

General terms and conditions

of Actindo AG

(as at 02.01.2019)

Preamble

Actindo AG (hereinafter referred to as "Actindo") provides all deliveries and services exclusively on the basis of the following General Terms and Conditions (GTC). Actindo's customers and all users of the Actindo Core1 platform acknowledge and observe the following GTC.

Actindo has developed the cloud-based platform "Actindo Core1" and modular software packages and application programs (apps) based on it. These software solutions, which are protected by copyright in favor of Actindo, enable the customer to serve the various business processes of a company with a comprehensive software solution. Actindo provides these software packages for use via the Internet as a Software as a Service (hereinafter referred to as "SaaS") solution.

Customers who use Actindo's SaaS solution "RetailSuite" are not affected by these GTC and the GTC that serve as the basis of their contract continue to apply to these customers.

I. General, scope of application

1. Actindo AG, Carl-Zeiss-Ring 15, 85737 Ismaning, HRB 84750, with its registered office in Ismaning, and its affiliates and subsidiaries, hereinafter also referred to as "Actindo", provide all deliveries and services exclusively on the basis of the following General Terms and Conditions (GTC).
2. Actindo's offer is directed exclusively at companies, traders, public institutions and associations as defined by §14 BGB (German Civil Code), hereinafter referred to as "customers". Consumers according to §13 BGB are not supplied by Actindo.
3. Any terms and conditions of the customer that deviate from these GTC in whole or in part will not be recognized unless Actindo has agreed to them in writing. Actindo's GTC also apply exclusively if Actindo provides services without reservation in the knowledge of conflicting terms and conditions of the customer.
4. Actindo is entitled, with the consent of the customer, to change the content of the existing contract, including these GTC, provided that the change is reasonable for the customer, taking into account the interests of Actindo. Consent to the amendment of the contract is deemed to have been given if the customer does not object to the amendment within two weeks of receipt of the notice of amendment. Actindo undertakes to inform the customer of the consequences of failing to object in the course of the notification of change.
5. If the customer objects to this intended change, Actindo has the choice to maintain the contract under the previous conditions or to terminate it at the time the change takes effect.
6. At the time of using Actindo's services, these General Terms and Conditions are deemed accepted.
7. These GTC shall also apply to all future transactions of the contracting parties.

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II. Subject matter of the contract / performance obligations of Actindo

1. The cloud-based "Actindo Core1" platform is a set of computer programs that are operated and executed on Actindo's servers (Software as a Service, "SaaS") and provides an application programming interface for the efficient creation (programming) and execution of Apps developed by Actindo or independent software vendors (hereinafter referred to as "ISV"). These programs may be distributed by the ISV via the Actindo App Store (§ V.3) and leased by the Customer via the same Actindo App Store (§ V.1).
2. Actindo Core1 as a platform without licensed apps only provides the customer and/or the ISV with identification and authentication mechanisms as well as various programming interfaces and is only extended by functionality through the licensing of apps.
3. Storage space (Storage)
 - a) The necessary storage space to run the Actindo Core1 platform (without any apps) is provided by Actindo to the customer free of charge up to a storage space of 256 MB.
 - b) The storage space for the installation and transaction data of the apps (e.g. databases, file system) can be rented by the customer in the App Store.
4. Computing power (hereinafter referred to as "vCores")
 - a) Computing power is billed in units of "vCores", where a vCore is roughly equivalent to the computing power of a processor with 1100 +/- 10% BogoMIPS (apparent millions of instructions per second).
 - b) The necessary computing power to run the Actindo Core1 platform (without any apps) is provided to the customer by Actindo free of charge.
 - c) The computing power to run the apps can be rented by the customer from the App Store.
5. Actindo assumes responsibility for securing the data within the scope of this storage quota and will prevent the transfer of damaging data to the extent that this is possible with reasonable economic and technical effort. However, the customer is aware that complete protection against harmful data is not possible. If a threat cannot be eliminated in any other way that is technically and economically reasonable and promising, Actindo is entitled to delete customer data with damaging content. Actindo will inform the customer of this as far as possible in advance and obtain the customer's prior consent. The customer is solely responsible for compliance with retention periods under commercial and tax law.
6. The transfer point for Actindo's contractual services is the router output of the data center used by Actindo in Germany or an EU country. The connection of the customer to the Internet, the maintenance of the network connection, and the procurement and provision of the hardware and software required on the part of the customer are not owed by Actindo, but are to be produced and provided by the customer.
7. The Actindo Core1 platform is available seven days a week from 00:00 to 24:00 ("Operating Time"). Actindo promises the customer an availability and function within the Operating Hours of 99.5% on an annual average. If maintenance work is unavoidable during the Operating Hours and the Application cannot be made available as a result, Actindo will inform the Customer of this in good time. Unforeseeable, unscheduled maintenance is excluded from this. The availability rate is determined by means of testing services provided by third parties for this purpose in accordance with the respective state of the art in order to provide evidence of this type. If this shows that the availability quota has been complied with, it shall be up to the contractual partner to prove that this is not the case..
8. Actindo has agreed with the data center in which the Actindo Software is operated on a hardware availability agreement of 99.9% on an annual average, with a response time of four

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hours, and will maintain this agreement. Actindo will take care of the ongoing and proper data backup. As part of the data backup, Actindo will transfer the customer's data in encrypted form to external data carriers or data backup services. The customer agrees to this transfer of encrypted data.

