

Special Terms and Conditions for SaaS and Online-Services of the 4relation Consulting GmbH

By signing a SaaS or Online-Service agreement with NAVAX Customer Experience GmbH (contractor) you accept the following „Special Terms and Conditions for SaaS and Online-Services“ of the contractor. They complete the general terms and conditions (“AGB“) of the contractor in the respective current version.

1. Scope

These „Special Terms and Conditions for SaaS and Online-Services“ shall apply to all contracts with the following content:

- Contracts which cover the transfer of Software from the contractor or Third-party Manufacturers for usage via the internet;
- Contracts which cover the storage of important data of the customer (Data-Hosting) on servers.

2. Services

The contractual object is the approval of the agreed use of the software listed in the agreement, which is defined more closely through the service descriptions and these contractual terms, in form of remote access via the internet (“Software as a Service“) and the enabling of data retention by the customer on servers („Hosting“) which are made available through data service provider for a charge.

Individual customizations and expansions regarding functionality of the software must be agreed separately and are not subject matters of scope of performance.

For the software of the contractor, the customer is granted the non-exclusive and non-assignable temporary right for the duration of the contract to use the software in accordance with the terms of the respective agreement. For this purpose the contractor makes the respectively leased software available to the customer via internet against a charge, for the duration of the concluded contract. For this purpose the contractor will set up the software at a service provider according to the requirements of the customer. For this purpose the contractor is entitled to have subcontractors carry out services.

The respective actual functional range of the software is given by the services description of the manufacturer.

The installation of the software is not owed by the contractor. The connection of the customer to the internet is not included in the contract.

3. Term of Contract and Termination

The leasing agreement with the SaaS provider will be concluded by the customer for an indefinite duration. The leasing agreement can only be terminated in writing by either party, respectively at the end of the month, after giving three months’ notice.

The contractor’s right to terminate for good reason shall remain unaffected. A good reason for the contractor shall particularly exist inter alia upon termination by the SaaS provider. In this case the contractor is entitled to termination without notice of the lease agreement after written notification.

With the termination and upon request, the customer shall receive a copy of his/her stored data in electronically readable form (download/data carrier), whereby format and data structure are determined by the data service provider. The data backup must be requested in writing by the customer, already at the time of the written notice of termination, respectively at termination through the contractor, immediately after receiving the letter of termination. The generating of a data backup shall be carried out in return for payment. The services required for these purposes (data carrier/services) are invoiced according to expenditure.

It should be expressly noted that the contents of the data backup are only readable with the respective software. This software is a part of the data backup. The contractor does not have any influence on content and functions of the data backup; the customer will immediately carry out corresponding tests, or respectively appoint the contractor to do so. If the customer does not request data backup, then the contractor shall expressly not be liable for damages resulting from deactivation of the system due to the unavailability of data.

Thirty (30) days after deactivation of the system all customer data will be permanently erased by the data provider.

4. Modification of Software Scope

Change requests regarding the scope of the leased software (number of users and modules) can be communicated to the contractor in writing in electronic form, respectively at the 10th day of each current month for the following month. If the contractor does not receive a change request through the customer until the indicated time frame, then the scope of the current month is considered to be agreed on for the following months as well.

At scope- and/or tariff changes the customer receives (after written assignment) in each case a data sheet, accordingly updated by the contractor with information about the scope of software and the consequentially resulting monthly charge and an updated actualized prescription for the following month in electronic form.

5. Rights of Use to the Software

The contractor grants the customer the non-exclusive and non-transferable right to use the software listed in the concluded agreement for the duration of the contract within the scope of the SaaS-Services, purposeful and in accordance with the license terms of the manufacturer.

The customer may only edit/modify the software as long as this is covered in the respective intended use of software, according to the respective current service description. The customer shall not be entitled to allow the use of the software by a third party either with or without a fee. Therefore the customer shall be expressly prohibited to sublease or sublicense the software.

6. Data Hosting

After receipt of a written assignment (order) by the customer, the contractor will set up a defined storage space on a server at the respectively applied service provider. If the disk space is no longer enough for the data, the customer can order some more contingents accordingly. The data service provider will ensure that the stored data can be accessed via the internet.

The customer is not entitled to allocate or provide this storage space partially or completely against payment or free of charge to a third party for use.

The customer is obligated not to save any data (content) on the storage space, whose deployment, publication or use violates the law. The customer remains the owner of the contents stored in any case.

7. Disruption / Impairment of Accessibility

Adjustments, modifications and amendments of the contractual SaaS-/ or Hosting-Services and measures, which serve for the detection and correction of malfunctions, will only lead to a temporary interruption or impairment of accessibility, if it is absolutely essential for technical reasons.

The maintenance of the SaaS-Services is usually conducted from Monday – Friday: 9:00 am - 6:00 pm. In the case of major malfunctions – if the use of the SaaS-Services is no longer possible, respectively seriously limited – the maintenance is conducted within reasonable time from receipt of awareness or information notification through the customer. The contractor will inform the customer via email about the maintenance work as soon as possible, and carry it out according to the technical conditions, in the shortest time possible. Should the elimination not have been possible within 12 hours, then the contractor will notify the customer about it within 24 hours, stating respective reasons and expected time frame needed for the elimination of the malfunction, as far as the contractor is provided this information by the data service provider.

