

# GENERAL TERMS AND CONDITIONS

These General Terms and Conditions (GTC) shall apply to all services offered by innofield AG (hereafter "innofield"). By using our services you accept the following terms and conditions completely without any alteration.

## 1. SCOPE OF APPLICATION AND CONCLUSION OF CONTRACT

1.1 These GTC cover the use of services and products which innofield provides or offers to its customers (hereafter "Customer"). Our Data Processing Agreement under the European General Data Protection Regulation (GDPR) forms part of these Terms and Conditions.

1.2 Consent to these GTC is given by using the corresponding services and products. The Customer may when requesting individual services be requested to reiterate his consent to the GTC by activating a corresponding check box. When delivering a contract or a customised quote relating to innofield services and products, innofield shall provide these GTC to the Customer together with the contractual documents in writing by mail or by email. The Customer shall in this case confirm his consent to the GTC by signing and returning the quote or the contract, or by using the service or paying the invoice. The GTC shall form an integral part of the contract with the Customer.

1.3 Clauses worded otherwise in individual contracts between the parties have precedence over these GTC.

## 2. SERVICES AND RIGHTS OF INNOFIELD

### 2.1 General

innofield provides both free and chargeable services. The Customer shall select the services to be provided by innofield from the range of services available at the time of use. The conditions published on the websites of innofield or in the innofield Control Panel, or the conditions of the customised quote as the case may be, shall apply to all services. innofield

may at any time change the range of services and limit individual services and/or cease providing them.

## 2.2 Cloud services

2.2.1 As part of cloud services innofield shall provide the Customer to the extent selected by the latter with storage space and server services on an infrastructure connected to the internet.

2.2.2 The services are calculated based on the average use of the innofield resources. The resources provided (in particular, storage, traffic, CPU / MEMORY use) may only be used for the ordinary operations of the service. innofield is authorised, with regard to resource-intensive uses by the Customer or by the users of the service (e.g. up/download of sound that goes beyond ordinary operations, video, streaming, games, file sharing, high number of simultaneous accesses, excessive storage of data files, in particular, caching files, on the server, excessive hard drive access (read and/or write), etc.) to set thresholds at any time and in its absolute discretion for the resource consumption and to limit the provision of the service for the Customer accordingly.

2.2.3 innofield also reserves the right to block the user account of the Customer if the latter's user behaviour or the user behaviour of the users of the service (e.g. a high number of simultaneous access attempts through DDoS attacks) in any way adversely affect the way the service operate. innofield shall inform the Customer (if possible within the scope of its operating resources and with respect to the concrete circumstances) in advance or immediately after the blocking.

2.2.4 innofield shall endeavour within the limits of its operational resources to offer the services continuously round the clock without any interruptions. Maintenance work, rectification of problems, expansion of services, measures to protect innofield's infrastructure, etc. may make temporary operating interruptions necessary. The Customer shall be informed early on of such operating interruptions if this is possible in the circumstances.

2.2.5 The Internet is a world wide system of independent, integrated networks and computers. innofield can only exert influence over those systems which are contained in its network and can therefore not guarantee to deliver services error- free.

2.2.6 In so far as innofield renders services free of charge these can be ceased at any time and without prior notification. This shall not constitute any claim for reduction, reimbursement or compensation.

2.2.7 innofield can engage the services of third party providers and subcontractors for the purpose of performing the contract.

2.2.8 Delays in delivery and services as a result of force majeure and events which render the provision of the service significantly more difficult or impossible for innofield – in particular strikes, lockouts, official decrees, failure of communication networks and gateways of other operators, including if these occur with suppliers or subcontractors of innofield or their subcontracted suppliers, subcontractors or operators of sub-node computers authorised by innofield – shall entitle innofield to extend the delivery period and/or service provision by the duration of the event plus an appropriate lead time.

## **3. RIGHTS AND OBLIGATIONS OF THE CUSTOMER**

### 3.1 General

3.1.1 The Customer is authorised to make the intended legal use of the services and products and undertakes to comply with these GTC and any instructions of innofield, in particular with regard to maintenance, updating or deletion of software.

3.1.2 When ordering and registering and in the context of using the services the Customer is obligated to provide truthful information.

