

**GENERAL CONTRACTUAL CONDITIONS  
for Software as a Service (SaaS) services by 42com valid from 1 September 2013**

42com International Inc., 2711 Centerville Road, Suite 400, Wilmington, DE 19808, U. S. A. (42com)

**§ 1 Material scope**

- (1) These contractual conditions for 42com International Inc. (hereinafter referred to as "42com") regulate the contractual relationship between 42com and the partner for standard software programs (hereinafter referred to as "software") which are created by 42com and provided as an SaaS service via the internet.
- (2) Any regulations which differ from these contractual conditions must be in writing.
- (3) The telecommunications services to be processed with the software and/or covered by 42com are not the object of these contractual conditions.
- (4) General contractual and business conditions of the partner are not the subject matter of the contract, even if these offer requests, orders, acceptance declarations etc. are attached, and even if 42com has not contradicted these conditions.

**§ 2 Conclusion of contract**

- (1) The conclusion of the contract and other agreements are only binding subject to written confirmation by 42com. The confirmation contains information on the name of the software, the scope of use and the agreed fee.
- (2) The above regulations apply accordingly for any subsequent amendments and supplements to the contract.

**§ 3 Contractual services**

- (1) Use of software  
The subject matter of the contract the approval for the use of the software listed in the contract which is determined in greater detail by the description of services and these contractual conditions, in the way of remote access via the internet (Software as a Service), and the enabling of the storage of data by the partner on servers which are operated on behalf of 42com ("hosting"). The partner's connection to the internet is not the subject matter of this contract, but rather is the responsibility of the partner as a condition for use. Individual expansions and adaptations to the functionality of the software must be agreed separately and are not the subject matter of the scope of services.
- (2) Maintenance of operation  
Monitoring of the basic functions of the SaaS services is carried out seven days a week, 24 hours a day. Operational maintenance of the SaaS services is carried out from Monday to Friday from 9am to 6pm (GMT+1) on working days in the federal state of Berlin, Germany, with the exception of 24 December and 31 December.  
42com shall fix errors and restore the operation within an appropriate period of time with this maintenance. Errors in the above mentioned sense are documented and reproducible disruptions which mean that operation of the software is not possible, or a corruption or loss of data which is being processed or generated by the software occurs. The partner must take reasonable measures to facilitate the identification of errors and their causes. In particular, he will provide the necessary information.

- (3) In detail, the contractual services result (in the following order):
  - a) from the contract between 42com and the partner and
  - b) from these contractual conditions.
- (4) The assumption of a guarantee for certain features requires confirmation in writing by 42com to be effective.
- (5) 42com is entitled to provide the services through third parties as subcontractors in accordance with the data protection agreement. 42com is liable for the services provided by third parties and for its own actions.

**§ 4 Scope of function; features**

- (1) The software is a carrier-grade telecommunication platform which covers all processes from the supply, termination and implementation of the services through to customer tracking and billing. Among other things, this includes registration of the users, verification and management of customer data, allocation of telecommunication services, billing of call minutes and the development and monitoring of payment processes and bookings.
- (2) The concrete scope of function of the software results from the electronic product description which the partner can access online from the contractual software. The use of the functions of the software by the partner requires access authorisation for the software, which in turn affects the scope of function available to the user.
- (3) Features of the contractual software beyond the functionality defined in this way are not owed. Technical data, specifications and service information in public statements, in particular advertisements, are not guaranteed features.
- (4) The continuous development of the software is an essential part of the SaaS offer by 42com. This includes the optimisation of the software, the adaptation to technical advances and taking into account current operating requirements. This does not result in any claim by the partner to the implementation of additional functions. As part of the development of the software, partial functions may be changed or discontinued provided this does not jeopardise the partner in achieving the purpose of the contract.

**§ 5 Fee, due date, delay, compensation**

- (1) The level of the monthly fee payable for the contractual services is indicated in the contract and does not include VAT at the level applicable at the point at which the service was provided. The fee is invoiced on a monthly basis in advance.
- (2) If there is a delay in payment, 42com can charge interest for late payment totalling five percent above the relevant base rate. The enforcement of any further damage is not affected.
- (3) If the partner is late with payment of the fee
  - a) for two subsequent months or of more than 50 percent of the fee or
  - b) over a period of more than two months is late with the payment of fees totally two monthly fees,

42com may terminate the contractual relationship with no notice period.