III. Actindo Core1 Account

1. In order to gain access to the Actindo Core1 platform, registration of the customer is mandatory. Actindo can refuse the registration of a customer without giving reasons. With the registration the customer assures the requirements of
2. § I.2 and to have provided all data completely and truthfully.
 - a) Each customer is assigned an _____ account prefix, login name and password during registration. _____ login name and password ("account administrator").
 - b) The output of the password and the login name of the account administrator are issued via the e-mail address on which the account administrator has registered.
3. When creating a user profile, the account administrator can decide whether to assign a password himself or have the system create one.
4. Passwords must be created according to the rules below.
 - a) Password length: at least 8 characters. In addition, at least three of the four categories must be part of the password:
 - b) Capital letters
 - c) Lower case letters
 - d) Digits
 - e) Special characters
5. The account administrator is responsible for assigning user rights to users created or invited by him/her. The account administrator can also grant the user rights of an account administrator to other users.
6. By means of his login name and password, the user gains access to all Actindo Core1 accounts to which he is assigned. In each of these accounts the user has access to
 - a) The Actindo Core1 Plattform
 - b) The Actindo Appstore of the account, insofar as his user rights grant him these.
 - c) The licensed apps of the account, insofar as his user rights allow him to do so
7. The customer shall protect the user and access authorizations assigned to it or the users as well as identification and authentication backups from unauthorized access by third parties and shall not disclose them to unauthorized third parties. As soon as the user or customer has indications that the user and access authorizations have been obtained unlawfully by a third party or could be misused, the customer is obligated, for purposes of damage mitigation, to immediately deactivate the user in question and to notify Actindo of this immediately.
8. The user is responsible for keeping the password secret. The password is known only to the user. The user can change his password himself at any time. When creating the password, the rules defined in § III.4 must be followed.
9. Actindo is not liable for any damage resulting from the disclosure of the password, whether intentionally or negligently (e.g. by entering it in so-called phishing emails).
10. The Actindo Core1 account itself (without additional apps, storage and vCores) is free of charge. The license agreement runs for an indefinite period of time and starts with the registration of the account. The termination of the Actindo Core1 Account by the customer himself, is possible in

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the Actindo Core1 Account of the customer, or by both parties in writing by letter or by fax. Termination by Actindo and/or the customer is also possible by e-mail if it is proven that written termination by letter or fax was not possible. In any case, the party giving notice of termination must provide proof of receipt of the notice of termination. However, the termination will not take effect until there are no more current app usage contracts (cf. Item IV) in the Actindo Core1 Account. The right to terminate for cause (Section XIV) remains unaffected

11. At the time the termination of the Actindo Core1 Account becomes effective, Actindo's obligation to store and secure data expires. Therefore, before the end of the contract, the customer will export his data via one of the offered interfaces or create a printout of the data on paper in order to meet his documentation obligations from the commercial and tax regulations. The customer is therefore responsible for data storage and backup.
12. Actindo will delete the customer's data within a period of four weeks after the end of the contract and destroy all copies made. If physical destruction is technically unreasonable, for example in the case of encrypted backups, Actindo will destroy the access key to this data so that recovery can be ruled out.

IV. Apps for customers

1. Actindo offers the customer the possibility to extend the Actindo Core1 platform with Apps by purchasing, renting or using the right to use Apps free of charge. These apps can be developed by Actindo itself or by ISVs (together hereinafter "app providers").
2. The respective terms and conditions (including, but not limited to: prices, one-time costs, minimum term, billing interval) are determined by the respective app provider and communicated to the customer by Actindo.
3. The contract for the use of apps is concluded between Actindo and the customer, explicitly not between the app provider and the customer. The term of the contract is indefinite and begins at the time agreed in the usage contract (order confirmation of the AppStore or signed offer). The basic term of the contract is the listed number of months. The contract shall be extended by the basic term in each case, unless it is terminated with the notice period specified in the offer at the end of the respective term.
4. For the agreed term of the contract, payment is agreed in advance.
5. The termination of app usage contracts by the customer is possible in the customer's Actindo Core1 account, or by both parties in writing by letter or by fax. In either case, the party giving notice must provide proof of receipt of the notice.
6. The right to terminate for cause (§ XIV) shall remain unaffected..
7. App-providers can provide the customer with test licenses with which he can test the apps. In this case, the contract for use in accordance with § IV. 1 – § IV.3 is concluded for a limited period of time for the test period. The test licenses are free of charge for the customer during this test period. The test period is limited to 30 days. App providers may, however, shorten or extend this time at their own discretion. There is no entitlement to free support during the test period.
8. Apps are installed and commissioned (activated and parameterized) by the customer. Support, if offered, is generally provided by the ISV. If the support of an ISV module is provided by Actindo itself, Actindo will indicate this when offering the App (in the App Store or in the contract offer). In this case, support will only be provided under a support contract to be concluded separately in accordance with X shall be made. Claims of the customer from the liability for defects § XIX remain unaffected.