3.1.3 The Customer undertakes to select passwords appropriately, keep them carefully and protect them from access by third parties. The Customer bears full and sole responsibility for the use of the passwords. If the Customer finds that his account is being misused, he must inform innofield immediately in writing (by email with subsequent acknowledgement of receipt by innofield).

3.1.4 By use of the innofield services by third parties the customer must instruct the third party in the proper use of the innofield services in accordance with these GTC. The customer

is responsible for the culpable misconduct of the third party in the use of the innofield services, or such misconduct will be attributed to the customer.

3.1.5 The Customer undertakes to keep the applications and software used by him (both in respect of the server and the client) up to the latest technical standard, maintain them regularly and conduct regular updates. The Customer also undertakes to delete applications and software which he no longer needs and uses from the server.

3.1.6 The Customer is obligated to notify innofield immediately of any disruptions and interruptions in the services requested by him and where possible assist innofield in remedying the disruption. The Customer shall bear the costs of innofield isolating and remedying disruptions if the Customer has called for the investigation and the cause of the disruption is attributable to the behaviour of the Customer or the equipment used by him or to the behaviour of the users of the service.

### 3.2 The Customer's responsibility for contents

3.2.1 The Customer is responsible for the content of the information (language, images, sounds, computer programs, databases, audio/video files etc.) which he himself and third parties communicating with him through innofield arrange to be transmitted or processed, disseminate or keep available for retrieval. The Customer is also responsible for references (in particular, links) to such information. innofield is not obligated to monitor the contents made accessible by the Customer.

3.2.2 The Customer is obligated while using the products and services of innofield to make only permitted contents accessible. The following contents are prohibited: contents which infringe or jeopardize rights of innofield or third parties, in particular intellectual property rights in the wider sense (for example, copyrights or trademarks) or personal rights, provisions of the Unfair Competition Act (UWG), including the contact data obligation of the Customer pursuant to Art. 3 (1) lit. s UWG, or the commercial repute; all contents which constitute criminal acts (namely in the areas of pornography, depictions of violence, racism, business secrets, libel and fraud) are also prohibited (hereafter jointly referred to as "Prohibited Contents"). When using cloud services, the Customer further undertakes to comply with the Usage Guidelines for Cloud Services.

3.2.3 Any disputes between joint holders of an account or the Customer and third parties

relating to the use of the account or the information disseminated via the relevant account or via the service are exclusively a matter for the joint holders of the account or the Customer. innofield still has the right to inform third parties of the identity of the Customer at the request of courts or authorities (see Cl. 9.2).

3.2.4 innofield is entitled to block access to the service entirely or partly and to cease providing the services if a court or authority has requested innofield to do so. innofield also reserves the right to reject and delete emails that have viruses.

3.2.5 innofield is entitled to invoice the Customer for the expense arising in connection with any measures taken pursuant to Cl. 3.2.2–3.2.4. The assertion of further damages remains reserved. innofield is entitled to require the Customer to provide a security deposit as a precautionary measure to ensure coverage of the expenses and the further damages. innofield is entitled to suspend the services or to terminate the contract without giving notice if the security deposit is not provided or if the Customer does not comply with the instructions given in connection with the measures taken.

## 4. DATA SECURITY AND DATA LOCATION

### 4.1 Data Backup

4.1.1 In the case of cloud services (see Cl. 2.2), innofield, performs daily full backups and generally keeps these for seven (7) days.

4.1.2 The data is backed up at different times and therefore it cannot be ruled out that a data loss might occur in a specific case. In exceptional cases it is also possible that due to technical reasons, for instance, due to maintenance work or disruptions in the system, innofield will be unable to perform data backups on certain days.

### 4.2 Data Location

4.2.1 innofield guarantees data location in Switzerland. All customer data is stored and hosted exclusively in Swiss-based data centers in Zurich and Attinghausen.

### 4.3 Data security

4.3.1 innofield will protect the customer data in accordance with the statutory requirements. innofield will accordingly take appropriate technical and organisational measures to protect, in particular, access to data, its transportation, storage and entry.