- (4) The partner may only make legally established or undisputed claims. The partner may only claim the right of retention on the basis of counter claims from this contractual relationship.

#### § 6 Responsibility of the partner/obligations of the partner

- (1) The partner is obliged,
- a) to check in good time whether the services offered meet his requirements, and if necessary seek technical advice on this;
  - b) to ensure that the software used by the partner meets the necessary minimum requirements placed on partners by 42com for the contractual use of the services of 42com;
  - c) to note the information in documentation, the handbooks, in particular in the electronic product description and other references by 42com to the products used;
  - d) to create error notifications immediately and designate a competent contact for handling the error and procuring information;
  - e) to comply with information provided by 42com on avoiding errors, in particular the safety information on the 42com internet site about the measures to protect the hardware and software (customer systems) used;
  - f) to take sufficient measures to protect his local IT systems from an attack by viruses, trojans or similar malware.
- (2) The partner is forbidden from passing on his username and password or other personal access information to third parties. All access data must be stored safely so that third parties cannot access it. For safety, the keycode and password must be changed not only before the software is used for the first time, but also at regular intervals (at least every three months and when the responsible person changed). The keycode and password must be changed immediately if third parties become aware of the data or if they are suspected to have become aware of the data. The keycode and password may not be stored on a PC or other storage device (CD-ROM, USB stick etc.) in an unencrypted format.
- (3) The partner must comply with national and international copyright law, trademark law, naming rights and sign rights and other commercial protection rights and personal rights of third parties.
- (4) The partner must bear the cost of economic disadvantages or additional costs arising as a result of an infringement of these obligations.

#### § 7 Availability, maintenance work, disruptions

- (1) Unless expressly agreed otherwise between the parties, 42com shall achieve an average annual availability of 99.5%. Individual failures and impairments of accessibility of the software and/or to provision of the software during regular maintenance windows and/or during maintenance, installation or alteration work coordinated by the partner and deactivation or decommissioning planned and agreed with the partner during this period do not count as periods of non-availability.

The regular maintenance window is between 10pm and 6am (GMT+1) each day.

Furthermore, periods in which the software is not available or is only available to a limited extent due to technical or other circumstances which are beyond the control of 42com (e.g. force majeure, disruptions to the telecommunications lines, faults of third parties) also do not count as periods of non-availability.

Furthermore, periods in which 42com limits access to the software temporarily due to

- a) an acute threat to its data, hardware and/or software infrastructure or the data, hardware or software infrastructure of the partner from external forces (e.g. viruses, port hacking, attacks by trojans), or due to
- b) a considerable danger to the safety of the network operation or the network integrity

also do not count as periods of non-availability. As far as possible, when making a decision of this type 42com will take into account the justified interests of the partners, inform the partner of the measures taken immediately as far as possible and make a reasonable effort to remove the access limitation as quickly as possible.

- (2) 42com's responsibility for the components used to provide the service ends at the interfaces between the 42com data processing centres and public data networks unless otherwise expressly agreed.
- (3) The partner shall report disruptions of access to 42com immediately. The non-availability only counts once an error report has been submitted by the partner, and only to the extent that such a disruption exists. Impairments of data transfer which are caused by the partner's local IT system or by a disruption of the partner's connection to the agreed point of transfer (e.g. failure or disruption in service with other providers or telecommunications providers) are not disruptions in the above mentioned sense.
- (4) The partner cannot make any claims against 42com for those periods which are not defined as non-availability or disruptions in the above mentioned sense.

#### § 8 Warranty

- (1) 42com shall provide a warranty for the contractual software in accordance with the regulations of German rental law (software rental), unless otherwise specified in 7. and below.
- (2) The partner has informed himself of the functions and functionalities of the software before conclusion of the contract. 42com is not liable for any defects of which the partner is aware. Liability without fault for defects which existed at the point at which the contract was concluded is also excluded. The partner can only claim the right to cancel in accordance with Section 543 paragraph 2 No. 1 of the Civil Code on the condition that there is a case of non-availability or disruption in the sense of 7, and he had previously requested an improvement from 42com setting a deadline of at least two weeks, and this deadline passed without success.
- (3) The warranty is excluded if the partner has carried out unauthorised changes to the contractual software, unless these changes did not affect the production of the error.

