General Terms and Conditions ZEP/ZEP Clock

provantis IT Solutions GmbH

1. Scope, Form

1.1. These General Terms and Conditions („GTC") apply to the distribution of „ZEP", a modular SaaS solution accessible via the Internet browser and which enables the users (hereinafter the „Customers") to record time spent on projects. In the following, „ZEP" refers to the specifically ordered module package.

1.2. The GTC also apply to „ZEP Clock", a version of ZEP that is used for the mere recording of working hours. As far as „ZEP" is mentioned in the following, both ZEP and ZEP Clock are meant. A distinction is only made by name where necessary.

1.3. ZEP is an offer of provantis IT Solutions GmbH, registered at the local court (Amtsgericht) of Stuttgart (Germany), HRB 732230 (hereinafter „we"/"us").

1.4. Our GTC apply exclusively. Deviating or conflicting terms and conditions are not recognized by us unless we have expressly agreed to them.

1.5. Individual agreements and specifications in our order confirmation take precedence over the GTC.

1.6. Legally relevant declarations by the Customer (such as setting of deadlines, notification of defects or withdrawal) must be made in writing or text form (e.g. letter, e-mail, fax). Legal formal requirements and further proof, in particular in the event of doubts about the legitimacy of the person making the declaration, shall remain unaffected.

1.7. References to the applicability of statutory provisions shall only have clarifying effect. Even without such clarification, the statutory provisions shall therefore apply unless they are directly amended or expressly excluded in these GTC.

\2. Conclusion of Contract

2.1. Our offers are subject to change without notice (freibleibend) and are non-binding unless they are expressly designated as binding or include a specific acceptance period. This also applies if we have provided the Customer with documentation, product descriptions or other documents.

2.2. The order placed by the Customer shall be deemed to be a binding contract offer. Unless otherwise stated in the order, we are entitled to accept this contract offer within three working days (Mon-Fri, excluding federal and Baden-Württemberg public holidays) after its receipt by us. The acceptance can be declared either in writing (e.g. by order confirmation) or by providing ZEP.

2.3. The legal relationship between us and the Customer shall be governed solely by the contract concluded in writing, including these GTC. This fully reflects all agreements between the contracting parties on the subject matter of the contract. Verbal promises on our part prior to the conclusion of the rental contract are legally non-binding and verbal agreements between the contracting parties are replaced by the written contract, unless expressly agreed otherwise between the contracting parties in each case.

3. Provision of ZEP

3.1. We shall provide ZEP to the Customer for the agreed term in the respective current version (cf. Sec. 3.6) for the agreed number of authorized users against payment for retrieval via the Internet at the delivery point by means of access via a browser.

3.2. The functional scope of ZEP and its modules as well as the conditions of use are available on the website at www.zep.de.

3.3. The delivery point is the router exit at the data center used by us. We are not responsible for the telecommunication connection between the Customer and us up to the delivery point.

3.4. In the case of ZEP (not ZEP Clock), the Customer can add or cancel modules and/or increase or decrease the number of agreed users at any time via the e-mail address mentioned in Sec. 7 with effect from the next calendar month. Reference is made to Sec. 9.2.

3.5. If we provide the Customer with user names and user passwords, the Customer must change these to user names and passwords known only to the Customer without undue delay.

3.6. We may update and further develop ZEP at any time and in particular adapt it due to a changed legal situation, technical developments or to improve IT security. In doing so, we will adequately consider the legitimate interests of the Customer and inform the Customer about necessary updates in due time. In case of a significant impairment of the legitimate interests of the Customer, the Customer has a special right of termination.

3.7. We do not owe further services such as customizing or installation services, training or individual further developments of ZEP; unless specifically agreed.

4. Availability and Response Times

4.1. Unless otherwise agreed, we owe an availability (= technical usability at the delivery point) of ZEP of 99.8% as an annual average. The measuring instruments of the operator of the data center are decisive for the determination of the availability rate.

4.2. The promised availability is understood without maintenance times. We will perform these outside normal business hours and to a reasonable extent. If, in exceptional cases, we wish to carry out maintenance work beyond this, we will give the Customer reasonable advance notice.

4.3. Also excluded from the agreed availability are interruptions in availability that we may deem necessary for security reasons (e.g. in the event of a denial-of-service attack or a serious security vulnerability in third-party software used without an available patch), provided that we had taken appropriate security precautions.

