

Commercial Terms of Service

1. Definitions

“Agreement” refers to any agreement that pertains to these set of commercial terms and brings into force, these very terms of service.

“digitally induced GmbH” & “the company” being used synonymously, refers to the company who has executed the agreement. The company is located at 96 Scharpenbergerstr, 58256 Ennepetal, Germany.

“Effective Date” refers to the date when the agreement has been signed by all the parties to this agreement by physical or electronic signature or otherwise, or an order/ subscription from the customer has been accepted by digitally induced GmbH.

“Customer” for all intents and purposes, shall mean the customer who has obtained a subscription on the online portal of digitally induced GmbH or has obtained the services of the company and has become a party to this agreement.

“Service” or “Services” shall refer to any form of products or services and/or information, including but not limiting to its subscription packages and its non-commercial resources, which are supplied to the customer by the company, in the course of this agreement.

“Subscription” refers to an arrangement, by the operation of which, the customer is provided access to various commercial resources of the company.

“Intellectual Property Rights” shall refer to all trademarks, copyrights, patents, designs, prototypes, logos, domain names, inventions, trade secrets and know-how and all other such intellectual property.

“Customer Work Products” shall refer to any product, idea or prototype created by the customer by the use of the company’s resources or through the assistance provided by the company.

“Consulting” shall refer to the services through which the customer receives the company’s professional know-how and expertise, either as part of a subscription plan, as laid out while purchasing the plan, or outside of the plan, chargeable as per agreed terms.

“Bug Fix Update” pertaining to a product version, shall refer to a software update or release, designed and specifically identified by the company as a bug fix for that software version.

“Fall-back Date” shall refer to the date, 12 months prior to the date of expiration of the subscription.

“Fall-back license” refers to the license that authorises the customer to use the version of the software as was provided to the customer on Month 1. The customer will not receive the latest version of the software, just before the cancellation or expiration of the subscription.

The bug-fix updates for strictly, that very version of the software, however, will be made available to the user.

2. Subscriptions and Included products and services

a. General Provisions

The company offers commercial subscriptions, that provide the customer access to various services and commercial materials of the company by varying degrees, based on the plan that the customers have selected. The detailed description of the

privileges granted by each plan is clearly provided in the “pricing” page of the website of the company.

All resources, which are part of the selected plan, can only be used by a select number of users, the details of whom have been provided by the customer in advance and they shall be treated as “customer user” or “connected users”. The specific number of users is predetermined, based on the number of users for whom the plan has been purchased by the customer.

b. Premium Chat (if included in the Subscription)

The Customer is offered access to a chat service, where the company’s expert team helps the Customer by answering technical questions. This Service allows the Customer to get advice regarding any issues related to products of the company and their operation through a chat service during the Service Hours. There is a limit on how much the Customer can use this Service and the time period caps off at four (4) hours. Should the support duration exceed the time period of 4 hours, such support shall be chargeable as per usage.

The maintenance of “usernames” and “passwords” of respective users is strictly subject to scrutiny and up-keeping by the customer and the company shall not be liable to replace any such user id whose password has been forgotten or misplaced.

c. Fall-back & Support

A “Fall-back license” is provided with every paid plan after an uninterrupted payment for 12 months and this allows the customer to keep using his product, even without an active subscription with the company.

The “Enterprise plan” provides the customers with premium chat support and first four hours of such support is included as part of the subscription. Should the support duration exceed the time period of four hours, such support shall be chargeable per use (per hour or per minute).

Support, when not availed as part of the “enterprise plan”, shall be provided in the form of email support and access to forums and casts and extensive documentation. Additional support plans can be provided upon request by the customer.

3. Indemnification

The company shall indemnify its customers from and against any and all third party claims and/or liabilities, including the fees and costs of attorneys, arising directly out of the use of the products and services provided by the company, in compliance with the agreement. The aforementioned claims include claims of infringement, invalid licensing of copyrighted work-products and misappropriation. Should there be any proceeding being brought forward in any of the aforementioned matters against the customer, the company will, by written notice in English, served at its own expense, will defend the customer and the customer shall assist the company in such defence.

