
General Terms and Conditions for the Hosting of GBTEC Software AG's BIC Software

GBTEC AG offers the customer the service of operating the hosting of the "BIC Cloud" software. The terms and conditions for the licensing and maintenance of the software are laid down in separate agreements. The present contractual conditions apply to the provision of the server infrastructure for the operation of the software as well as the operation of the software on such server infrastructure, collectively referred to as "Service". GBTEC AG provides the customer with an access to use the software via a telecommunication connection as well as with storage space for his application data under the following conditions

1. Subject matter of the contract

- 1.1 The software is operated on cloud servers by GBTEC AG. Against payment of the agreed fee, the customer shall be **enabled to use the software stored and running on the servers** of GBTEC AG or of a service provider commissioned by GBTEC AG via an Internet connection for the customer's own purposes during the term of this contract and for storing and processing his data. The actual right to use the software must be acquired by way of a separate licensing agreement.
- 1.2 These contractual conditions apply exclusively. Terms and conditions of the customer shall not apply. Counter-confirmations of the customer with reference to his own terms and conditions are hereby expressly rejected.

2. Type and scope of service

- 2.1 GBTEC AG shall make the software available for use by the customer in the version to be used according to the maintenance contract ("version to be used", cf. Section 3.4) concluded between the contracting parties at the service transfer point. Service transfer points for the use of the Service are the router outputs of

the data centres used by GBTEC AG where the respective servers with the software are located. The Service, the computing power required for use on servers and the required storage space on servers is provided by GBTEC AG. In addition, computing power and storage space on the customer's computers are required for the use of the Service in accordance with system requirements of GBTEC AG. Compliance with the system requirements of the version to be used on the customer's computers is the customer's responsibility.

- 2.2 Before using the GBTEC AG Service for the first time and at regular intervals, the customer is obliged – as far as technically possible - to back up his data. Important note: The service or the program can also be used offline. In the case of intended offline use of the program, the customer is also obligated to back up his data independently and completely, as far as technically possible. The backup of the data on the customer's computers is the responsibility of the customer. For data backup performed by GBTEC AG, see Section 9.3.
- 2.3 GBTEC AG does not owe the establishment and maintenance of the data connection between the customer's IT systems and the described service transfer point.

3. Technical requirements

GBTEC AG is not responsible for the quality or performance of the required hardware and/or software on the part of the customer. Compliance with the system requirements of the version to be used on the customer's computers is the responsibility of the customer.

4. Rights of use

- 4.1 The Customer is entitled to use the Service himself or through its employees or third parties, provided that the software is licensed for such users.
- 4.2 The Customer shall not be entitled to use the Service himself or through third parties beyond the use permitted under this Agreement or to make it accessible to third parties who are not registered as authorised users.

5. Customer data and content / Indemnification from third party claims

- 5.1 As part of the Service, GBTEC AG, as a technical service provider, stores and processes content and data for the customer, that the customer enters, stores and makes available for retrieval when using the service.
- 5.2 The customer retains all rights and ownership rights to his content. GBTEC AG does not claim any ownership rights to such content. The customer has access to his data at any time during the term of the contract via the functions of the software.
- 5.3 The customer undertakes not to post any criminal or otherwise absolutely or in relation to individual third parties illegal content or data and not to use any programs containing viruses or other malware in connection with the Service. The customer remains responsible with regard to personal data and must therefore always verify that the processing of such data via the use of the Service is supported by a corresponding clause that permits it.
- 5.4 The customer shall be solely responsible for all content and data processed by him as well as for any legal positions required for such purpose. GBTEC AG does not take any notice of the customer's content; it are stored for and made available to the customer without prior verification or monitoring by GBTEC AG; GBTEC AG does not check the content for correctness and/or legality.
- 5.5 In this context, the customer undertakes to indemnify GBTEC AG against any and all liability and costs, including possible and actual costs of legal proceedings, if GBTEC AG is held liable by third parties, including employees of the customer, as a result of alleged actions or omissions by the customer. GBTEC AG will inform the customer about the claim and, as far as this is legally possible, give him the opportunity to defend against the asserted claim. At the same time, the customer shall immediately inform GBTEC AG in full on the available facts that the claim is based on.
- 5.6 Any further claims for damages by GBTEC AG shall remain unaffected.

