

General Terms & Conditions of Business – GBTEC Software AG

Table of Content

General Terms & Conditions of Business – GBTEC Software AG	1
1. Scope	1
2. Contract conclusion	2
3. Scope of Services	2
4. Usage fee / default	3
5. Customer's duties of cooperation	4
6. Principles of Performance / default of GBTEC AG / Change request.....	5
7. Liability	7
8. Intellectual property rights	8
9. Confidentiality / data protection	9
10. Changes to services, cloud usage fees and the T&Cs / final terms	11

1. Scope

- 1.1 These General Terms & Conditions of Business (T&Cs) apply to all contracts and legal relationships between GBTEC AG and customers unless otherwise agreed by the parties in writing. The latest version can be downloaded at <https://www.gbtec.com/terms-conditions/>.
- 1.2 Additional provisions apply with regard to the use/purchase or maintenance of certain products, services or applications and to the use of our services. The contractual provisions apply in the following order of precedence:
1. Individual contract (comprising the offer/ order/ order confirmation to the customer)

2. specific standard terms and conditions for the use, maintenance and hosting of the software, all of which are available at <https://www.gbtec.com/terms-conditions/>
3. these T&Cs.

2. Contract conclusion

- 2.1 The contract for services provided by GBTEC AG comes into effect by
 - a) the receipt of the statement of acceptance of the written offer from GBTEC AG by the customer or as required
 - b) acceptance of the request by GBTEC AG by email, where the customer has previously submitted an offer for the use of the services by sending the complete booking entries or by selecting the services via the order function on the GBTEC AG website and activating a corresponding command.
- 2.2 The websites of GBTEC AG merely represent an invitation to submit an offer.
- 2.3 The customer must be a trader as defined in § 14 of the BGB (Bürgerliches Gesetzbuch [German Civil Code]) and must be acting in execution of its commercial or independent professional activity when the contract is concluded.

3. Scope of Services

- 3.1 The goods and services to be provided by GBTEC AG under these T&C's as well as additional licensing terms and conditions of GBTEC AG for the respective product chosen (see Para. 1.2), including the service and product specifications, require the use of specific technical end devices. The current system specifications published by GBTEC AG must also be met for the use of the products. The essential system requirements for the technical end devices are given in the additional or specific conditions of use for the product concerned.
- 3.2 Disruptions and interruptions may arise from time to time to services provided by GBTEC AG that use technical systems, both for reasons of force majeure (see Para. 6.2) and due to technical modifications to the systems of GBTEC AG or other

measures required for the proper operation of the software. This applies accordingly to disruptions to systems of third parties which GBTEC AG employs for the fulfillment of its responsibilities. In addition, GBTEC AG is entitled to suspend its contractual services with regard to services provided using technical systems (e.g., servers) on a temporary basis, in whole or in part, where this is required for the proper operation of the technical system. This includes the time required for installing updates, upgrades, new releases and/or other modifications and maintenance work. If a customer uses the service during this period and this results in a reduction in services, for example, following maintenance work, or the complete suspension of the service, the customer has no claim to liability for defects or compensation

GBTEC AG shall take all reasonable measures to rectify disruptions or cause them to be rectified as soon as possible. If a serious disruption or interruption to services for which GBTEC AG is accountable lasts longer than 24 hours, the customer is entitled to a proportional reduction in the monthly fee. Serious disruptions are those during which it is not possible to collect, display, amend or store essential data.

- 3.3 GBTEC AG wishes to point out to customers that restrictions or impairments to the services provided may also occur which lie outside the scope of influence of GBTEC AG. These include in particular actions by third parties which are not acting on behalf of GBTEC AG, technical conditions of the Internet which cannot be influenced by GBTEC AG, and force majeure. The hardware and software and technical infrastructure used by the customer may also have an influence on the services provided by GBTEC AG. Where such circumstances have an influence on the availability or functionality of services provided by GBTEC AG, this shall have no effect on the contractual conformity of the services provided.

4. Usage fee / default

- 4.1 The prices for services provided by GBTEC AG are governed by the relevant current price lists or the underlying written offer.