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9. Whether and to what extent documentation is owed for an app or the platform itself is solely at the discretion of the platform operator or the respective ISV of the app. Additional manuals or documentation are not owed. Insofar as Actindo additionally provides software apps in foreign languages and no German version of the associated user documentation is available, Actindo may also provide this user documentation in the respective foreign language.
10. At the time the termination takes effect, the customer can no longer access the terminated app. Therefore, before the end of the contract, the customer will export its data via one of the offered interfaces or create a printout of the data on paper in order to comply with its documentation obligations under commercial and tax law.

V. Actindo App-Store for customers

1. The customer may purchase, rent or acquire free of charge the right to use apps via an electronic sales platform ("Actindo App Store"). The respective terms and conditions are determined by the App Provider (§ IV. 2).
2. The use of the Actindo App Store requires an Actindo Core1 Account (§III).
3. Apps are approved for the app store by the app provider and made available by Actindo in the Actindo App Store.
4. Apps can be added by the customer to his Actindo Core1 account in the App Store by booking the respective software license.

VI. Independent Software Vendor (hereinafter referred to as "ISV")

1. Actindo offers the customer the opportunity to offer the right to use self-created (programmed) apps (§ IV) to a group of customers in the App Store (§ V) for purchase, for rent or free of charge. Such a provider of apps is hereinafter referred to as an "ISV".
2. The use of the Actindo App Store as an ISV requires an Actindo Core1 Account (§ III), as well as the conclusion of a separate, written contract, a so-called "ISV Contract" between Actindo and ISV. Only then can the ISV load apps into the App Store.
3. Independently of the App Store, a customer may develop and use his own apps for his own needs in his own Actindo Core1 account. He may pass these on free of charge by means of an activation code (token) to Actindo Core1 accounts of his own or affiliated companies (pursuant to § 271 (2) HGB). Passing them on to another group of customers is prohibited and entitles Actindo to block the app and/or all accounts involved. In addition, Actindo is entitled in this case - without prejudice to further rights and claims, in particular claims for damages - to terminate the contract without notice and may exclude the ISV from future use of the App Store and the Actindo Core 1 platform.

VII. Obligations of the customer

1. The customer and/or the user of the applications shall be responsible for any legal violations committed during the use of the software (e.g. tax consulting law, legal advice law, tax laws, data protection law, secrecy of telecommunications).
2. The customer will back up the data and content transmitted to Actindo on a regular basis and in accordance with the respective risks, but at least once a day, and will create his own backup copies on his own data carriers in order to enable the reconstruction of the data and information in the event of loss. Actindo will back up its servers regularly and protect them against

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unauthorized access with reasonable technical and economic effort. In the event that data is nevertheless lost, the customer will transfer the relevant data to Actindo's server again free of charge.

3. The customer will comply with the applicable data protection laws and other legal provisions when using the contract software. The customer will refrain from any attempt, either by himself or by third parties, to retrieve information or data without authorization or to intervene or allow unauthorized intervention in programs operated by Actindo or to penetrate Actindo's data networks without authorization. The customer shall only post data or content that does not violate third-party intellectual property rights or copyrights or other rights of third parties. The customer is responsible for the data and content he provides.
4. The Customer shall be solely responsible for ensuring that the Customers and all Users have an Internet connection and suitable software and hardware equipment or configuration in accordance with the data published on the Website. The operation and maintenance of these technical requirements are the sole responsibility of the Customer. The customer is aware that Actindo will continue to develop the software according to the current state of the art. Actindo will attempt, to the extent possible and economically reasonable and technically feasible, not to increase the hardware-related system requirements.
5. The customer will report defects in the contractual services to Actindo without delay via the access provided to the ticket system, specifying how and under what circumstances the error or defect occurs, and will support Actindo in troubleshooting to a reasonable extent without delay and free of charge. If, after Actindo has reviewed a defect notification from the customer, it turns out that the defect did not occur within Actindo's area of responsibility, Actindo may charge the customer for the costs of the review for the error notification at the applicable prices. This does not apply if the customer could not recognize that the fault did not occur within Actindo's area of responsibility, even when exercising reasonable and necessary care.
6. In order to comply with the retention periods under commercial and tax law, the customer must ensure that the data is printed out or otherwise exported. The customer alone is responsible for compliance with retention periods under commercial and tax law.
7. Before sending the data and information, the customer shall check them for viruses and use state-of-the-art virus protection programs. Finally, the customer shall regularly back up its data files in the system by means of downloads until the time of termination of the contract, as it cannot be ruled out that after termination of the contract, access to these data files by the customer is no longer possible.