6. Maintenance of the service / warranty

- 6.1 GBTEC AG shall use data centres for the Service the "system availability" of which reaches at least a 99.5% annual average.
- 6.2 GBTEC AG owes the availability of the service (see also Sec. 2) and thus the technical usability of the service at the place of delivery for use by the customer. Excluded from the availability are agreed downtimes due to maintenance and Service maintenance, updates, etc. as well as times during which the Service cannot be accessed due to technical or other problems beyond the control of GBTEC AG.
- 6.2.1 Temporary disruptions and interruptions of GBTEC AG services provided by means of technical equipment may occur in addition to reasons of force majeure due to technical modifications to GBTEC AG equipment or due to other measures necessary for the proper operation of the software. This shall apply accordingly to malfunctions of third-party systems used by GBTEC AG for the performance of its duties. In addition, GBTEC AG is entitled to temporarily suspend its contractual services in whole or in part with regard to services rendered by means of technical systems (e.g. servers) insofar as this is necessary for the proper operation of the technical system. This includes, but is not limited to, any time necessary for the installation of updates, upgrades, new releases and/or other modifications and maintenance work. If a customer uses the Service during this time and if, for example, performance is reduced or the Service is discontinued completely as a result of maintenance work, the customer shall not be entitled to any warranty claims or damages. GBTEC AG will take all reasonable measures to eliminate malfunctions or have them eliminated as soon as possible. If a serious disruption or interruption for which GBTEC AG is responsible lasts longer than 24 hours, the customer shall be entitled to a pro rata reduction of the monthly fee. Serious disruptions are those which result in the software not being in operation. Disruptions and interruptions caused by characteristics or errors of the software to be used are not subject to this agreement.

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- 6.2.2 GBTEC AG points out that, in addition, restrictions or impairments of the Service provided may occur that lie outside of GBTEC AG's sphere of influence. This includes in particular actions by third parties that do not act on behalf of GBTEC AG, technical conditions of the internet that GBTEC AG cannot influence and force majeure. The hardware, software and technical infrastructure used by the customer may also have an influence on the Service provided by GBTEC AG. Insofar as such circumstances have an influence on the availability of the services provided by GBTEC AG, this has no effect on the contractual conformity of the Service provided.
- 6.3 The customer may report disruptions via the support hotline and/or in writing by e-mail to biccloudsupport@gbtec.de. The customer shall name two administrators with their respective e-mail addresses through which the communication with GBTEC AG's support will then exclusively take place.
- Disruption reports will only be recorded during the service hours: On weekdays (Monday to Friday) from 8.00 a.m. to 6.00 p.m. (CET) with the exception of public holidays in the federal state of North Rhine-Westphalia (Germany). Such public holidays are treated as Sundays.
- 6.4 GBTEC AG points out that the following services are excluded from the scope of Sec. 6.3 and 6.5:
- correction of problems caused by improper handling of the Service,
 - fixing problems caused by the software version to be used. These may be the subject of a separate maintenance contract.
 - individual programming services, in particular adaptation to new products and services, a modified hardware and software environment as well as to altered operational processes of the customer or third-party software used by the customer,
 - on-site service at the customer's premises,
 - trainings,
 - support services regarding the cooperation of the software with third-party software used by the customer, which are not subject of a maintenance contract with GBTEC AG,

- development of customised implementation such as scripts, programs, configurations and the like,
- help with respect to queries concerning modelling.

The aforementioned are not services covered by warranty claims, but pure support services, which - if the customer wishes to make use of them - are to be agreed upon separately between the parties and are to be remunerated separately according to time and material.

6.5 GBTEC AG shall remedy defects in the Service notified by the customer within a reasonable period of time. Defects will be divided into three categories by mutual agreement between the parties. In the absence of agreement, GBTEC AG shall decide taking into account the legitimate interests of the customer. The reaction times depend on the error category in each case. They begin and run exclusively during the service times (according to Sec. 6.3) and are as follows:

- a.) Error category 1 ("very high"): Service is not available or is considerably (severely) limited (reaction time: 4 hours). This shall be the case when
 - no user can use the Service and no workaround is possible **AND**
 - the incident or error affects the Service as a whole.
- b.) Error category 2 ("high"): Use of the Service is not impossible, but significantly impaired (response time: 24 hours). This shall be the case when
 - not all criteria of error category 1 are fulfilled **AND**
 - the incident or error affects a significant portion of the service **AND**
 - an available workaround requires considerable additional effort.
- c.) Error category 3 ("low"): all other incidents or errors

7. Customer's obligations to cooperate

The customer shall support GBTEC AG in the performance of its contractual obligations to a reasonable extent as follows.