- 4.2 If not otherwise agreed usage fees are due within 30 days following receipt of the invoice by the customer.
- 4.3 All prices are quoted in EUR plus the statutory value added tax, unless the validity of a different currency is explicitly referred to.
- 4.4 If the customer makes changes with regard to the billing information (e.g., the recipient, address and in the case of digital billing the email address), these must be communicated by the customer immediately in text form.
- 4.5 The customer may only offset receivables of GBTEC AG with receivables of its own which are uncontested or established by law.
- 4.6 With regard to continuing obligations, the following applies: GBTEC AG will adjust the fees to be paid according to this agreement at its reasonable discretion based on the development of the costs which determine the price calculation. GBTEC shall have the right to increase respectively the obligation to reduce the fees if e.g. the costs for the procurement of hardware or software, energy, the use of data centre services, communication networks or the labour costs increase or decrease or other changes in the economic or legal framework conditions lead to a changed cost situation. Increases in one type of cost may only be used to increase fees to the extent that they are not offset by any decreases in costs in other areas. In case of cost reductions GBTEC AG shall reduce the prices as far as these cost reductions are not completely or partly compensated by increases in other areas. Exercising its reasonable discretion shall include choosing a time for a fee adjustment in such a way that cost reductions are not taken into account according to standards more unfavourable for the customer than cost increases, i.e. cost reductions will have at least the same effect on the fees as cost increases. GBTEC AG will inform the customer about fee adjustments in text form at least six weeks before such adjustment comes into effect.

5. Customer's duties of cooperation

- 5.1 As part of their duty of cooperation, customers are obligated to test the software sufficiently in terms of its usability in the concrete situation in a non-operational

environment – where it is possible and reasonable to do so – before commencing operational use in the real environment. GBTEC AG may demand written confirmation of this.

- 5.2 Customers are obligated to protect themselves appropriately and regularly from data loss and virus attack. Since the new installation of software, as well as modifications to installed software, may bring with it the risk of a loss of data, for example as a result of the rectification of defects or other software maintenance services, customers are obligated to take precautions to secure against data loss in advance of such measures – where known and possible – by means of comprehensive data protection (for example through backups).

6. Principles of Performance / default of GBTEC AG / Change request

- 6.1 If GBTEC AG is in default with the supply of software or another service due, the customer has the right to cancel the contract following the setting of two grace periods without effect. Warnings and the setting of grace periods require the written form. Grace periods must be appropriate.
- 6.2 To the extent and as long as a case of force majeure exists, GBTEC AG is not obligated to perform under the contract. Force majeure is deemed in particular strike, lock-out, non-delivery by suppliers, official orders and the death or long-term sickness of an employee of GBTEC AG engaged with the project. In this case, both parties are entitled to cancel the contract without notice. In such cases, the customer retains the claim to partial performance of the services up to the point that the cancellation comes into effect; GBTEC AG for its part retains its claim to proportional remuneration. All declarations in this context require the written form to be effective.
- 6.3 Requirements of the software, of a service to be provided by GBTEC AG etc. or changes to the wishes or prerequisites of the customer may lead to changed conditions during the term of the contract which may make it appear sensible to amend the contractual conditions or the specifically agreed service certificates.

For this purpose, the Parties must implement a so-called Change Management Procedure as set out below:

- each Party (Requesting Party) may demand changes to the scope of service originally agreed in terms of the capability of the other Party (Receiving Party), unless this is unreasonable for the Receiving Party,
- the change must be documented in a Change Request Document that describes the requirements and extent of the change,
- the Receiving Party must examine the change request of the Requesting Party and notify the Requesting Party within 10 working days whether the change request is unreasonable or unfeasible for it. If the change request is reasonable or feasible, it shall notify the other party at the same time whether an extensive internal test is necessary or not.

If an extensive internal test is required, the Receiving Party must at the same time submit a corresponding test proposal with information on the fee. The Requesting Party shall either issue or reject the test order within 10 working days.

If a comprehensive test of the change procedure is not required, the Receiving Party must either submit an implementation proposal stating the implementation period, planned deadlines and the effects on the fee, or agree the implementation of the change requested.

The Requesting Party shall accept or reject the implementation proposal of the Receiving Party within the binding period for the proposal. Agreed service changes must be documented in binding form by means of a corresponding adjustment to the individual contract or performance certificates, or by preparing and signing a new individual contract or new performance certificate.

The Parties may agree that the services affected by the change request are suspended up until the necessary adjustment of the contractual agreements.

If the necessary adjustment of the contractual agreements does not come into effect within the binding period of the implementation proposal, the works shall be continued on the basis of the original contract.

- 6.4 If delays to deadlines should result from the Change Management Procedure described above or for other reasons for which GBTEC AG is not accountable, or as

a result of the customer's failure to provide the agreed cooperation and assistance or to do so in accordance with the deadlines, or the service is suspended at the customer's request, the deadlines originally agreed by the Parties must be redefined by mutual consent. The resulting postponements shall not result in default by GBTEC AG. In addition, GBTEC AG is entitled to charge for the resulting maintenance/down times in the amount of the service quota affected and/or any additional expense.