VIII. Rights of use

1. For the term of this contract, Actindo grants the customer the non-exclusive, non-transferable, non-sublicensable right to use the contract software on the system in Actindo's data center (SaaS use). The contract software is not transferred to the customer. If Actindo provides minor or bugfix updates of the contract software during the term of this agreement, the aforementioned right of use applies to these in the same manner. Beyond the purposes of this contract, the customer is not entitled to use, reproduce or download the contractual software or any data other than his own, or to make it available to third parties outside the agreed circle of users. A change of control, including the complete sale of all shares held by the customer to one or more new shareholders, is not a case of transfer of the granted right of use. The same shall apply to changes of legal form, mergers, demergers or other measures under the German Reorganization Act (Umwandlungsgesetz).
2. If a third party claims a violation of rights by the data or content provided by the customer, Actindo is entitled to block the content completely or temporarily if there is a doubt about the

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legality of the data and/or content that is justified by objective evidence. In this case, Actindo will request the customer to dispel the doubts within a reasonable period of time or, if the legal violation is established, to discontinue it. If the customer does not comply with this request, Actindo is entitled, without prejudice to further rights and claims, to terminate the contract for cause without notice. Actindo may charge the customer for expenses incurred by Actindo as a result of the aforementioned measures at the prices valid at Actindo from time to time, which may not, however, exceed the prices customary in the market. If the customer is responsible for the infringement, he will compensate Actindo for the resulting damage and indemnify Actindo from any third-party claims. Further rights are reserved.

3. In the event of unauthorized use or transfer of use, the customer must immediately provide Actindo upon request with all information known to him about the third party, insofar as this data is known to him or easily accessible.
4. If the contractual use of the contract software is impaired by third party property rights through no fault of Actindo, Actindo is entitled to refuse the services affected thereby. Actindo will inform the customer of this immediately and provide him with access to his data in a suitable manner. In this case, the customer is not obligated to pay for the affected software part. Other claims or rights of the customer remain unaffected.
5. Actindo may deny a customer or user access to use the programs if the customer or user has violated the provisions of the Terms and Conditions with gross negligence or intent. In this case, objections and claims of any kind by the customer are excluded.
6. The refusal of use can be made without giving reasons for a maximum of one day. Regardless of this, the provisions of §XVI apply, according to which in the event of default in payment, the future use of services may be excluded.
7. After this period, Actindo must inform the customer of the reasons and – if this is possible due to the nature of the violation – allow the customer access again, provided that the customer has remedied the violation.

IX. Software Updates

1. Actindo takes over the maintenance of the Actindo Core1 platform. This includes diagnosis, elimination of defects that were originally present or new ones that occur due to changes in circumstances, and scheduled further development.
2. The updates of the Actindo Core1 platform are deployed centrally to all accounts by Actindo*).
3. Actindo and/or the ISV shall provide the Customer with updates ("Releases") for the Licensed Apps when they are ready for use and tested. The Customer has no right to expect Updates to be provided on specific dates or within specific time periods. Actindo and/or the ISV will use its best efforts to provide Updates that fix serious bugs in the Software. However, specific response or recovery times are not promised.
4. The customer acknowledges that updates from Actindo or ISV can only be tested for standard installations. In particular, no side effects can be tested that have been performed by modifying software extensions or manually changing configuration files past the mechanisms provided by the software. A promise that a particular update will leave the functionality of the software unchanged in every situation is explicitly not given.
5. Claims of the customer arising from statutory liability for defects or guarantees shall remain unaffected.

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6. Updates are made available to the customer by Actindo or the ISV in the customer's Actindo Core1 account. The customer must inform himself about available updates. Updates must always be installed by the customer. If the immediate installation of an update is indispensable (e.g., in the event of the elimination of security defects), Actindo may install it automatically without the prior consent of the customer and inform the customer after installation. The customer's consent regarding the installation in such a case is assumed.
7. With the installation of updates, the customer receives the same rights of use to this as to the Actindo Core1 platform or apps for which the update has been installed.
8. Unless expressly mentioned above, or covered by the attached remuneration regulation, Actindo does not owe any further services. In particular, Actindo is not obligated to provide, create or provide individual programming or additional programs.

X. Support services

Support services can be obtained via support apps in the Actindo AppStore. The inclusive volume for telephone and ticket support, as well as the costs for additional support beyond the inclusive volume, as well as the response times (time from receipt of the ticket to the first response from Actindo) are regulated in the product description of the respective support app. The inclusive volume does not carry over into the next month, but expires without replacement at the end of the last day of the respective month.

XI. Additional services / third party services

1. Actindo may offer the customer to use services from third-party providers.
2. In case of using these functions, the Customer agrees to the transfer of the data necessary for the performance of the service (e.g. the document or the address of the recipient) to the performing third party.
3. The costs for these services will be charged to the customer by Actindo.
4. A direct contractual relationship between the customer and the performing third party is not established.
5. Actindo guarantees the availability and function of these services, as well as the related protection of data, exclusively on the part of Actindo.

