

General Terms and Conditions for Cloud Services of ondot solutions GmbH

1 Scope, supplementary contractual terms

The General Terms and Conditions for Cloud Services "GTC Cloud" of ondot solutions GmbH (ondot) apply to contracts with customers for Application Service Providing, software as a service, cloud services, hosting contracts and contracts for the provision of software in the cloud and are deemed to be part of the contract, unless otherwise agreed in writing in individual agreements between ondot and the customer.

These GTC apply together with the General Terms and Conditions of ondot solutions GmbH for the sale and maintenance of licenced programs (GTC Licences), which also form an integral part of these GTC and are available at <https://www.ondot.at/agb/>.

Any deviating, conflicting or supplementary GTC of a customer shall only become part of the contract if and to the extent that ondot has expressly agreed to their validity in writing. This requirement of consent shall apply in any case, in particular also if ondot provides a delivery or service to the customer without reservation, being aware of the customer's GTC.

Furthermore, the licence terms of the manufacturer of the respective software and the contractual terms of the respective data centre in whose server infrastructure the software provided to the customer is installed shall apply.

2 Services

ondot provides the customer with the contractual software (Software) in accordance with the rights of use specified under item 3 of these GTC for online use via a data network (hereinafter referred to as "Data Network"). For this purpose, the Software is provided by ondot on a server infrastructure that can be accessed by the customer via the Data Network. The Software is operated in the data centre in the version agreed with the customer. Public statements, recommendations or advertising are not equivalent to quality specifications of the Software. ondot undertakes to maintain the Software in accordance with the maintenance agreement of the GTC Licences.

3 Rights of use

ondot grants the customer a simple, non-exclusive, non-transferable right to use the Software, limited to the term of the contract.

The customer may copy the Software to the extent that the respective copy is required for the contractual use of the Software. This includes loading the Software into the working memory, but not the installation or storage of the Software on data carriers. Further copies of the software, including the program code, must not be created. The customer's authority to copy the program code under the copyright law shall remain unaffected.

In the event of improper use of the Software by the customer or by a third party whom the customer has enabled to use the Software, the rights of use shall lapse.

The type and scope of the rights of use for third-party software that ondot makes available to the customer shall be governed by the terms of use of the third party and are limited to the term of the contract. ondot will disclose the terms of use of the third party to the customer upon request.

The customer is not permitted to allow unauthorised persons and third parties to access and use the Software online.

The rights of use granted to the customer shall lapse if and for as long as the agreed remuneration for the use of the Software has not been paid to ondot or has not been paid to ondot in due time. Moreover, in case of non-payment or late payment of the agreed remuneration, ondot shall have the right to terminate the customer's online access to the Software immediately and without warning. However, this shall not have a debt-discharging effect for the customer. Agreed contract terms and notice periods must be observed in all cases.

4 Software availability

ondot guarantees the availability of the Software from the server infrastructure of the data centre to the transfer point into the public or the agreed Data Network at a rate of 95% on average for each calendar year. This shall not apply to any periods when the server cannot be accessed due to technical or other problems that are not within the sphere of responsibility or influence of ondot (e.g. force majeure, natural disasters, strikes, labour disputes, fault of third parties, etc.).

ondot may restrict access to the server if this is required due to technical changes, system maintenance, the security of network operation, the maintenance of network integrity, in particular to avoid breakdowns of the network, software failures or incidents affecting the data stored. Availability may be limited due to the maintenance of the Software and the server infrastructure, especially between 22:00 and 06:00 hours. If availability is restricted between 06:00 and 22:00 hours due to urgent maintenance work, this shall not constitute a defect.

5 Data management – location & user data security

5.1 Location

The ondot cloud solutions are operated in one of the largest data centres in Austria with extensive international certifications, including:

- ISO 9001 Quality Management
- ISO 27001 Information Security
- ISO 50001 Energy Management
- ISO 14001 Environmental Management

The operator of the A1 Next Generation Datacenter is Austria's largest Internet provider, ensuring the best possible connectivity.