4.4. The Customer shall immediately notify any disruptions to the support contact data listed in Sec. 7. We will respond to serious disruption notifications (Sec. 4.5) during our business hours (Monday - Friday, 9:00 a.m. - 5:00 p.m.) German time, excluding federal and Baden-Württemberg public holidays; hereinafter the „Business Hours") within four hours, and to other disruptions within a reasonable period of time. Example: We receive notification of a serious disruption at 4:00 p.m. We will then get back to you by 12:00 p.m. the following day.

4.5. We will remedy serious disruptions (the use of ZEP as a whole or a main function (i.e. a function that is indispensable for a meaningful use of ZEP) is not possible) within 24 hours after our reaction (Sec. 4.4). If and as soon as it is foreseeable that a remedy of the disruption is not possible within this period of time, we will inform the Customer about this immediately and communicate the expected exceeding of the period of time and provide a work-around solution until the remedy.

4.6. We will remedy other significant disruptions (main or secondary functions of ZEP are disturbed, but can be used; or other not only insignificant disruptions) within 48 hours from our reaction (Sec. 4.4).

4.7. The elimination of insignificant disruptions is at our discretion.

5. Rights of Use

5.1. We grant Customer a simple (= non-exclusive), non-sublicensable and non-transferable right to use ZEP for its own business purposes by its own personnel within the agreed scope of license for the duration of the contract.

5.2. The Customer shall not be entitled to any rights not expressly granted to the Customer above. Unless otherwise agreed, the Customer is in particular not entitled to make ZEP available for use to third parties - including companies affiliated with the Customer in terms of Sec. 15 et seq. German Stock Corporation Act (Aktiengesetz) - against payment or free of charge.

6. Granting of Storage Space

6.1. Unless otherwise agreed, we shall also provide the Customer with sufficient server storage space to store its data for the purposes of the contract.

6.2. The Customer is not entitled to transfer this storage space to a third party for use, in part or in full, against payment or free of charge.

6.3. We will perform daily data backups. Supplementary reference is made to Sec. 8.8.

7. Support

During Business Hours (cf. Sec. 4.4), we provide support for questions regarding the use of ZEP under the following contact data:
E-mail: zep@provantis.de / Tel.: +49 (0)7156 43623-0.

8. Obligations of the Customer

8.1. Unless otherwise agreed, Customer shall perform and be responsible for the setup of ZEP (individual configuration, input/import of data, etc.) itself.

8.2. The Customer shall ensure to observe all third party rights (e.g. when transferring third party data to our server).

8.3. The Customer is obliged not to store any illegal content or content that violates the law, official requirements or the rights of third parties on the storage space provided. We are entitled to immediately block the storage space if and as long as there is reasonable suspicion that the stored data is illegal and/or violates the rights of third parties. We will inform the Customer of the block and the reason for it without undue delay.

8.4. The Customer is obliged to comply with the relevant legal provisions when using ZEP. The Customer indemnifies us from claims of third parties, which are based on an illegal use by him.

8.5. Before sending data and information to us, the Customer shall check them for viruses and shall use state-of-the-art virus protection programs.

8.6. The Customer is obliged to keep any usage and access authorizations provided secret, to protect them from access by third parties and not to pass them on to unauthorized users. This data shall be protected by appropriate and customary measures. The Customer shall inform us without undue delay if there is any suspicion that the access data and/or passwords may have become known to unauthorized persons and shall change the passwords without undue delay.

8.7. As far as the Customer processes personal data during the use of ZEP and no legal permission applies, he obtains necessary consents of the respective data subject.

8.8. Customer is - without prejudice to Sec. 6.3 – obliged to back up the data transmitted to us with the help of ZEP on a regular basis and according to the importance of the data and to create own backup copies in order to enable the reconstruction of the data and information in case of loss, and, if and to the extent that the Customer is given the technical possibility to do so, to regularly back up the data stored on our server by way of download.

8.9. The Customer shall notify us without undue delay of any changes to his contractual data (e.g. changed addresses, etc.).

9. Remuneration, Terms of Payment, Default

9.1. The Customer owes us the agreed remuneration for the provision of ZEP and the storage space as well as any further agreed services.