- 7.1 The customer undertakes to keep the access and usage data made available to him secret, to protect them from access by third parties and not to pass them on to unauthorised third parties or users unless this has been expressly agreed between the parties. The customer must ensure that any employees to whom access data is made available protect such data in the same manner. The customer shall inform GBTEC AG immediately as soon as it is suspected that access data and/or passwords may have become known to unauthorised persons.
- 7.2 The customer shall only be responsible for the proper and regular backup of his data to the extent that this involves data that is not stored on the server provided by GBTEC AG, but on the workstation systems of users. This shall also apply to any documents provided by GBTEC AG during the course of the performance of this contract. The customer is free to additionally secure all data himself using the export and import function.

8. Remuneration / delay

- 8.1 A fee shall be charged for the Services to be rendered in accordance with Sec. 1. The amount will be specified in the respective offer as amended by any and all further individual written agreements (i.e. further offers and orders) between the parties.
 - 8.1.1 The fee shall include the costs caused by changing the software version of the "BIC Cloud" software (once every quarter) as provided by the maintenance contract. Any and all additional changes of software versions are considered "application management" services and are to be agreed upon and remunerated separately based on time and material.

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- 8.1.2 If the customer uses the Service with considerably more users than known at the time of order confirmation or if the customer wishes to use a software version for the Service that has considerably more extensive system requirements than the version agreed at the time of order placement, GBTEC may demand a proportional increase in the hosting fee. The increase shall be based on the proportional change in the number of users respectively on the cost-relevant parameters of the system requirements. An increase in the number of users or system requirements by more than 20% is agreed as considerable.
- 8.2 Other services shall be provided by GBTEC AG at prices to be agreed upon between the parties on a time and material basis.
- 8.3 Remuneration shall be owed plus VAT at the statutory rate applicable in each case. Contracts with an intended and customarily agreed minimum contract term of one (1) year are payable annually in advance. Unless otherwise agreed in writing, payment shall be made **within 30 days** of receipt of the invoice. In the event of default of payment, GBTEC AG reserves the right, to interrupt, terminate or restrict the service and to delete the stored contents after an express written notification to the customer and the expiry of a further reasonable payment period to be set therein.
- 8.4 Invoices shall always be issued in electronic form. If the customer requests invoices by post, these shall be subject to a charge and shall be invoiced in accordance with the price indicated in the current price list.

9. Rights concerning data processing / data backup

- 9.1 GBTEC AG complies with the statutory data protection provisions.
- 9.2 For the purposes of the performance of this contract, the customer grants GBTEC AG the right to reproduce the data to be stored for the customer by GBTEC AG, insofar as this is necessary for the provision of the services owed under this contract. GBTEC AG is also entitled to store the data in a failure system or a separate failure computer centre. GBTEC AG shall also be entitled to make

- changes to the structure of the data or the data format in order to eliminate disruptions of the Service.
- 9.3 GBTEC AG shall back up the customer's data on a daily basis for the purpose of restoring the data in its entirety. The backed-up data is stored for a period of 24 hours and can be made available to the customer if required.
- 9.4 The BIC CLOUD software works on a check-in/check-out system. This means that the customer downloads diagrams to his own computer for processing. These diagrams are then stored in the browser's memory. This enables customers to work offline as well as online. GBTEC AG draws the customer's attention to the fact that data generated or changed by the customer during processing and especially in offline operation cannot be saved by GBTEC AG. The customer is responsible for ensuring that the browser memory is not deleted during this work phase. Only when the data has been successfully checked in will the processed data be stored again in BIC CLOUD. **NOTE: Working in the private mode of the browser is possible, but GBTEC AG strongly advises against this. By closing the window all data of the session will be deleted. By closing the browser, the browser memory may also be emptied and the local data discarded, depending on the company's settings.**
- 9.5 If and to the extent that the customer processes or has processed personal data on IT systems for which GBTEC AG is technically responsible and the processing is carried out within the EU or the EEA, GBTEC AG and the customer undertake to conclude a separate agreement in writing (Article 28 III GDPR).
- 9.6 The services under this contract are provided by GBTEC AG as data processing on behalf of the customer, insofar as the data to be processed is personal. The customer is the principal and the controlling body within the meaning of Article 24 GDPR. GBTEC AG is obliged to keep personal data which is processed on behalf of the customer secret and to process it only in accordance with the instructions of the customer. The instructions must be communicated in writing in good time.
- 9.7 GBTEC AG shall take appropriate technical and organisational safety precautions and measures for the appropriate protection of the data of customers which meet

the requirements of the GDPR (in particular Articles 25, 28, 32 GDPR) and the BDSG.