## 5. INVOICING AND PAYMENT TERMS

5.1 All agreed prices for the innofield services are in Swiss francs and, save where otherwise indicated, are understood as excluding value added tax and other official duties. The payment obligation for chargeable services and products shall commence upon conclusion of the contract or upon using the service. innofield can demand an appropriate payment in advance from the customer for orders for products not stocked by innofield in its product range or for orders entailing high hardware content. Goods supplied remain the property of innofield until full and final payment of the purchase price. innofield correspondingly reserves the right to record a retention of title in the relevant register. Attachment or pledging of the goods by the customer is not permitted. Intellectual property rights do not pass to the customer.

5.2 innofield generally invoices the Customer for the selected contractual term in advance. The invoice is payable by the due date stated on the invoice.

5.3 If the Customer breaches the aforementioned payment terms innofield shall be authorised to charge 8% late interest and, in addition, as of the 2nd reminder it is entitled to charge dunning fees in the amount to cover costs. innofield is also authorised to terminate the service pursuant to Cl. 10.2.3. In addition, innofield has the right to suspend the service after the 1st unsuccessful reminder to the Customer.

5.4 The parties waive their right to offset mutual claims against each other.

## 6. WARRANTY

6.1 innofield strives to provide services carefully and professionally. innofield cannot however guarantee that the service will be available continuously on the internet and that the data requested by the Customer is transmitted correctly over the internet. innofield, in addition,

assumes no warranty that the services provided by innofield and any third parties used will put the Customer in the position of achieving the financial or other purpose intended by him.

## **7. LIABILITY OF INNOFIELD**

7.1 innofield shall be fully liable to the Customer for direct proven loss or damage caused by wilful intent or gross negligence by innofield.

7.2 Liability for medium or ordinary negligence shall be limited to the amount of CHF 100,000.00 per calendar year.

7.3 Liability shall be expressly excluded for slight negligence and for indirect loss or damage or consequential damage. Consequential loss or damage includes, without limitation, lost profits, lost production, harm to reputation, and damages resulting from a loss of data.

7.4 Any kind of liability for damages resulting from the abusive use of or unauthorised access to innofield's communications infrastructure or the service by third parties is also excluded. This includes in particular, without limitation, any interference by means of using computer viruses or DDoS attacks, as well as any change by hackers or unauthorised sending of emails.

7.5 The above exclusions and limitations of the liability of innofield shall not apply in the case of death, physical injury and impairment to health and in the case of mandatory statutory regulations, including the regulations in the Product Liability Act.

## **8. LIABILITY OF THE CUSTOMER**

8.1 The Customer shall be fully liable to innofield for loss or damage caused by wilful intent or gross negligence. The Customer's liability for slight negligence is expressly excluded.

## **9. CONFIDENTIALITY AND DATA PROTECTION**

9.1 innofield und the Customer mutually undertake to safeguard the confidentiality of all information and data not generally known which becomes accessible to them in preparing for and implementing the contract. This duty shall remain even after the contract has come to an end as long as there is a legitimate interest therein.

9.2 innofield and the Customer shall be responsible for ensuring data protection and data security in their respective spheres of influence. innofield shall take appropriate organisational and technical measures to protect personal data from unauthorised processing. innofield uses personal data exclusively for the purpose of providing its own services. In the case of certain services it may be necessary to disclose personal data to third parties in Switzerland or abroad (for example, in the case of access to applications which are operated by third party providers). innofield also reserves the right to make personal data accessible to authorities or third parties provided it is under a legal obligation to do so. innofield is further authorised to inform customers of ongoing developments and new services of innofield itself and of partners of innofield. The Customer may at any time declare in the Control Panel that he does not wish any such information. innofield shall retain personal data only if and as long as it is necessary for the purpose of providing the services or innofield is statutorily obligated to do so.

## **10. CONTRACTUAL TERM AND TERMINATION**

### 10.1 Term – general

These GTC shall apply throughout the entire period during which services are used by the Customer.

