

## 1. Scope, form

- 1.1 These General Terms and Conditions ("T&Cs") apply to the distribution of "**ZEP**" ("ZEP Compact", "ZEP Clock" and "ZEP Professional"), a modular SaaS solution that can be accessed via the Internet browser and allows users (hereinafter the "**Customers**") to record time spent on projects. In the following, "ZEP" refers to the module package specifically ordered. Insofar as the term "ZEP" is used in the following, "ZEP Compact", "ZEP Clock" and "ZEP Professional" are meant. A distinction is made by name only to the extent necessary.
- 1.2 ZEP is an offer of ZEP GmbH, registered at the District Court of Stuttgart, HRB 732230 (hereinafter referred to as "**we**"/"**us**").
- 1.3 Our T&Cs apply exclusively. Deviating or conflicting terms and conditions will not be accepted by us unless we have expressly agreed to them.
- 1.4 Individual agreements and information in our order confirmation take precedence over the terms and conditions.
- 1.5 Legally relevant declarations by the customer (e.g. setting a deadline, notification of defects or withdrawal) must be made in written or text form (e.g. letter or e-mail), unless our terms and conditions provide for a different form. Legal formal requirements and further evidence, especially in the event of doubts about the legitimacy of the declarant, remain unaffected.
- 1.6 Our product range is aimed exclusively at entrepreneurs (within the meaning of § 14 para. 1 BGB, i.e. natural or legal persons or partnerships with legal capacity who are acting in the exercise of their commercial or self-employed professional activity at the time of conclusion of the transaction) as well as legal entities under public law and special funds under public law,

but in any case only at end customers. The customer confirms this in the context of the order.

- 1.7 References to the applicability of statutory provisions are only of clarifying importance. Therefore, even without such a clarification, the statutory provisions shall apply insofar as they are not directly amended or expressly excluded in these T&Cs.

## 2. Conclusion and modification of the contract

- 2.1 Our offers are subject to change and non-binding, unless they are expressly stated 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 Within ZEP, the customer selects the product that is suitable for him. Before submitting an order, the customer can view and change their details at any time. By clicking on the button "**Apply for a fee**", the customer submits a binding application for the conclusion of the contract. The application can only be submitted if the customer has previously agreed to these terms and conditions and the conclusion of the order processing agreement.
- 2.3 Following the customer's order, we will send our declaration of acceptance by e-mail ("**Order Confirmation**"). The contract is concluded by this order confirmation. In this e-mail, we provide the customer with the "**contractual provisions**" (consisting of the T&Cs, the order processing agreement and the order confirmation). The terms of the contract can be accessed via the customer's user account in ZEP.
- 2.4 The contractual provisions are solely relevant for the legal relationship between us and the customer. These fully reflect all agreements between the contracting parties on the subject matter of the contract. Verbal commitments made by us prior to the conclusion of the con-

tract are legally non-binding and verbal agreements between the parties shall be superseded by the terms of the contract, unless otherwise expressly agreed between the parties in each case.

- 2.5 At the beginning of each calendar month, the customer can add or cancel modules from ZEP Compact and ZEP Professional in his online user account in the "current license" overview and/or increase or decrease the number of agreed users. In the case of ZEP Compact and ZEP Professional, the customer can also order additional modules and/or increase the number of agreed users on the 15th of each calendar month. At ZEP Clock, the customer can add or cancel modules in his online user account at the beginning of each calendar month. The date on which the amended contract came into being is referred to in the following paragraphs: 2.2 until 2.4 according to application. On the regulation on remuneration in section 9.1 and to terminate the contract in section 12.1 is pointed out.

### 3. Leasing ZEP

- 3.1 We provide the customer with ZEP for the agreed term in the current version (see section 3.5) for the agreed number of authorised users for retrieval via the internet at the transfer point by means of access via a browser.
- 3.2 The range of functions of ZEP and its modules as well as the conditions of use can be found on the website under [www.zep.de](http://www.zep.de).
- 3.3 The transfer point is the router output at the data center we use. We are not responsible for the telecommunication connection between the customer and us up to the point of delivery.
- 3.4 If we transmit user names and user passwords to the customer, these must be changed by the customer immediately to user names and passwords known only to the customer.
- 3.5 We may update and further develop ZEP at any time and adapt it in particular due to changes in the legal situation, technical developments or to improve IT security. In doing so, we will take due account of the legitimate interests of the customer and inform the customer in good time

about necessary updates. In the event of a significant impairment of the customer's legitimate interests, the customer is entitled to a special right of termination.