9.2. The agreed remuneration shall be due for payment in each case 14 days after invoicing for the respective calendar quarter. The remuneration for the first calendar quarter shall be paid on a pro rata basis, if applicable. If the Customer makes use of its right of adjustment as set out in Sec. 3.4 any difference shall be taken into account in the next billing period. Example: The Customer has booked 50 users. In the 2nd month of the relevant calendar quarter, the Customer has increased the number of users to 70. In this case, the additional remuneration for the 2nd and 3rd month of the relevant calendar quarter will be invoiced in the following calendar quarter.

9.3. In the event of termination of the contract, we shall reimburse any excess amount paid in advance in accordance with Sec. 9.2 pro rata.

9.4. Invoicing shall be effected by sending an invoice. The Customer is obliged to raise objections in writing or in text form within a period of eight weeks after receipt of the invoice. After expiry of this period, the invoice shall be deemed to have been approved by the Customer. We shall specifically draw the Customer's attention to the significance of his actions when sending the invoice.

9.5. Notwithstanding our claim to commercial due date interest (Sec. 353 German Commercial Code (Handelsgesetzbuch), hereinafter "HGB"), the Customer shall be in default at the latest if it does not make payment within 10 days of the due date. The outstanding rent shall bear interest from the first day of default at nine percentage points above the base interest rate.

9.6. All prices are subject to the applicable value added tax.

9.7. The Customer's rights of set-off and retention are excluded, unless the underlying counterclaim is recognized or legally established. In the case of defects, the corresponding counter rights of the Customer shall remain unaffected.

10. Warranty

10.1. The statutory regulations shall apply unless otherwise stipulated below.

10.2. The Customer, if he finds defects of ZEP, has to notify us without undue delay.

10.3. The Customer is not entitled to assert a reduction (Minderung) by deducting the reduction amount from the current remuneration by itself. The Customer's claim under the law of enrichment (bereicherungsrechtlicher Anspruch) to reclaim the portion of the remuneration paid in excess due to a justified reduction (Minderung) shall remain unaffected by this.

10.4. The Customer's rights due to defects are excluded insofar as the Customer makes or has made changes to ZEP without our consent, unless the Customer proves that the changes do not have any effects on the analysis and elimination of the defects that are unreasonable for us.

11. Liability

11.1.   We shall not be liable for defects already existing at the time of conclusion of the contract, unless a case of Sec. 11.2 is given.

11.2.   We shall be liable without limitation a) in the event of malice, intent or gross negligence; b) within the scope of a guarantee expressly assumed by us; c) for damages arising from injury to life, limb or health; d) for the breach of a material contractual obligation, the fulfillment of which is a prerequisite for the proper performance of the contract and on the observance of which the Customer regularly relies and may rely (cardinal obligation) - in this case, however, limited to the damage reasonably to be expected at the time of the conclusion of the contract - and e) in accordance with the provisions of the German Product Liability Act (Produkthaftungsgesetz).

11.3.   We shall not be liable for the loss of data insofar as the damage has occurred due to the fact that the Customer has failed to perform data backups (cf. Sec. 8.8) and thereby to ensure that lost data can be restored with reasonable effort.

11.4.   Besides, our liability is excluded.

11.5.   The above liability rules apply accordingly to the conduct of and claims against employees, legal representatives and vicarious agents of us.

12. Term and Termination

12.1.   The contract begins with the conclusion of the contract and runs, unless otherwise agreed, for an indefinite period. Unless otherwise agreed, it may be terminated by the Customer at any time at the end of the current calendar month, by us within the statutory periods (Sec. 580a para. 3 no. 2 German Civil Code (Bürgerliches Gesetzbuch), hereinafter "BGB").

12.2.   The right to extraordinary termination remains unaffected.

13. Handling of Customer Data upon Termination of the Contract

13.1.   At the end of the contract term, Customer's right to access its data generated by means of ZEP and other data uploaded to the storage provided by us (collectively, the „Customer Data") shall also end.

13.2.   The Customer is obliged to ensure the availability of the Customer Data still required by him beyond the end of the contract. He shall take suitable measures for this purpose during the term of the contract, for example by regularly exporting the Customer Data via an export function provided by us and, if necessary, printing it out.

13.3.   We are not obligated to surrender Customer Data beyond this.

14. Privacy

14.1.   The parties shall observe the requirements of data privacy law.

14.2.   The parties will conclude a data processing contract (Art. 28 GDPR), if required.

15. Changes to these GTC

15.1.   We may amend these GTC during the ongoing contractual relationship if and to the extent that there is a valid reason to do so. Such valid reason may, for example, be a relevant change in the law, a change in supreme court rulings or a change in market conditions.