7. Liability

- 7.1 GBTEC AG has unlimited liability for losses arising from injury to life, physical injury or injury to health which are based on a breach of obligations by GBTEC AG, a legal representative or agent of GBTEC AG and for losses caused by the absence of a quality guaranteed by GBTEC AG, or in the event of fraudulent conduct by GBTEC AG. In addition, GBTEC AG has unlimited liability for losses caused by GBTEC AG or one of its legal representatives or agents through willful intent or gross negligence.
- 7.2 In the event of a simply negligent breach of fundamental contractual duties, GBTEC AG shall be liable, except in the case stated in Para. 7.1, limited by amount to that of foreseeable losses typical to the contract. Fundamental contractual duties are those duties which are essential to the fulfillment of the proper execution of the contract and on compliance with which the contractual partner relies or may rely. In all other respects, the liability of GBTEC AG is excluded.
- 7.3 Liability under the Product Liability Law remains unaffected.
- 7.4 GBTEC AG is only liable for losses arising from the loss of data and expenditure for the restoration of such data if the customer has ensured by means of appropriate precautionary measures, in particular by preparing daily backup copies of all data, that this data can be reconstructed at reasonable expense from machine-readable data material. In all other respects, except in cases of willful intent and gross negligence, the liability for data loss is limited to the typical expense of restoring

the data which would have been incurred if regular backup copies had been prepared in accordance with the risk.

- 7.5 Irrespective of the legal grounds, claims for compensation by the customer against GBTEC AG generally lapse one year from the start of the warranty period, otherwise from the time the claim arises, unless there are statutory warranty periods which are shorter. However, the statutory limitation periods shall apply in the event of injury to life, physical injury and injury to health or the liberty of a person, in the event of willful or grossly negligent action by GBTEC AG and the breach of fundamental contractual duties and defects claims, if GBTEC AG has fraudulently concealed the defects or has taken on a warranty for the product quality, and in cases of claims under the Product Liability Law.
- 7.6 GBTEC AG retains the right to claim the objection of contributory culpability. It is pointed out to the customer in particular that as part of its duties of care before first use of the software, it must check whether the installation of the software might lead to particular interference with software already installed, and further take care to safeguard its data before the initial installation and during ongoing operations, and must take all reasonable additional security measures in the event of a presumed software fault.

8. Intellectual property rights

- 8.1 All copyrights, patent rights, trademark rights, brand rights, other commercial property rights and intellectual property rights, and all similar rights for the protection of information related to the (software) products and the documentation of GBTEC AG, are and remain the exclusive property of GBTEC AG at all times. No provisions in any proposal (offer), order and/or contract (including these General Terms & Conditions of Business) may be understood in such a way that this may lead to a complete or partial transfer of such rights to the customer, nor is such a transfer intended, nor can it be understood as such.
- 8.2 The customer is not permitted to change, remove or render unrecognizable a marking in relation to intellectual property rights to the (software) products or

documentation. The customer is not permitted to register a brand, trade name, logo or domain name of GBTEC AG or a similar name that may be confused with it.

9. Confidentiality / data protection

The data protection agreement respectively policy at <https://www.gbtec.com/data-privacy/> applies to all personal data that the customer provides us with. **If the customer registers via the website of GBTEC AG, the customer is separately referred to the data protection policy. The use of the services or software via the website of GBTEC AG is only possible if the customer has previously agreed to the provisions of the data protection agreement respectively policy. Where required, GBTEC AG will conclude a separate agreement for contract data processing with the customer.** In addition, the following shall apply:

- 9.1 The Parties shall provide each other with all the information and documentation required for the fulfillment of the contract. The Parties undertake to store documentation supplied or produced as part of this contract properly and to protect it against view by third parties.
- 9.2 The Parties undertake to ensure that all information and documents of whatever kind obtained in course of the collaboration are handled in strict confidence and are only used for the purpose of the contract. Confidential information must not be shared with third parties without the prior written consent of the Parties. In addition to knowledge of the product and business policy and distribution channels, that applies especially to all information which is designated as confidential or is recognizable as business or trade secrets. This includes in principle all business, technical, financial and other information concerning business activity, projects and customers.
- 9.3 The obligation under Para. 9.2 does not apply to such information and parts thereof which the receiving party can demonstrate
 - a) was demonstrably already known to it before the date it was received, or
 - b) was publicly known before the date it was received or was generally accessible or was known or generally accessible after the date of receipt without its fault, or