- 9.8 GBTEC AG will only collect and use customer-related data to the extent required for the performance of this contract. The customer agrees to the collection and use of such data.
- 9.9 GBTEC AG will use subcontractors in third countries only after having obtained the customer's written approval. In order to guarantee the same high level of data protection for such subcontractors, GBTEC AG will, as the customer's representative, additionally conclude EU standard contract clauses for order data processing with the subcontractor.

10. Secrecy / Data protection

The order data processing agreement (as required by Article 28 III GDPR) concluded between the customer and GBTEC AG shall apply.

11. Liability and damages

- 11.1 GBTEC AG shall be liable without limitation for damages resulting from injury to life, limb or health which are caused by a breach of duty on the part of GBTEC AG, a legal representative or vicarious agent of GBTEC AG as well as for damages which were caused by the absence of a quality guaranteed by GBTEC AG or in the case of malicious intent on the part of GBTEC AG. Furthermore, GBTEC AG shall be liable without limitation for damages caused wilfully or through gross negligence by GBTEC AG or one of its legal representatives or vicarious agents.
- 11.2 In the case of a slightly negligent violation of material contractual obligations, GBTEC AG liability shall be limited to the typical foreseeable damage, except in the cases of Sec. 11.1. Material contractual obligations are those obligations the fulfilment of which is essential for the proper performance of the contract and the compliance with which the contractual partner trusts and may trust. Any other liability of GBTEC AG is excluded.

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- 11.3 Liability under the Product Liability Act (Produkthaftungsgesetz) shall remain unaffected.
- 11.4 GBTEC AG shall only be liable for damages resulting from the loss as well as for expenses for the restoration of data if the customer has ensured through appropriate precautionary measures, in particular through daily back-up copies of all data, that such data can be reconstructed from machine-readable data material with reasonable effort. Apart from this, liability for loss of data shall be limited to the typical cost of recovery that would have been incurred if backup copies had been made on a regular basis and according to the risk at hand, except in cases of wilful intent and gross negligence.
- 11.5 Irrespective of the legal basis, the customer's claims for damages against GBTEC AG shall become statute-barred one year after the beginning of the limitation period, otherwise after the date on which the claim arises, unless shorter statutory limitation periods exist. However, the statutory periods of limitation shall apply in the event of damage to life, limb, health or freedom of a person, in the event of wilful or grossly negligent action on the part of GBTEC AG and in the event of breach of material contractual obligations, in the event of claims based on defects if GBTEC AG maliciously concealed the defects or assumed a guarantee for their quality, and in the event of claims based on the Product Liability Act (Produkthaftungsgesetz).
- 11.6 GBTEC AG retains the objection of contributory negligence. The customer is hereby particularly made aware that, within the scope of his duty of care, he must verify before first use of the software whether the installation of the software could lead to special interference with software already installed, and that he must also ensure that his data is backed up before the first installation and during ongoing operation and, in the event of a suspected software error, must take all reasonable additional security measures.
- 11.7 GBTEC AG is not liable for an infringement of the rights of third parties by the customer if and insofar as this infringement results from the customer exceeding the usage rights granted under this contract. In this case, the customer exempts GBTEC AG from all claims of third parties upon first request.

12. Term and termination / exit management

- 12.1 The duration of this hosting agreement shall be at least (12) twelve months (“initial period”) and shall commence on the date GBTEC AG has granted the customer access to the Service. Each party may terminate the hosting agreement by giving at least 6 months' notice in writing to the other party to expire at the end of the initial period or at the end of the calendar year for any (renewal) period after that. In the absence of such termination the duration of the hosting agreement is automatically extended by another 12 (twelve) months (“renewal period”).
- 12.2 The parties retain the right to terminate this agreement for good cause without notice or penalty if the statutory requirements for such termination are met. It shall be considered good cause if the continuation of the contractual relationship until expiry of the statutory period of notice is not reasonably acceptable for the terminating party, taking into account all circumstances of the individual case and weighing the interests of both parties. Good cause for GBTEC AG shall, in particular, be assumed in the following events:
- the customer’s infringement of his contractual obligations, in particular:
 - o the customer intentionally giving false contact data,
 - o the customer intentionally providing a false or invalid e-mail address,
 - o fruitless expiry of the further payment period of Sec. 8.3,
 - o the customer transfers his user account to a third party,
 - o the customer allows his user account to be used by unauthorised third parties, in particular by unnamed individuals

 - Non-compliance with legal regulations by the customer

If the customer is responsible for the cause for termination, he is shall pay GBTEC

AG the agreed remuneration until the termination becomes effective. From such date, at the latest, all other mutual contractual obligations shall cease to apply.