XII. Performance changes

1. Actindo or an ISV may change the service at any time in a manner that is reasonable for the customer and continues to ensure the contractual purpose and agreed service content. The change is reasonable in particular (a) if it improves functionality, or (b) if it becomes necessary for good cause, such as disruption of service provision by subcontractors, and the performance characteristics of the modules continue to be substantially fulfilled. Actindo will notify the customer of changes for good cause (b) in writing or text form at least six weeks before they take effect. If a change is not made on the basis of laws, regulations, market standards, or common practice, the customer has the right to object to the change if it would restrict the customer's business processes or if the change would cause the customer a significant economic

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disadvantage. An objection must be made in writing by fax and/or letter. If the customer does not object, the changes and additions shall become part of the contract. The obligation to notify shall not apply to function-improving updates.

2. Irrespective of this, Actindo is entitled to change or supplement its range of services or parts thereof at any time with the prior consent of the customer.

XIII. Prices

1. Actindo or an ISV may adjust the price agreed with the customer in accordance with the following provisions at its reasonable discretion if the total costs attributable to the contractual relationship change due to circumstances that occur after the conclusion of the contract, were not foreseeable and are not at Actindo's discretion. Actindo may increase the prices for the provision of the software if and to the extent that the total costs attributable to the contractual relationship increase. The total costs attributable to the contractual relationship are composed as follows: Fees for server services, fees for software, maintenance costs, development costs, fees for technical services, customer service and other costs of sales, general administrative costs and personnel costs.
2. Actindo may increase prices by no more than the amount of the total cost increase and no more than once within a calendar year. Customers will be informed of the price increase by Actindo in advance, at least two weeks before the increase takes effect, by e-mail.
3. Within the scope of this notification, Actindo specifically informs the customer of any right to terminate the contract, the notice period, and the consequences of not giving notice of the price increase in due time. If a price increase amounts to more than 7.5% of the price applicable up to the time of the increase – previously agreed or applicable – the customer is entitled to terminate the contract for the provision of the Software in writing within two weeks of receipt of the notification of the increase with effect from the time the increase takes effect. The notice of termination shall be sent by mail or e-mail to the address stated in the contract or in the imprint. The right of termination shall only apply to the subject matter of the contract affected by the price increase. However, if the subject matter of the contract affected by the price increase is a prerequisite for another subject matter of the contract, termination shall also apply to the latter. If the customer does not give notice of termination or does not do so in due time, the contractual relationship shall be continued at the time stated in the notice with the new price.
4. Irrespective of these regulations, Actindo is entitled to adjust the price accordingly in the event of an increase in the statutory sales tax.

XIV. Termination for cause

Good cause for termination exists in particular if:

- » a contracting party breaches material obligations or repeatedly breaches non-material obligations under the contract and does not remedy the breach within a reasonable period of time even after being requested to do so by the other contracting party, or
- » a contracting party cannot reasonably be expected to adhere to the contract as a result of force majeure, or

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- » insolvency proceedings have been opened against the assets of the other contracting party or such opening is imminent, or
- » if the customer is in arrears with three consecutive monthly usage fees for services used (or with a total amount equal to the usage fees for three months).

XV. Remuneration and terms of payment

1. Actindo handles all of its customer business transactions via the Internet. Payment of all invoice amounts for purchases in the AppStore is therefore made by electronic payment methods. Actindo may allow another payment method, in particular payment on account by bank transfer, in writing. In this case, Actindo is entitled to charge a reasonable processing fee of up to EUR 10.00 due to the greater administrative effort involved.
2. The customer must reimburse Actindo for any bank charges incurred due to payment returns, such as returned direct debits, of whatever type (objection, incorrect account/IBAN, insufficient funds, etc.), plus a processing fee of EUR 10.00 in addition to his fees for using the software.
3. Objections to Actindo's invoicing must be made in writing within a preclusive period of three working days after receipt of the invoice. Otherwise, the invoice is deemed to be accepted.
4. Invoices are sent electronically. For an additional paper dispatch of the invoices, a fee of 5.00 euros per invoice will be charged.
5. Actindo will amend the invoice and the direct debit in the event of justified objections. If the direct debit has already been transferred to the bank at the time the invoice is changed, Actindo will refund the difference to the customer or offset it against the next usage fee.
6. However, the customer is not entitled to block direct debits that relate to unrecognized invoices. If the direct debit is blocked, the customer must reimburse Actindo for any bank charges incurred plus a processing fee.

XVI. Default and consequences of default

1. In the event of late payment, Actindo is entitled to charge interest on arrears in accordance with §288 para. 2 BGB.
2. Default in payment shall occur in the case of the direct debit procedure on the date of the return of the direct debit, otherwise on the next day after the due date of the invoice. However, default shall occur no later than 30 days after receipt of the invoice.
3. In the event that the customer is in default of payment, Actindo is entitled to exclude the customer from future use of services after the second reminder until all payment obligations have been met. If the contract is continued, the monthly flat rates are also owed by the customer for this phase.
4. If the customer is in default with more than one payment, Actindo has the right to demand immediate settlement of all outstanding claims. In these cases, Actindo has a right of retention with regard to all services not yet transmitted or provided. Likewise, Actindo can exclude the customer from future use of its services until all claims have been settled.
5. If the customer is in default of payment for three consecutive months or for a total amount that corresponds to the usage fee for three months, Actindo is entitled to terminate the contract for cause.
6. In the event of a significant deterioration in the financial circumstances of the customer, the above paragraphs shall apply accordingly.