- (4) Supplementary to this, in reference to the agreed availability of the software (Section 7) as a minimum content for claims for responsibility for defects on the part of the partner, if the availability drops below the agreed availability, the agreed fee charged on the basis of the availability for the period in question is reduced as follows:

Failure to achieve the agreed availability (in percentage points)	0.5	1.0	1.5	2.0
Reduction on contractual fee in accordance with Section 5.1 by (in percentage points)	2.5	5.0	7.5	10.0

- (5) 42com will document the status of the contractually defective availability. The credit resulting from any reduction in the obligation to pay will be included in the subsequent invoice. The burden of proof of a release from the obligation to pay beyond this due to the general responsibility for defects of 42com lies with the partner.
- (6) The statute of limitations on claims due to defects is twelve months, unless the defect was fraudulently concealed or 42com acted intentionally.

#### § 9 Right of use

- (1) The software (program and the electronic product description) is legally protected. The copyright, patent right, trademark right and all other intellectual property rights to the software and other items to which 42com grants the partner access as part of the initiation and implementation of the contract are exclusively the property of 42com in the relationship between the parties to the contract. Where third parties hold rights, 42com holds the relevant exploitation rights.
- (2) For the duration of the contract, 42com grants the partner and, where applicable, any resellers authorised by him an exclusive right of use of the software named in the contract and the associated user documentation within the scope defined in the contract. This right is non-transferable and cannot be sublicensed. Use is through access to the software functionalities via the internet. The point of transfer for SaaS services is the output of the router in the data processing centre used by 42com to the internet. The customer does not receive any rights beyond this.
- (3) Use of the software beyond the use permitted in this contract is not permitted. The partner is not entitled to allow third parties to use the software or to make it accessible to third parties. In particular, the partner is not allowed to reproduce or sell the software or parts thereof. The partner must also pay fees for a third party if the third party uses the software if and to the extent that the partner was responsible for the use. A contractual penalty of EUR 2,000 is payable for any contravention. The burden of proof that 42com has sustained lesser damage lies with the partner.
- (4) The partner is not entitled to decompile the software, to carry out reverse engineering or disassembling, to reproduce or use any part of the software to create a separate application or to allow a third party to carry out these actions.
- (5) At the request of 42com, the partner must provide all information relating to claims against third parties immediately. This applies in particular to the name and address of third parties, and to the type and scope of the unauthorised use.

- (6) If the partner infringes the obligations to which he is subject, 42com is entitled to block the partner's access at his expense. A blocking of this type does not release the partner from the obligation to pay the monthly fee for the use of the software.

#### § 10 Processing of personal data, data protection agreement, data publication

- (1) To the extent that personal data is submitted to the software by the partner, the provision of the contractual services by 42com takes place exclusively on behalf of the partner taking into account the legal requirements of Section 11 of the Federal Data Protection Act (BDSG) as contracted data processing.
- (2) The partner remains liable for compliance with the regulations of the Federal Data Protection Act (BDSG), the further relevant German data protection laws and professional regulations as the data controller (see Section 11 paragraph 1 of the Federal Data Protection Act). No transfer of function to 42com is agreed.
- (3) The responsibility of 42com including the subcontractors employed by him to provide services to the partner is set out in the data protection agreement to be agreed in writing between 42com and the partner. The data protection agreement is an integral part of the contract and obliges 42com to the partner in terms of fulfilling the legal requirements in accordance with Section 11 paragraph 2 sentence 2 of the Federal Data Protection Act (BDSG) in the compliance with the obligations provided in said act and the granting of the relevant rights. This also applies to the extent to which 42com provides services through subcontractors. 42com does not accept any liability to third parties for infringements by the partner and his subcontractors of Section 11 of the Federal Data Protection Act (BDSG) and similar regulations.

#### § 11 Technical protection of the data from viruses and other sabotage programs

It is pointed out to the partner that the data are at risk of viruses and attacks by third parties linked to the use of the internet. For these purposes, 42com uses suitable, current software to recognise viruses and other sabotage programs in the most recently available version. A firewall is also used, which is updated on a regular basis.