Furthermore, if in the reasonable opinion of the company, the product or service of the company infringes the intellectual property of a third party or such proposition has been confirmed in a trial, the company may, at its own discretion and expense, either obtain right to use that product for the customer, or replace that product with another product or service which complies with the agreement or modify the product to remove the impugned infringement.

If none of the aforementioned alternatives work or are not feasible enough, the customer shall stop using the company’s product or service and shall receive a full refund from the company.

The company however, shall not be held liable if the claim is due to wilful misconduct or gross negligence by the customer, or is asserted by a company or group under the ownership of the customer, or is an outcome of use of the company’s product or service in combination with another company’s product or service. The aforementioned indemnity obligation shall however always be limited to an amount equal to three times the yearly subscription amount.

4. Modification in Subscription plan, price or services offered.

The company may, without notice, change its subscription plans or their prices and the number or nature of privileges offered under each agreement at any point in time as it deems necessary and relevant to its operation. The company may also cease to provide parts of or the whole of the subscription or a service. The company may also create new operating guidelines or impose restrictions upon existing operations of a subscription plan. The company however, will notify its customers of any significant changes in advance. If the change significantly affects or impairs the subscription or service, then the customer may terminate the subscription and any pre-paid fees will be refunded in proportion to the part of the non-performance or for the remaining term of the subscription.

5. General responsibilities of Customer

The customer shall pay the applicable subscription and service fees in a timely manner. The customer shall provide the company, free of cost, all permissions, instructions, information, documentation, access rights, resources and assistance that are reasonably necessary for the company to deliver the services. The customer shall adhere to the agreed processes and ways of working and communication, as applicable. The customer shall maintain, at their own costs, the data communication connections, equipment, ICT environment and software necessary for the use of the service, as reasonably informed by the company from time to time.

The customer shall be responsible for the accuracy and suitability and non-infringement of any material and information provided and instruction issued to the company as well as for the compliance thereof with the laws, regulations and orders of appropriate authorities. The customer shall ensure that the information and material and agreed use of the services or included software do not violate any export control restrictions or international trade sanctions.

6. Fees, INVOICING and Payment Terms

a. Subscriptions

The applicable subscription fee is mentioned in the “pricing” page of the company’s website. The agreed subscription fee shall apply for the agreed subscription term. The company shall be entitled to adjust the subscription fee at any time as it deems necessary and prudent. The adjusted fee shall apply to

the customer from the beginning of the next subscription term, provided that such subscription is renewed.

b. **Invoicing and Payment Terms**

The company invoices subscriptions in advance upon order or 30-days before renewal. Time and material based services are invoiced in monthly arrears.

Value added tax, sales tax and any other similar taxes, charges and withholdings are added to the fees in accordance with the then current regulations.

Payment terms are Ten (10) days net of the date of an invoice. The company reserves the right to charge interest on any unpaid balances, at the rate of 2% per month.

7. Intellectual Property Rights and Use Rights

a. **The company's materials.**

The company exclusively owns and retains all title, intellectual property rights and any other rights in and to The company's materials, including any non-commercial material and commercial material.

The customer's right to use the company's commercial or non-commercial materials is subject to the customer separately obtaining a license to such material and the customer complying with the separate license terms and conditions, as indicated by the company. The customer may use the company's materials and resources only for the purpose set out in the agreement and the applicable license terms and conditions.

b. **Customer Materials.**

The customer exclusively owns and retains all title, intellectual property rights, and any other rights in and to the customer's pre-existing materials. The

company has the right to use the customer's pre-existing materials only for the purpose of the agreement.

The customer exclusively owns and retains all rights to customer work products. The company has the right to use the customer work products only for the purposes of the agreement.