- 3.6 We do not owe any other services such as customizing or installation services, training courses or individual further developments of ZEP; unless otherwise agreed.

### 4. Availability and response times

- 4.1 Unless otherwise agreed, we owe an availability (= technical usability at the handover point) of ZEP of 99.8% on an annual average. The measurement instruments of the data center operator are decisive for determining the availability rate.
- 4.2 The promised availability does not include maintenance periods. We will conduct this outside of normal business hours and to a reasonable extent. If, in exceptional cases, we wish to carry out further maintenance work, we will inform the customer of this in reasonable notice.
- 4.3 Availability interruptions 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) are also excluded from the agreed availability, provided that we have taken appropriate security precautions.
- 4.4 The customer shall immediately notify the parties referred to in section 7 support contact details listed. In response to serious fault messages (number 4.5) during our business hours (Monday – Friday, 9:00 a.m. – 5:00 p.m.) German time, with the exception of national and Baden-Württemberg holidays; The "**Hours**") within four hours, or within a reasonable period of time to other disturbances. Example: We receive a report of a serious malfunction at 16:00 h. We will then contact you by 12:00 h the following day.
- 4.5 Serious disturbances (the use of ZEP as a whole or a main function (i.e. a function that is indispensable for a meaningful use of ZEP) are not possible) will be reported within 24 hours of our reaction (point 4.4) to fix it. If and as soon as

it is foreseeable that it will not be possible to remedy the fault within this period, we will inform the customer immediately and inform him of the expected exceeding of the time period and until the fault is rectified. *work-arounds* solution.

4.6 Other significant disturbances (main or secondary functions of ZEP are disrupted, but can be used; or other disturbances that are not only insignificant) will be reported within 48 hours of our reaction (para. 4.4) to fix it.

4.7 The elimination of insignificant disturbances is at our discretion.

## **5. Rights of use**

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

5.2 The customer is not entitled to any rights that are not expressly granted to the customer above. Unless otherwise agreed, the customer is in particular not entitled to make ZEP available to third parties – including companies affiliated with the customer within the meaning of §§ 15 et seq. of the German Stock Corporation Act – for use for a fee or free of charge.

## **6. Granting of storage space**

6.1 Unless a different storage space agreement has been made, we will also provide the customer with sufficient server storage space for the purposes of the contract to store his data.

6.2 The customer is not entitled to make this storage space available to a third party for use in part or in full, for a fee or free of charge.

6.3 We will make daily data backups. On digit 8.8 is referred to in addition.

## **7. Support**

During business hours (see section 4.4), we provide support to assist with questions regarding the use of ZEP using the contact details below:

E-Mail: support@zep.de / Phone: +49 (0)7156 43623-0.

## **8. Customer's Obligations**

8.1 Unless otherwise agreed, the customer is responsible for setting up ZEP (individual configuration, input/import of data, etc.).

8.2 The customer shall ensure that he/she respects all rights of third parties (e.g. when transmitting third-party data to our server).

8.3 The customer is obliged not to store any illegal content on the storage space provided that violates the law, official requirements or rights of third parties. We are entitled to immediately block the storage space if and as long as there is a reasonable suspicion that the stored data is unlawful and/or violates the rights of third parties. We will immediately inform the customer of the suspension and the reason for it.

8.4 The customer is obliged to comply with the relevant legal provisions when using ZEP. The customer indemnifies us against claims by third parties based on unlawful use by him.

8.5 Before sending data and information to us, the customer checks them for viruses and will use state-of-the-art virus protection programs.

8.6 The customer is obliged to keep the use and access authorisations provided confidential, to protect them from access by third parties and not to pass them on to unauthorized users. This data must be protected by appropriate and customary measures. The customer will inform us immediately if there is a suspicion that the access data and/or passwords may have become known to unauthorized persons and will change the passwords immediately.