15.2.   Changes shall be offered to the Customer in text form no later than one month before the proposed date of their coming into effect. The Customer shall be deemed to have given his consent if he has not notified us of his rejection before the proposed date on which the changes are to take effect. We shall specifically draw the Customer's attention to this effect of approval in our offer. Extensive changes that affect the basis of the legal relationship between the parties and may be equivalent to the conclusion of a new contract are, in deviation from this, only possible with the express consent of the Customer.

16. Subcontractor

Unless otherwise agreed, we shall be entitled to use third parties to perform our contractually owed services.

17. Force Majeure

17.1.   In the event of and for the duration of force majeure, we shall be released from our performance obligations. Force majeure is any event beyond our control that prevents us from fulfilling our obligations in whole or in part, such as fire damage, floods, epidemics, strikes and lawful lockouts as well as operational disruptions not caused by our fault or official decrees.

17.2.   We shall notify the Customer immediately of the occurrence and cessation of the force majeure and shall use our reasonable efforts to remedy the force majeure and limit its effects as far as possible.

17.3.   If the force majeure lasts longer

than two weeks, the Customer is entitled to terminate or withdraw from the contract.

18. Secrecy

18.1. Confidential information is the information expressly designated as confidential by the party providing the information and such information whose confidentiality is clearly evident from the circumstances of its provision („Confidential Information"). Excluded from the confidentiality obligation is such information

· which were verifiably already known to the recipient at the time the contract was concluded or subsequently become known to it from a third party, without this violating a confidentiality agreement, statutory regulations or official orders;

· which are public knowledge at the time of conclusion of the contract or are made public thereafter, insofar as this is not based on a breach of this contract;

· which must be disclosed due to legal obligations or by order of a court or authority. To the extent permissible and possible, the recipient obligated to disclose shall inform the other party in advance and give it the opportunity to object to the disclosure.

18.2. The parties shall treat all Confidential Information as confidential. Any use of the Confidential Information shall be limited to the use in connection with the contract. The receiving party shall refrain from commercially exploiting or imitating (e.g. by means of reverse engineering) the Confidential Information itself or through third parties outside this purpose, in particular from applying for industrial property rights to the Confidential Information disclosed.

18.3. The parties shall only grant access to Confidential Information to those consultants who are subject to professional secrecy or to whom obligations corresponding to the confidentiality obligations of these GTC have previously been imposed. In addition, the parties shall only disclose the Confidential Information to those employees who need to know it for the performance of the contract and shall also oblige these employees to maintain confidentiality for the period after their departure to the extent permitted by employment law.

18.4. Insofar as the Customer's data is subject to the requirements of Sec. 43e German Federal Lawyers' Act (Bundesrechtsanwaltsordnung), the following provisions shall apply in addition (and in the event of contradictions to the other provisions of this Sec. 18 the following provisions shall have priority): We are aware that the Customer is subject to special confidentiality obligations and that the violation of such obligations may have penal consequences (custodial sentence or fine). With reference to this, we are hereby bound to secrecy. We may only obtain knowledge of third party secrets to the extent that this is necessary for the performance of the contract. We are authorized to involve further persons for the fulfillment of the contract; in this case we shall oblige these persons to secrecy in text form.

18.5. The obligation to maintain confidentiality shall apply for the term of the contract and for a period of three years after its termination.

19. Final Provisions

19.1. The Customer may not assign the rights to which it is entitled under the contract, in whole or in part, to third parties without our prior written consent.

19.2. These GTC and the contractual relationship between us and the Customer shall be governed by German law to the exclusion of the UN Convention on Contracts for the International Sale of Goods. These GTC are to be interpreted exclusively consistent with German law and usage of terminology. Where these GTC contain a German term as a translation for an English term, the German term shall be binding for the interpretation.

19.3. The place of performance is our registered office.

19.4. If the Customer is a merchant within the meaning of the HGB, a legal entity under public law or a special fund under public law, the Regional Court (Landgericht) of Stuttgart shall be the exclusive - also international - place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship. The same shall apply if the Customer is an entrepreneur within the meaning of Sec. 14 BGB. However, we shall always also be entitled to bring an action at the place of performance or a prior individual agreement or at the general place of jurisdiction of the Customer. Overriding statutory provisions, in particular regarding exclusive jurisdiction, shall remain unaffected.

Status of these GTC: September 2022