Urgent maintenance work can be conducted after timely prior notice. The customer will be notified in writing about an urgent imminent maintenance activity in writing (via email).

The customer shall immediately report faults in accessibility to the contractor. The availability only applies after submission of the fault message from the customer as impaired and only insofar as there is a real malfunction present. Impairments of data transfer, which are caused through the customer's local IT system, respectively through a disruption in connectivity by the customer (e.g.: line failure or outage with other providers or telecommunication providers), are not a malfunction in the abovementioned sense.

8. Obligations of the Customer

The customer shall fulfill all duties necessary for the provision of services and processing for this contract free of charge, in a timely manner, completely and in a professionally orderly fashion. The customer is obligated to prevent any unauthorized third parties from accessing the protected areas of the software by taking appropriate precautionary measures. For this purpose the customer will notify his/her employees of the abidance of the copyright where necessary.

The customer will protect the user and access authorization and the identification and authentication protection assigned to him, respectively to the users, from the unauthorized access through third parties, and will not pass them on to unauthorized users. As soon as the user sees any indications that the user and access authorization could be unlawfully obtained or misused by a third party, the customer is obligated due to harm reduction purposes to inform the contractor immediately about it.

The customer is solely and fully responsible for the content of the transferred, processed and saved data, and will indemnify and hold the contractor and his/her deployed secondary service provider fully harmless (also) against third parties.

The customers are obligated to act in full compliance with all legal obligations to which they are personally subject (e.g. DSGVO 2016). The customer is responsible for the permissibility, processing and use of data and safeguarding of the rights of the data subjects (information, use, correction, blocking, deletion).

The client itself is responsible for the entry and care of the data and information required for the use of the SaaS services.

The customer bears all disadvantages and additional costs arising from any breach of these duties.

9. Remuneration

The customer is obligated to pay the agreed payment (plus legal VAT) for the use of software and the data hosting monthly in advance, other services (e.g. single setup fees) will be invoiced after provision of services. For this purpose the customer will set up a SEPA direct debit scheme. Additional costs and expenses in money transfer (Bank charges, etc.) shall always be chargeable to the client. The invoices or partial invoices issued by the contractor shall be payable without any deductions and free of charges. In the event of default of payment by the customer, default interest calculated at 12% above the base interest rate is owed from the day on which the debt fell due.

The contractor is entitled to carry out an adjustment of the fees and service description by written notification to the client within four (4) weeks' notice. Prerequisites and reasons for such changes are particularly due to technical progress and development of the software.

All prices are generally indexed according to the consumer price index published by the "Statistics Austria" (VPI 2010). The base number for the compilation of the index is the in January of the concluded contract announced index number. The respective index adjustment is conducted annually. The non-enforcement of the index adjustment does not represent a waiver for assertion of price increases.

10. Blocking-/Termination of Services

In case of a default in payment by the customer and a final extension period of 10 work days, the contractor is entitled to block the access of the customer. In this case, the customer shall still be required to pay the monthly charges and fees.

The provision of services through the contractor is conditional upon the fact that the customer fulfils his/her payment liability on time. If the customer makes default in owed payment for two successive months, then the contractor shall be entitled to terminate the contractual relationship on important reason without notice.

11. Warranty/Liability

The customer obliges to give immediate information in case of disturbances in contractual services in writing, indicating how and under which circumstances the malfunction occurs, and he/she will actively support the contractor during trouble shooting.

Should the services be accessed by an unauthorized third party using the client's user ID and password, the client assumes liability for such fees incurred.

The provider is entitled to immediately block the storage disc, if reasonable suspicion exists that the stored data are illegal and/or violate the rights of a third party. A reasonable suspicion for illegality and/or a violation of rights is especially present when courts, authorities and/or other third parties notify the provider thereof. The contractor shall inform the customer about the blocking and respective reason as soon as possible. The block shall be removed as soon as the suspicion is invalidated.

The contractor shall not be liable in respect of claims for damages by the customer against the contractor irrespective of the legal grounds, unless the contractor or the legal representatives or assistants were acting willfully and knowingly or reckless. Liability for slight negligence is excluded.

Claims for damages against the contractor shall expire 6 months after they arise, unless they are due to an illegal or deliberate action.

12. Modifications / Amendments

Changes or amendments of these „Special Terms and Conditions for SaaS and Online-Services“ must be in written form and with legally binding company signature in each individual case to be legally effective; remittance by fax or email is valid as written form.

All this shall also apply to the abandonment of the requirement of written form.

13. Salvatorian Clause

Should individual provisions of these terms and conditions be or become ineffective/invalid, then the effectiveness of the remaining provisions of the contract are not affected. Invalid terms of the agreement are to be substituted with those that economically correspond closest to the contractual intent of the parties.

14. Applicable Law, Place of Performance, Place of Jurisdiction

Place of jurisdiction shall be Vienna.

Unless agreed otherwise, the statutory provisions applicable to enterprises shall exclusively apply according to Austrian law, even in the case of execution of the order abroad. The applicability of the UN-purchase law is excluded.