5.2 Fault tolerance

System reliability is ensured by virtualised operation on a Microsoft cluster with numerous nodes on independent physical servers. Additionally, each individual server has redundant power supply and network connection.

The failover cluster compensates the failure of a host computer without interruption.

Data is stored on hard disk arrays, each equipped with a RAID Level 5 hard disk array, redundant power supply and dual network connectivity.

Backups of operating systems and system installations are kept for 2 weeks.

5.3 User data security

The user data is stored in an SQL server database.

Transaction logs are backed up every 15 minutes, and a full backup is made once a day to off-site storage with a 48-hour retention period.

5.4 Archiving

The data backup does not replace proper archiving of the data under fiscal law and does not guarantee compliance with the principles regarding data access and verifiability of digital documents (GDPdU, "Grundsätze zum Datenzugriff und zur Prüfbarkeit digitaler Unterlagen").

5.5 Data recovery

Retransfers of the backed-up data into the system shall be carried out on behalf of the customer against separate remuneration in accordance with the currently valid price list for services of ondot. Retransfers due to a reason for which ondot is responsible shall be free of charge for the customer. Data recovery upon the customer's request is only possible for dedicated hosted products; this cannot be guaranteed for "shared cloud" products.

6 Warranty

The provisions of item 7 of the GTC Licences shall apply to the warranty.

7 Liability

ondot warrants that the Software, when used in accordance with the contract, will conform to its specifications and will not have any defects that would impair its fitness for the contractually agreed use any more than insignificantly. Insignificant deviations from the specifications shall not constitute a defect. The customer is aware that any software as complex as in the present case cannot be developed without any errors.

Possible defects or malfunctions are to be reported to ondot immediately in a comprehensible manner in writing by email. ondot will remedy the defect within a reasonable period of time after receipt of such notification. To the extent that this is reasonable for the customer, ondot is entitled to provide the customer with a new version of the Software (e.g. "Update", "Maintenance Release/Patch") which no longer contains the defect complained of or which eliminates the same, or to develop a workaround.

As long as the accessibility of the Software for online use during operating hours is not possible due to the elimination of defects for a period of up to 48 continuous hours, the customer's right to terminate the contract for failure to grant use of the Software and their right to a reduction of the remuneration shall be excluded.

ondot shall not be liable for any defects that are based on operating errors and/or that have occurred after any use of the Software in violation of the contract, unless the customer proves that there is no causal relationship between the defects and the above-mentioned events.

ondot shall not be liable for the correctness of the content of the customer's data located on the contractual Software and the resulting defects and errors.

ondot shall not be liable for the functionality of the external data lines to its server, in case of power failures as well as for service restrictions or service failures that are based on force majeure or events that significantly complicate or restrict any service or make the same impossible. This includes, in particular, strikes, lockouts, official orders, the failure of communication networks of other operators, disruptions at the respective line provider, and disruptions that are within the sphere of risk of other network providers.

For direct damages – except for section 6 and liabilities resulting from mandatory product liability provisions – ondot, their suppliers and vicarious agents shall only be liable in case of intent or gross negligence – with the burden of proof being on the customer.

The customer's claim for damages is limited to improvement; if this is impossible or would involve any unreasonable effort, the total monetary compensation shall be limited to the hosting & licence fees actually paid for the period from the occurrence of the loss until remedy of the same, but no more than the hosting & licence fees for the last 3 months.

Any liability for indirect or consequential damages, such as loss of revenues, unrealised savings, interruption of operations, or claims by third parties, as well as any damage to recorded data, is expressly excluded. Furthermore, liability for ordinary negligence shall be excluded in any case.

The customer declares that they enter into the contract only for the purposes of their business. These limitations of liability shall also apply to claims by the customer against a third-party supplier of the licenced material.

The parties irrevocably acknowledge the adequacy of the liability provision in this section.

ondot shall assume no liability for the dissemination of confidential data stored in the EDP system of ondot, if and to the extent that the dissemination of such data is due to an abuse of passwords and login data, which ondot cannot be blamed for.