### 10.2 Cloud service contract

10.2.1 The contract between innofield and the Customer for cloud services (see Cl. 2.2) shall come into effect upon delivery of the contractual documents by innofield to the email address stated by the Customer for contract-related messages, by confirmation of the customised quote by the Customer or by use of the services by the Customer, and shall apply for the term selected in the Customer's order or in the customised quote (1, 6, 12, 24 or 36 months). The contract may be terminated by either party with a notice of 30 days as at



the end of the agreed contractual term. The termination notice shall be submitted in writing by registered letter or email with subsequent acknowledgment or receipt by innofield. innofield shall also be entitled to serve the termination notice by email to the email address stated by the Customer for contract-related messages. If it is not terminated within the due time the contract shall be automatically renewed in each case for the agreed contractual term.

10.2.2 Cancellation advice: The Customer may cancel his order for cloud services within 30 days, without stating reasons, in text form (registered letter or email with subsequent acknowledgment or receipt by innofield). The period shall commence after receipt of this cancellation advice. Timely dispatch of the cancellation suffices to prove that the cancellation period has been complied with. The cancellation must be sent to help@innofield.com. The Customer must use the contact email address notified to innofield as sender. In his email the Customer must also include the contract documents provided by innofield as an enclosure. The cancellation right shall apply only when an order is made through the innofield website and only for cloud services that are not customised.

10.2.3 If the Customer breaches contractual provisions (including the Usage Guidelines for Cloud Services), misuses services for illegal purposes, makes Prohibited Contents accessible, or threatens to harm innofield's reputation, innofield is authorised in its own discretion to deactivate the service without delay and/or terminate the contract without notice. The Customer shall owe innofield the charges due up until ordinary termination of the contract as well as compensation for all additional costs incurred in connection with terminating the contract without notice.

10.3 innofield may also terminate the contract with the Customer with immediate effect if proceedings have been initiated against the Customer for bankruptcy or insolvency or if it otherwise becomes clear that the Customer can no longer meet his payment obligations, and if the Customer does not prior to the expiry of the contractual term advance the costs for the next contractual term or provides a corresponding security.

10.4 After the expiry of the contract innofield is authorised to delete the data of the Customer. The Customer is himself responsible for backing up his data in a timely manner.

## **11. AMENDMENTS TO THE CONTRACTUAL CONDITIONS**

11.1 innofield shall endeavour to keep its infrastructure up to date to a standard which corresponds to the security specifications and technical standard that are customary for the industry. The Customer acknowledges that new technical developments, security specifications and/or changes in the range of services of contractual partners of innofield or the open source software used by innofield may result in the range of services being expanded or restricted and may also have an impact on the way the price changes.

11.2 innofield therefore expressly reserves the right to amend the contractual terms, including these GTC, at any time. Amendments to the GTC shall be made accessible on the innofield website and shall come into effect when they are activated. Any price increases or restrictions in services that adversely affect the Customer during the contractual term shall be notified by innofield to the Customer in writing by email in the case of cloud service contracts. If the Customer does not accept the amendments, he has the option of informing innofield of this in writing within 30 days of receipt of the message by registered letter or email with subsequent acknowledgment or receipt by innofield and terminating the contract as at the end of the month. If there is no written message within this period the changes shall be deemed to be approved by the Customer.

## 12. ADDITIONAL PROVISIONS

12.1 In the case of customers with cloud service contracts, contract-related messages such as the notification of price changes are sent by email to the main contact email address defined by the Customer in the Control Panel. The Customer shall be responsible for ensuring that the customer data saved in the Control Panel (invoice and administration contact and technical contact) throughout the entire term of the contract is up to date, complete and correct. innofield is not obligated to take heed of any customer data other than the customer data saved in the Control Panel or to make enquiries itself with regard to correcting this data. innofield is, however, authorised to correct or delete input in the Control Panel that is patently incorrect or that infringes third party rights.

12.2 Rights and duties under the cloud service contract can only be transferred to third parties with the written consent of the other party. This provision does not apply to the transfer of the contract from innofield to a legal successor or associated company.

12.3 These GTC and any disputes arising under or in connection with the contractual relationship between innofield and the Customer shall be subject exclusively to Swiss law, excluding its conflict of laws rules and the provisions of the UN Convention on Contracts for the International Sale of Goods (CISG).

12.4 The ordinary courts at the registered office of innofield shall have exclusive jurisdiction. innofield also has the option of taking legal action against the Customer at the latter's domicile.

8304 Wallisellen, 23. May 2018