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7. Actindo reserves the right to assert further claims due to default of payment.

XVII. Property rights

1. All rights of Actindo or the ISV to programs, evaluations, descriptions, forms, teaching materials, systems, program interfaces, databases and to their other works and know-how are reserved.
2. The customer undertakes to refrain from doing anything that could impair the rights of Actindo or the ISV. In particular, he must ensure that any information available to the customer is not made accessible to third parties.
3. The customer is only permitted to copy, distribute, process and otherwise exploit the goods within the framework of the agreements applicable for this purpose.
4. The above provisions shall also apply after termination of the user relationship with Actindo.

XVIII. Liability

Actindo is conclusively liable, regardless of the legal grounds, as follows:

1. Actindo does not assume any liability for the accuracy and correctness of the services in terms of commercial and tax law, in particular for apps, unless both are expressly guaranteed in each case.
2. In the event of a breach of material contractual obligations or for damages due to defects of title and the absence of warranted characteristics, Actindo shall be liable in each individual case up to an amount of EUR 10,000.00. With the exception of a delay or impossibility for which Actindo is responsible, Actindo is only liable for intent and gross negligence.
3. Actindo has unlimited liability for personal injury for which Actindo is responsible. In the event of damage to property for which Actindo is responsible, Actindo will reimburse the cost of restoring or procuring new property up to a total of 100% of the annual compensation, up to a maximum of EUR 50,000 per damaging event. In the event of damage to data storage media or the loss of data, the above provision applies accordingly.
4. The limitation of liability under 3 shall not apply to cases of intent and gross negligence.
5. Actindo is not responsible for delays in performance in the event of force majeure, labor disputes, official measures, unforeseeable failure of means of transport or energy, and other unavoidable events, even if the above circumstances occur at one of Actindo's suppliers. If one of these events leads to an impossibility for which Actindo is not responsible, the obligation to provide the service does not apply.
6. Liability for consequential damages shall be limited to damages caused intentionally and by gross negligence, unless in the case of the absence of warranted characteristics this warranty had the specific purpose of protecting against such damages. In all other respects, liability under the Product Liability Act – insofar as applicable – shall remain unaffected.
7. If Actindo excludes the customer from future use of the services in the event of payment default, liability for transmitted data to which the exclusion of services relates is excluded, unless Actindo is guilty of gross negligence or intent.
8. Actindo shall not be liable for damages caused by the execution of the order on the basis of a separate instruction from a customer – regardless of the legal grounds – unless Actindo had to recognize the risk of the occurrence of the damage or it was expressly agreed otherwise. If

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Actindo points out the risk of possible damage and the customer nevertheless maintains its execution instruction, any claim for damages is excluded.

9. Further claims of the contractual partner other than those expressly mentioned in these General Terms and Conditions, irrespective of the legal grounds, are excluded, unless liability is extended within the scope of mandatory statutory provisions.
10. Actindo will take out appropriate insurance for operational liability cases and provide evidence of this insurance to the contractual partner upon request.
11. Insofar as the contractual partner desires a higher coverage amount as above, the parties may request a higher coverage amount for the project from the respective business liability insurance company of Actindo. Additional premium demands of the insurance company will be borne by the contractual partner.

XIX. Liability for defects

1. Actindo will remedy defects that significantly reduce the value or suitability of the software, as well as missing warranted characteristics, within a period of two months after the customer has notified Actindo in writing by letter or fax. If the services to be provided by Actindo under this contract are defective, Actindo will, within a reasonable period of time and after receipt of a notice of defect, either remedy the defect or provide the services again, at its own discretion. When using third-party software that Actindo has licensed for use by the customer, the liability for defects primarily consists of the procurement and installation of upgrades, updates or service packs provided by the third party. In addition, Actindo will assert its warranty claims against the third party. Actindo will use the necessary and reasonable care of a software company when concluding contracts with third parties to ensure that sufficient warranty claims are agreed upon. If a defect remains after these possibilities have been exhausted with regard to the third party's software, Actindo is obligated to provide subsequent performance in accordance with XIX.1 sentence 1. However, this does not apply insofar as the impairment is based on limitations of availability for which the pre-service provider is responsible.
2. Defects are functional limitations of the actual condition from the contractually defined specification; this also includes operability defects. Defects are divided into four classes:
 - a) Class 1: The system is not usable at all (system downtime) or important data are not executable or cause data loss or data data loss or data corruption.
 - b) Class 2: The system can only be used to a significantly limited extent, i.e. at least one central function is temporarily unavailable and the corresponding and the corresponding operational area cannot use the system. cannot use the system.
 - c) Class 3: All functions are fundamentally usable, but there are individual functional limitations.
 - d) Class 4: The system is usable despite the problems encountered, but there are limitations in terms of ease of use.
3. The response time to defects is specified in the respective support or consulting agreement concluded for the software usage contract. If no explicit time is specified for remedying defects, this will be done within a reasonable period of time. The period begins after the customer has notified Actindo of the defect and the agreed response time has expired. The appropriateness of the period is based on the class of the defect.
4. If the defect-free performance fails for reasons for which Actindo is responsible, even within a reasonable period set by the customer, the customer may reduce the agreed remuneration by a