To the extent that the liability of ondot is excluded or limited, this shall also apply to the personal liability of staff and employees of ondot as well as to third parties acting on behalf of ondot.

8 Control rights of ondot

ondot has the right to read and check the data transmitted and retrieved via the customer's online access if it is to be feared that such data is related to illegal acts or that the content of the data is contra bonos mores, or for the purpose of error & performance analysis.

ondot shall be permitted to access the data transmitted and retrieved via the customer's online access if and to the extent that this is necessary to check the system.

9 Commencement of the contract, term and termination

Unless otherwise agreed, the contract shall commence upon activation of online access to the Software.

The contract is concluded for an indefinite period. It may be terminated subject to three months' notice with effect at the end of a contract year. Any minimum terms and periods of notice agreed in the offer or in the individual contract shall have priority.

The right to extraordinary termination for cause remains unaffected. In particular, ondot shall have a right to extraordinary termination if the customer is in default with the payment of the remuneration.

Notice of termination must be given in writing.

10 Final provisions

10.1 Assignment of rights and obligations

The customer shall not transfer or assign (whether by operation of law or otherwise) this agreement or any rights or obligations hereunder without the prior written consent of ondot. Such consent may only be denied in justified cases. ondot shall, however, be entitled to assign claims for payment arising from this contract to third parties and to assign all rights under this contract to a parent company or subsidiary.

10.2 Independent contractors

This contract shall not establish a corporate relationship, agency relationship or any other specific legal relationship that goes beyond the agreed exchange of services. Vicarious agents of ondot shall not enter into a legal relationship of any kind whatsoever with the customer, in particular not into an employment contract or similar. ondot shall solely be responsible for all wages, salaries, wage taxes and social security contributions incurred within the scope of the employment relationship now and in the future.

10.3 Severability clause

If any provision of these GTC is found to be illegal and hence invalid by the competent court, the relevant provision shall be replaced, without any further action by the parties, by a permissible provision which comes closest to the legal and economic purpose of the original provision.

10.4 Exclusive validity

The provisions of these GTC with all associated order confirmations, price lists and specifications shall replace all previous agreements of any kind whatsoever with exclusive effect. A signed facsimile of this contract shall be valid. If there is a contradiction between the facsimile of the signed contract sent by the customer for the time being and any subsequently sent copy, the facsimile sent first shall prevail. If this contract is signed in two copies, both copies shall be deemed to be originals of one and the same contract.

10.5 Force majeure

Except for fulfilment of the payment obligations regarding the fee due under this contract, any disruption of contractual performance caused by force majeure shall not be considered a breach of contract. Force majeure shall be deemed to exist, for example, in the event of any circumstances occurring that are usually beyond the control of the contracting parties, such as accidents, acts of war, strikes, fires, lockouts, labour disputes, riots and civil disobedience, acts of the public enemy, legal orders, emergency decrees, orders by a military force, court or judicial and official orders, inability of carriers to deliver on time.

10.6 Public relations

Both parties agree to a press release on the existence of this contract and the legal relationship established thereby. This press release shall not be issued until both parties have agreed to its contents. Such consent may only be withheld for cause. The customer agrees to the inclusion of their data in the customer list of ondot and to the electronic processing of general data by ondot in accordance with the data protection regulations.

10.7 Prohibition of solicitation

Neither of the contracting parties will, during the term of this contract, directly or indirectly recruit employees of the other contracting party, or former employees who were employed by the other contracting party within the last twelve months, or arrange for them to enter into an employment contract with a third party without the written consent of the contracting party concerned. Any violation of this provision shall constitute a gross breach of contract and shall entitle the aggrieved contracting party to immediately seize the court, seeking a court order to cease and desist from employment.

10.8 Existing contracts

Any existing contracts concluded by ondot with third parties shall not be affected by this contract in any way.

11 Applicable law, place of jurisdiction

The contractual relations between the contracting parties are subject to Austrian law, excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG). The place of jurisdiction is Wiener Neustadt.

The contracting parties agree to seek an amicable settlement in the event of differences of opinion before referring the matter to the judge.

Baden, January 2023