- c) was made accessible to it after it was lawfully transferred by a third party which is not subject to any obligation of secrecy to the legal owner of the information in this regard, and to which the information was disclosed or made accessible without a breach of a confidentiality obligation, or
 - d) was developed independently by it (without using information subject to confidentiality).
- 9.4 The Parties are aware of the fact that information may also be subject to banking secrecy. The Parties and the advisers/third parties employed by them similarly undertake to maintain the strictest silence about such information according to the statutory regulations.
- 9.5 All persons who are or may be engaged for the Parties with fulfillment of the resulting responsibilities in connection with this contract shall be obligated to maintain the principles relating to processing personal data (article 5 GDPR) and are referred to the criminal and administrative provisions under the BDSG as well as the GDPR and other relevant legal provisions.
- 9.6 All technical and organizational measures shall be taken that are required to ensure the implementation of the provisions of the laws specified above, in particular the requirements specified in articles 25, 28, 32 GDPR.
- 9.7 The duty to maintain confidentiality and banking secrecy shall continue to apply without restriction after the end of this contract.
- 9.8 The Parties shall each refrain from soliciting employees of the other Party during the existing contractual relationship or for a period of one (1) year after the end of the contract. In the event of violation, a contractual penalty shall be paid to the Party concerned; the amount shall be set in accordance with § 315 BGB at the latter's best discretion and in the event of a dispute shall be subject to judicial review. This shall not apply if the other Party demonstrates that it did not solicit the employee.
- 9.9 This provision shall apply accordingly if the employment relationship is established with a company affiliated with one Party under corporate law or a free employee relationship is established with the latter.

9.10 Unless otherwise agreed between the Parties in writing, GBTEC AG is entitled to name the customer as a reference in publications on the internet and in print media. The promotional material released for this purpose, e.g. logos, shall be specified by the customer and the latter undertakes to grant all rights required in this regard. Customer data shall only be used for internal company purposes, provided the customer has granted its consent for this. The customer has the option at any time to revoke these rights of GBTEC AG in writing with future effect. Print media already produced at this time may be used up by GBTEC AG. The customer may be named as a reference up to two (2) years after the end of the contract.

10. Changes to services, cloud usage fees and the T&Cs / final terms

10.1 GBTEC AG reserves the right to make changes unilaterally at any time to the content of these General Terms & Conditions of Business and the service and product specification, provided the change is based on objective reasons and this is reasonable for the customer, or if the change is only beneficial to the customer. Justified occasions for changes both to the service and product specification and the T&Cs may be:

- new statutory or official requirements,
- requirements of a judicial ruling addressed to GBTEC AG,
- changes in the current market circumstances,
- changes to the financial circumstances,
- introduction of additional new services which require a service specification in the T&Cs, unless the previous user relationship is disadvantageously changed as a result,
- essential changes to close existing security gaps,
- adaptations which serve technical progress or are technically and procedurally essential, unless they have fundamental effects for the customer.

GBTEC AG shall inform the customer of the change in writing by email no later

than four (4) weeks before the change comes into effect. The change shall require the consent of the customer. Consent is deemed given and the General Terms & Conditions of Business or new service and product specifications shall be included in the contract relationship unless the customer objects to the change by email or in writing within four (4) weeks after receipt of notification of the change for the time the change comes into effect. If the customer does object, it shall continue to be governed by the previous contractual provisions. GBTEC AG shall set the customer the above-mentioned appropriate response time as part of the notification of the amended version and point out the consequences of its failure to respond.

If the customer does object, each Party has the right to cancel the contract by email or in writing with the period of notice that applies to ordinary termination.

- 10.2 The present contractual relationship is governed solely by the law of the Federal Republic of Germany. The UN Sales Convention – CISG – does not apply.
- 10.3 Where the customer of GBTEC AG is a merchant, legal entity under public law or a special fund under public law, the place of jurisdiction for disputes arising from this contract, its execution and the validity of the contract, is agreed as Bochum. GBTEC AG is also entitled to sue the customer at any other jurisdiction provided for by law.
- 10.4 Changes or additions to this contract require the written form to be effective. A waiver of the written form requirement may only be made by means of an express written agreement.
- 10.5 If a provision of this agreement is or becomes invalid during the term of the contract, this agreement is not affected as a result in all the remaining provisions and shall continue to apply unchanged. The invalid provision shall be replaced by another lawful provision which comes closest to the meaning and purpose of the invalid provision.

GBTEC Software AG