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reasonable amount. The right to a reduction is limited to the amount of the monthly payment for the defective part of the service.

5. If the annual reduction pursuant to Section XIX.4 above reaches 10 percent of the annual compensation, the customer may terminate the contract without notice.
6. The customer will immediately notify Actindo of any defects that have occurred in writing or by e-mail.
7. The customer will support Actindo free of charge in eliminating the defects and, in particular, provide Actindo with all necessary documents, data, etc. that Actindo requires to analyze and eliminate the defects. If the customer does not comply with its obligations to cooperate under this clause and Actindo is therefore unable to remedy the defect, the customer loses its rights to reduce the purchase price and the right to terminate without notice under clause IXX. 5.
8. Further claims and rights of the customer other than those expressly mentioned in this Item XIX due to defects in the contractual services do not exist, insofar as Actindo is not liable to a greater extent due to mandatory statutory regulations.

XX. Duty to investigate

1. Complaints must be submitted to Actindo in writing within three weeks of the start of use.
2. Actindo must be notified in writing of any non-obvious defects within three weeks of their discovery.
3. In the event of a breach of the duty to inspect or to give notice of defects, the delivery or service shall be deemed to have been approved.

XXI. Third party property rights

1. To the extent that legal action is taken against the customer due to the contractual use of the services provided by Actindo because of an infringement of third-party industrial property rights or copyrights, Actindo will indemnify the customer against these claims under the following conditions:
 - a) The customer shall notify Actindo in writing without delay as soon as he or she of the claims asserted against him or her, and the customer shall inform and
 - b) Actindo grants control over all defense actions and settlement settlement negotiations. In particular, he will provide Actindo with all necessary information, such as pleadings and court orders. and court orders. He will not, without the prior consent court or out-of-court acknowledgement of the third party's claims without the prior claims of the third party without the prior consent of Actindo.
2. In addition to the indemnification obligation under Section XXI. Actindo is only obligated to compensate the customer for damages due to the infringement of third-party property rights if Actindo is at fault for the infringement.
3. The rights of the Customer under this Clause XXI shall not exist to the extent that the infringement of third party intellectual property rights results from the fact that the Customer:
 - a) has made a change to the contractual services which Actindo has not not authorized in writing by Actindo under this Agreement or otherwise, or or otherwise, or
 - b) has used the contractual services in a manner other than for the purpose of this contract, or used, or

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- c) has combined it with hardware or software that does not meet the requirements stated in the description "System Requirements" description.

XXII. Source code assurance clause

1. Actindo grants free access to the source code of the contract software to enable the customer to exercise the rights of use granted to it under this contract in the event that Actindo is sold in full to a company competing with the customer.
2. If Actindo has ceased business operations or the customer proves that
 - a) Actindo itself files for insolvency,
 - b) insolvency proceedings have been opened against the assets of Actindo and have not been rescinded within within six months of the date on which the insolvency proceedings were opened
 - c) or a corresponding application has been rejected for lack of assets
 - d) or a deletion or liquidation order has been entered in respect of the Actindo liquidation order has been registered,
3. Actindo will release the source code of the contractual software in the most current version and in accordance with the booked modules to the customer for the purpose of exercising the rights of use granted to the customer under this contract.
4. Actindo undertakes to conclude an additional deposit agreement with a notary. The notary shall release the materials to the customer, provided that,
 - a) the customer proves that Actindo has consented in writing to the surrender requested by the customer, or has consented in writing, or
 - b) the customer submits a judgment with a res judicata effect for the replacement of Actindo's consent. judgment that has the force of res judicata, or
 - c) Actindo has ceased business operations, or
 - d) the Customer proves the occurrence of one of the prerequisites for the claim for source code the entitlement to source code output.
5. If and as soon as, in accordance with the above provisions, the customer is entitled to demand that Actindo hand over the source code, the customer shall be entitled to the right of use pursuant to Section XXII.1 for an unlimited period of time and from then on free of charge. If Actindo is no longer willing or able to enable the use of the contract software via the Internet in the specific case of surrender, the customer is entitled to assume this role.