8.7 Insofar as the customer processes personal data when using ZEP and no legal permission applies, he obtains the necessary consent of the respective data subject.

8.8 The customer is – without prejudice to the 6.3 - obliges to back up the data transmitted to us with the help of ZEP on a regular basis and in accordance with the significance of the data and to make its own backup copies in order to

enable the reconstruction of the data and information in the event of loss, and, if and to the extent that it is technically able to do so, to regularly back up the data stored on our server by downloading.

- 8.9 The customer immediately adjusts changes to his contract data (e.g. changed addresses, bank details, etc.) in his user account in ZEP.

## **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 for ZEP Compact and ZEP Professional is due for payment in advance 14 days after invoicing for the respective calendar quarter. The remuneration for the first calendar quarter may be paid on a pro rata basis. If the customer exerts his right of adjustment in clause 2.5 any difference will be taken into account in the next accounting period. If the customer adjusts the contract on the 15th of a calendar month, we will invoice the original and the new contract scope on a pro rata basis.

Example: The customer has booked 50 users. At the beginning of the 2nd month of the relevant calendar quarter, the customer increased the number of users to 70. In this case, the additional remuneration for the 2nd and 3rd months of the relevant calendar quarter will be settled in the following calendar quarter.

- 9.3 The agreed remuneration for ZEP Clock is due for payment 10 days after invoicing. Invoicing takes place at the end of each month and takes into account the employees created as employed in the month to be billed.

- 9.4 In the event of termination of the contract, we will refund any damages referred to in Section 9.2 proportionately excess prepaid amount.

- 9.5 The customer can give us a SEPA direct debit mandate for payment processing. In this case, we will collect the agreed remuneration from the bank details provided by the customer after it is due. In the event of an update of the bank details, the customer, if he has already given us a

SEPA direct debit mandate, will authorise us to debit the new bank details.

- 9.6 Invoicing is done by sending an invoice. The customer must raise objections in writing or in text form within a period of eight weeks after receipt of the invoice. At the end of the period, the settlement is deemed to have been approved by the customer. We will draw the customer's attention to the significance of his conduct when he sends the invoice.

- 9.7 All prices are subject to the applicable statutory value added tax.

- 9.8 The customer's rights of set-off and retention are excluded, unless the underlying counterclaim is acknowledged or legally established. In the event of defects, the corresponding counter-rights of the customer remain unaffected.

## **10. Warranty**

- 10.1 The statutory provisions apply, unless otherwise stipulated below.

- 10.2 If the customer discovers any defects on the part of ZEP, he must notify us immediately.

- 10.3 The customer is not entitled to claim a reduction by independently deducting the reduction amount from the current remuneration. This does not affect the customer's enrichment claim to reclaim the part of the remuneration that has been overpaid due to a justified reduction.

- 10.4 The customer's rights due to defects are excluded insofar as the customer makes or causes changes to be made to ZEP without our consent, unless the customer can prove that the changes do not have an unreasonable impact on our analysis and elimination of the defects.

## **11. Liability**

- 11.1 We are not liable for defects that already existed at the time of conclusion of the contract, unless this is the case of 11.2 is given.

- 11.2 We shall be liable without limitation a) in the event of fraud, intent or gross negligence; b) under a warranty expressly undertaken by us; c) for damage resulting from injury to life, limb or

health; d) for the breach of an essential contractual obligation, the fulfilment of which is essential for the proper performance of the contract in the first place and on the observance of which the customer regularly trusts and may rely (cardinal obligation) - in this case, however, limited to the damage that could reasonably be expected at the time of the conclusion of the contract - and e) in accordance with the provisions of the Product Liability Act.

11.3 We are not liable for the loss of data insofar as the damage is due to the fact that the customer has failed to carry out data backups (cf. 8.8) and thereby ensure that lost data can be recovered with reasonable effort.

11.4 In all other respects, our liability is excluded.

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

## **12. Term and Termination**

12.1 The contract begins with the conclusion of the contract and, unless otherwise agreed, runs for an indefinite period. Unless otherwise agreed, it can be terminated by the customer at any time at the end of the current calendar month, by us within the scope of the statutory deadlines (§ 580a para. 3 no. 2 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, the Customer's right to access its data generated by ZEP and other data uploaded to the storage provided by us (collectively, the "Customer **Data**") also ends.

