND 6(2) SHALL REMAIN UNAFFECTED.

(4) IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, REGARDLESS OF THE FORM OF ACTION (INCLUDING NEGLIGENCE OR STRICT LIABILITY), WHETHER OR NOT THE PARTY IS ADVISED OF OR MIGHT HAVE ANTICIPATED THE POSSIBILITY OF SUCH DAMAGES.

(5) EACH PARTY S LIABILITY SHALL BE LIMITED TO THE AMOUNT PAID OR PAYABLE BY THE CUSTOMER TO 1000GRAD FOR THE SERVICES PROVIDED UNDER THIS AGREEMENT, AND IN NO EVENT SHALL EITHER PARTY S LIABILITY EXCEED ONE MILLION DOLLARS.

§ 7 References

1000grad is explicitly allowed to name the customer as reference in sales material, in the Internet and in other publications if there are no legitimate interests of the customer in conflict with naming the reference. The customer agrees already now to entitle 1000grad to e.g. use the respective logo. The customer will inform 1000grad if specific policies for the usage of such logo or reference naming exist.

§ 8 Court of jurisdiction

(1) In so far as the Customer is a businessman, a legal entity under public law provisions or a special body of assets under public law provisions, Leipzig is agreed as the court of jurisdiction for all disputes which arise from or in connection with this Agreement.

§ 9 General Terms

(1) The contractual relationship between the parties shall be governed by German law with the exclusion of the UN Convention on the International Sale of Goods.

(2) The contractual language is German. If these SAASATC (in German) have been translated and made available to the customer in another language, the contractual relationship with 1000grad is still governed by the German language version. This holds especially if sections are in conflict between the original and translated version.

(3) Amendments or supplements to this Agreement must be made in writing.

(4) Should individual provisions of this Agreement be ineffective, the effectiveness of the remainder of this Agreement shall remain unaffected thereby.

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