XXIII. Force majeure

1. Actindo is released from its obligation to perform under this contract if and to the extent that the failure to perform is due to the occurrence of force majeure circumstances after the conclusion of the contract.
2. Circumstances of force majeure are all external, non-culpable and unavoidable events that prevent Actindo from performing and that Actindo could not avoid even with the utmost care.
3. Each Party shall promptly notify the other Party in writing of the occurrence of a Force Majeure Event and shall similarly notify the other Party as soon as the Force Majeure Event ceases to exist.

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XXIV. Data protection and data security

1. Both contracting parties shall comply with the applicable data protection provisions, in particular those valid in Germany, and shall oblige their employees deployed in connection with the contract to maintain data secrecy, unless they are already under a general obligation to do so.
2. Both contracting parties shall furthermore observe the provisions applicable to commissioned data processing and to the data center and shall take the necessary technical and organizational measures to protect personal data within the meaning of Art. 32 DSGVO.
3. If the customer collects, processes or uses personal data himself or through Actindo, he warrants that he is entitled to do so in accordance with the applicable provisions, in particular those of data protection law, and in the event of a violation he shall indemnify Actindo against all third-party claims.
4. It is clarified that the customer remains the responsible party (i.e. "master of the data") both generally in the contractual relationship and in the data protection sense (Art. 4 para. 7 DSGVO). The customer is solely entitled with regard to the power of disposal and ownership of all customer-specific data (data entered, data processed, data stored, data output). Actindo does not perform any control of the data and content stored for the customer with regard to a legal admissibility of the collection, processing and use; this responsibility lies exclusively with the customer.
5. Actindo is only entitled to process and/or use the customer-specific data exclusively in accordance with the customer's instructions (e.g., to comply with deletion and blocking obligations) and within the scope of this contract. In particular, Actindo is prohibited from making the customer-specific data accessible to third parties in any way without the customer's prior written consent.
6. This also applies in the event that a change or addition is made to the customer-specific data.
7. Actindo, on the other hand, is entitled to process and use the customer's data to the extent permitted by data protection law during the term of this contract.
8. The customer is generally not entitled to demand access to the premises with the contractual software and other system components. This does not affect access rights of the customer's data protection officer after written notification with an appropriate lead time to check compliance with the requirements pursuant to Art. 28 (3) h of the German Data Protection Regulation (DSGVO) and Actindo's other handling of personal data in accordance with the law and the contract as part of the operation of the contract software under this contract.
9. The contracting parties shall use all documents, information and data which they receive for the execution of this contract and which are designated to them as confidential only for the execution of this contract and shall treat them confidentially as long as and to the extent that they have not become generally known. The contracting parties shall impose a corresponding obligation on their employees affected by this contract. These obligations shall remain in force even after termination of this contract for a further two years, calculated from the end of the contract.
10. Actindo may subcontract, but shall impose a corresponding obligation on the subcontractor.

XXV. Secrecy

1. Actindo undertakes to ensure that all data transmitted by the customer and its processing are treated with strict confidentiality and, in particular, are not disclosed without authorization.
2. The duty of confidentiality also extends to such knowledge that Actindo has acquired in connection with the execution of the order.

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3. The confidentiality obligation is set forth in a special privacy policy attached to these General Terms and Conditions.
4. The obligation to maintain confidentiality is limited in the case of seizures by the offices of the tax authorities and searches that are carried out on the basis of judicial search warrants. Actindo will seek legal advice when considering such disclosure claims in order to defend against unjustified claims by authorities.

XXVI. Place of jurisdiction, applicable law

1. The place of jurisdiction for all disputes arising from the contractual relationship between the contracting parties, in particular regarding the conclusion, execution or termination of the contract, is Munich. Actindo may also file suit against the customer at the customer's own place of jurisdiction.
2. The laws of the Federal Republic of Germany apply exclusively to contracts concluded by Actindo on the basis of these GTC and to any claims arising from them, regardless of their nature.
3. The application of the provisions on the Uniform UN Sales Law on the purchase of movable goods is excluded.

XXVII. Crediting, assignment, written form

1. The contracting parties agree that, insofar as written form is stipulated in contractual provisions between the parties, this shall be complied with by fax, but not by e-mail.
2. Offsetting Actindo's claims against counterclaims of any kind, in particular claims for damages and warranty claims, is excluded, unless the claims are undisputed or have been legally established.
3. The assignment of any claims of the customer arising from legal relationships with Actindo to third parties is excluded and invalid vis-à-vis Actindo.

XXVIII. Final provisions

1. All amendments or additions to this contract must be made in writing.
2. The contracting parties agree that a written form requirement is only met by letter or fax, but not by email.
3. The contracting parties may transfer the rights and obligations arising from this contract to third parties only with the prior written consent of the other party. The consent may be refused without justification.
4. Should individual provisions of these General Terms and Conditions be invalid or unenforceable or become invalid or unenforceable after conclusion of the contract, the validity of the remainder of the contract shall not be affected. The invalid or unenforceable provision shall be replaced by a valid and enforceable provision the effects of which most closely approximate the economic objective pursued by the contracting parties with the invalid or unenforceable provision. The above provisions shall apply mutatis mutandis in the event that the contract proves to be incomplete.

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