13.2 The customer is obliged to ensure the availability of the customer data required by him beyond the end of the contract. To this end, he must take appropriate measures during the term of the contract, for example by regularly exporting

via an export function provided by us and, if necessary, printing out the customer data.

13.3 We are not obliged to disclose customer data beyond this.

## **14. Privacy**

14.1 The parties comply with the data protection requirements.

14.2 The parties conclude a data processing agreement (Art. 28 GDPR).

## **15. Changes to these T&Cs**

15.1 We may amend these T&Cs during the ongoing contractual relationship if and to the extent that there is a valid reason. Such a valid reason may be, for example, a relevant change in the law, a change in the case law of the highest courts or a change in market conditions.

15.2 Changes will be offered to the customer in text form at least one month before the proposed date of their effectiveness. The Client's consent shall be deemed to have been given if he/she has not indicated his/her refusal before the proposed date of the changes taking effect. We will draw special attention to this approval effect in our offer. By way of derogation from this, far-reaching changes affecting the basis of the legal relations between the parties and which may amount to the conclusion of a new contract are only possible with the express consent of the customer.

## **16. Subcontractor**

Unless otherwise agreed, we are entitled to use third parties to provide our contractually owed services.

## **17. Force majeure**

17.1 In the event and for the duration of force majeure, we are 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

through no fault of our own or government orders.

17.2 We will immediately notify the customer of the occurrence and cessation of force majeure and will use our best 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 means information expressly designated as confidential by the party providing the information and information whose confidentiality is clearly apparent from the circumstances of the disclosure ("Confidential **Information**"). Such information is exempt from the confidentiality obligation

- which was demonstrably already known to the recipient at the time of conclusion of the contract or subsequently becomes known by a third party, without violating any confidentiality agreement, statutory provisions or official orders;
- which are in the public domain at the time of entering into the Agreement or are made public thereafter, to the extent that this is not based on a breach of this Agreement;
- which must be disclosed due to legal obligations or by order of a court or authority. To the extent permissible and possible, the recipient required to disclose will inform the other party in advance and give the other party an opportunity to challenge the disclosure.

18.2 The parties will keep all Confidential Information confidential. Use of the Confidential Information is limited to use in connection with the Agreement. The receiving party must refrain from commercially exploiting or imitating the Confidential Information outside of this purpose itself or through third parties (e.g. by means of "reverse engineering"), in particular from applying

for industrial property rights on the disclosed Confidential Information.

18.3 The Parties will only grant access to Confidential Information to those Consultants who are subject to professional secrecy or who have previously been subject to obligations in accordance with the confidentiality obligations of these T&Cs. In addition, the parties will only disclose the Confidential Information to those employees who need to know it for the performance of the contract and will also oblige such employees to maintain confidentiality for the period after their departure to the extent permitted by labor law.

18.4 Insofar as the customer's data is subject to the requirements of § 43e BRAO, additional (and in the event of contradictions to the other provisions of this section) We are aware that the customer is subject to special confidentiality obligations and that the violation of such obligations may result in criminal consequences (imprisonment or fine). With reference to this, we are hereby obliged to maintain confidentiality. We may only gain knowledge of third-party secrets to the extent that this is necessary for the performance of the contract. We are entitled to use other persons for the performance of the contract; In this case, we are obliged to oblige these persons to secrecy in text form.

18.5 The obligation to maintain confidentiality applies for the duration 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 he is entitled under the contract, in whole or in part, to third parties without our prior written consent.

19.2 These terms and conditions and the contractual relationship between us and the customer are governed by German law to the exclusion of the

UN Convention on Contracts for the International Sale of Goods.

- 19.3 The place of fulfilment is our registered office.
- 19.4 If the customer is a merchant within the meaning of the German Commercial Code, a legal entity under public law or a special fund under public law, the Regional Court of Stuttgart is the exclusive place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship. The same applies if the customer is an entrepreneur within the meaning of § 14 BGB. However, we are always also entitled to bring an action at the place of performance or a priority individual agreement or at the customer's general place of jurisdiction. Overriding statutory provisions, in particular those relating to exclusive competences, remain unaffected.