- 12.3 Notices of termination must be given in text form to become effective.
- 12.4 After termination of the contract, GBTEC AG shall delete all documents provided by the customer that are still in the possession of GBTEC AG, as well as all data from data carriers in connection with the present contract within a maximum of 60 days. If the customer explicitly requests this upon termination of the contract, GBTEC AG will confirm the deletion in writing. This includes all data introduced to and stored with the Service by the customer and his users as well as data generated, newly collected and stored by the Service, its use by the customer, its users or by GBTEC AG on behalf of the customer. The customer acquires all rights to this data, including property rights and copyrights. However, this does not extend to data that the customer or his users have stored in areas of the service that are accessible to third parties (e.g. contributions in community or support forums). The customer can export his data via the system functions provided within the scope of the Service for display in corresponding programs. If the customer enters into a new contract for the use of the Service or the underlying software immediately after the termination of the contract (e.g. as "on-premises"), GBTEC AG offers to transfer the data within the framework of the new contract.
- 12.5 GBTEC AG shall delete the data stored by the customer insofar as no storage obligations or rights exist. As part of a customer-friendly exit management, GBTEC AG shall continue to store the data stored by the customer in the cloud for a period of one (1) month after the termination of the contract is effective. Thereafter, all data shall be irrevocably deleted. Access is then no longer possible.

13. Transfer of rights and obligations

The assignment of the rights and obligations arising from this contract is only permissible with the prior written consent of the other party. The parties shall not unreasonably withhold their consent. The customer's consent shall not be required in the case of the transfer of performance obligations to a computer centre located in the Federal Republic of Germany.

14. Final provisions

- 14.1 GBTEC AG is entitled to increase its fees for the hosting and its recurring services in order to compensate for an increase in total costs (general price development). The total costs consist in particular of costs for maintenance and operation of the cloud including material costs, wage and ancillary wage costs, costs for the Service, costs for customer administration (IT support) as well as costs for general administration. The price adjustment may only be made up to the extent of the cost increase and according to the share of the increased cost element in the total costs; it is only permissible if the cost increase is based on changes which occurred after the conclusion of the contract and which were not originally initiated by GBTEC AG. A price increase is only permissible once per calendar year for each product, but for the first time after three years.
- 14.2 If a price increase amounts to more than 5% of the price valid up to the time of the increase, the customer shall be entitled to terminate the contract regarding the product affected by the price increase and - insofar as the product affected is a prerequisite for another product - also to the extent of the other product, within four (4) weeks after receipt of the notification of the increase with effect from the time the increase takes effect, by e-mail or in writing. If the customer makes use of this special right of termination, the increase shall not become effective and the agreement shall be terminated with effect from the time the price increase takes effect. If the customer does not terminate the contract or does not terminate it in due time, the contract will be continued at the new price at the time stated in the notification. GBTEC AG will specifically inform the customer of the right of

termination and the consequences of a termination not received in due time within the scope of the notification of the price increase.

- 14.3 If the actual total costs at GBTEC AG within the meaning of Sec. 14.2 are reduced for reasons which occurred after the conclusion of the contract and which were not caused by GBTEC AG, GBTEC AG shall take this into account appropriately and pass on the reduction to the customer to the extent of the cost reduction and in accordance with his share of the reduced cost element in relation to the total costs.
- 14.4 GBTEC AG shall inform the customer about a price adjustment at least four (4) weeks before it comes into effect.
- 14.5 The present contractual relationship shall be governed exclusively by the laws of the Federal Republic of Germany. The UN Convention on Contracts for the International Sale of Goods – CISG shall not apply.
- 14.6 The place of jurisdiction for any legal disputes arising from this contract, its execution and its execution is Bochum, provided that the customer is a merchant, legal entity under public law or special fund under public law.
- 14.7 This agreement and its amendments as well as all contract-relevant declarations, notification and documentation obligations shall require the written form, unless another form has been agreed or is prescribed by law.
- 14.8 Should individual provisions of this agreement be invalid, this shall not affect the validity of the remaining provisions. In this case, the parties shall cooperate to replace ineffective provisions with provisions that correspond as closely as possible to the ineffective provisions.
- 14.9 This Agreement contains all understandings between the parties and supersedes all other prior or contemporaneous communications, negotiations, discussions, understandings, arrangements or agreements made orally or in writing between the parties in relation to the relevant products and services.

GBTEC Software AG