#### § 12 Maintenance options

The following maintenance options are not an integral part of the scope of SaaS services by 42com and must be agreed separately.

- (1) Standard support option
- As part of the standard support for the software, 42com provides the following services: 42com shall support the partner's specialist and technical operating staff with general technical questions on the software named in the contract and its use, and with explanations of the handbooks and technical documentation. For this, the partner has access to a hotline which can be accessed via telephone or on the internet from 10am to 5pm (GMT+1) on working days in the federal state of Berlin, with the exception of 24 December and 31 December. The maximum reaction time during this period (receipt of request to start of processing) is six seconds. For each request, the user will be given a request number which he can use to follow the processing of the request.

## (2) Premium support option

In addition to the services available in the standard support, with premium support the partner has access to additional services for the software. For this, the partner has access to a hotline which can be accessed via telephone from 9am to 6pm (GMT+1) on working days in the federal state of Berlin, with the exception of 24 December and 31 December. The maximum reaction time during this period (receipt of request to start of processing) is two seconds. In addition to this, the partner is given a dedicated support contact to process the request.

**§ 13 Liability, exclusion of liability**

- (1) 42com is liable to an unlimited extent for intent and gross negligence for all damages which can be attributed to it. In the case of minor negligence, 42com is only liable to an unlimited extent in the case of loss of life, bodily injuries or damage to health.
- (2) Furthermore, 42com is not liable for minor negligence unless the negligence represents an infringement of a material contractual obligation (cardinal obligation), the fulfilment of which enables the proper implementation of the contract on the compliance of which the partner may regularly rely. In these cases, 42com's liability is limited to the damages which are predictable and typical based on this type of questionable operation. This also applies to loss of earnings and loss of savings. Liability for other unconnected consequential damage is excluded.
- (3) 42com is only liable for the loss of data in accordance with the paragraphs above if a loss of this type would not have been avoidable by appropriate data safety measures on the part of the partner.
- (4) 42com has the duty of care usual for the industry. When determining whether 42com bears responsibility, it is necessary to take into account that software effectively cannot be created completely free of errors.
- (5) 42com is not liable for events of force majeure which make the provision of the contractual services impossible, or merely make the proper implementation of the contract significantly more difficult or temporarily prevent this. Force majeure is defined as all circumstances which are independent of the will and influence of the parties to the contract, such as war and other military conflicts, mobilisation, blockades, domestic unrest, terrorist attacks, embargo, seizure, natural disasters, strikes, lockouts and other industrial unrest, government actions, official decisions or other circumstances which are not the fault of the parties to the contract, which are serious and which could not have been predicted. A circumstance is only deemed to be force majeure if it occurs after the conclusion of the contract.
- (6) In the scope of application of the Product Liability Act, this legislation remains unaffected.

**§ 14 Duration of contract and termination**

- (1) Unless a minimum term is otherwise specified, a minimum term of 12 months is deemed to be agreed. If the contract is not terminated, it will be extended by a further 12 months. Once the minimum term has passed, the contract can be terminated by either party with a notice period of three months from the end of a calendar month.

The right to terminate the agreement with good cause is not affected.

**§ 15 Differing agreements; amendments to the contract; applicable law; jurisdiction; severability clause**

- (1) Agreements and amendments to the contract outside of these contractual agreements must be in writing. This applies in particular to an amendment of this requirement for the written form. Oral discussions differing from this become an integral part of the contract if they are reflected in the contract. Section 2 applies accordingly in this respect.
- (2) Unilateral amendments to these contractual agreements by 42com also become part of the contract if 42com notifies the partner of them in writing or via email to an email address provided by the partner and the partner has not expressly contradicted the amendments within six weeks of receiving the amendment notification and was notified of this consequence in the amendment notification.
- (3) The law of the Federal Republic of Germany applies.
- (4) The exclusive jurisdiction for all legal disputes arising from or in connection to contracts concluded which include these contractual conditions is Berlin, Germany. 42com is also entitled to submit a claim at the partner's headquarters.

If any of the individual provisions of this contract are or become invalid, this does not affect the validity of the remaining provisions. The parties agree that if the invalid provision is replaced by a provision, this provision will be as close as possible to the economic purpose of the invalid provision. The same applies to any loopholes in the agreement.