8. Customer Data

The customer agrees that the protection and preservation of any and all information and data present on its computer systems or which may otherwise be affected by the performance of service, is solely the responsibility of the customer. The company shall not be responsible for the loss of or damage to any such information, including where such loss or damage results from failure of the customer to properly back-up its data prior to the performance of the services.

9. Confidentiality

Both the company and the customer agree that the agreement and all information and materials related to the agreement constitutes "**confidential information**". Confidential information further includes information either marked confidential or information reasonably known or understood by the receiving party as being treated by the disclosing party as confidential. Confidential Information shall not include information: (i) that is now or becomes generally available to the public through no fault or breach of the receiving party; (ii) that the receiving party can document was already known to it prior to disclosure by the disclosing party; (iii) that is independently developed by the receiving party without the use of any of the other party's Confidential Information; and (iv) that the receiving party rightfully obtains from a third party who has the right to transfer or disclose it.

Both parties may disclose confidential information to their personnel that have a need to know such confidential information for performing the duties required by the agreement with the provision that such personnel is bound by confidentiality obligations herein.

10. Use of name

The company may use the customer's name and logo in its marketing collateral, websites and promotional materials to identify the customer as a customer of the company.

11. Term and Termination

The validity of a subscription extends to a stipulated period of time, specified at the time of purchase. When such term comes to an end, the said subscription gets renewed for a time corresponding the time of the original subscription. The charge for the subscription shall be deducted in the same manner as the most recent subscription. The customer is allowed the opportunity to terminate the subscription 30 days before the renewal.

12. Warranty Disclaimer and Limitation of Liability

EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE OR ANY WARRANTY THAT ANY SERVICE OR DELIVERABLE WILL MEET ALL NEEDS AND EXPECTATIONS OR BE ERROR-FREE. NEITHER PARTY TO THE AGREEMENT SHALL BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO BUSINESS INTERRUPTION, LOSS OF DATA, LOSS OF PROFITS, LOSS OF REVENUES, LOSS OF BUSINESS OPPORTUNITIES AND LOSS OF GOODWILL, OR DAMAGES CAUSED TO THIRD PARTIES OR BY THE PURCHASE OF REPLACEMENT PRODUCTS OR SERVICES, EVEN IF THEY HAVE BEEN ADVISED OF OR SHOULD HAVE FORESEEN SUCH DAMAGES.

13. Statute of Limitations

The parties come to an agreement that any action pertaining to an alleged breach of the agreement shall be commenced within one year of the date of the breach, without

regard to the date the breach is discovered. Any action not brought within that one-year stipulated time period shall be barred, without regard to any other limitations period set forth by law or statute.

14. Complaints

Should there be any suggestions or complaints from the end of the customer regarding the services or subscriptions or operations of the company, the customer is hereby encouraged and invited to contact the company's customer service team and make them aware regarding the same. The issue brought forward will be subjected to prompt investigation and resolution, as may be applicable.

15. Governing Law and Jurisdiction

The Agreement shall be governed by and construed in accordance with the substantive laws of Germany, excluding its choice of law provisions and the United Nations Convention on Contracts for the International Sale of Goods (CISG). Any dispute, controversy or claim arising out of or relating to the Agreement, or the breach, termination or validity thereof, shall be finally settled by Arbitration in accordance with the German Arbitration Act, 1998. The number of arbitrators shall be "one". The seat of arbitration shall be Dusseldorf, Germany. The language of the arbitration shall be English/German.

16. Force Majeure

Except for the standing obligation to pay sums due hereunder, neither party shall be liable for defaults, delays or failures in performance of the agreement (including, without limitation, war or insurrection, earthquake, flood or other similar natural catastrophe, pandemics, interruptions in general traffic, data communication or supply of electricity, technical malfunctions, denial of service attacks, computer errors, corruption or loss of information, import or export embargo, strike, lockout, boycott, or other industrial action) resulting from acts, events, circumstances or causes beyond its control.