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## Standard Contract Terms and Conditions of GBTEC Software AG (Provider) for the Licensing of the Standard Software BIC in a Public Cloud

GBTEC AG provides customers with business process management software or services on its websites <https://www.gbtec.com> and <https://biccloud.com>. The present Special Terms & Conditions of Use apply to the use of our website or services such as, for example, the BIC CLOUD and the software which forms part of the services, including applications and associated documentation (jointly described as "Service"). Unless agreed otherwise in writing, the T&Cs of GBTEC AG also apply; these can be viewed and downloaded from the website <https://www.gbtec.com/terms-conditions/>. GBTEC AG provides customers with the opportunity to use the software applications for access via a telecommunications connection and storage for its application data on the terms set out below.

### 1. Object of contract

- 1.1 These terms of contract apply to the use of the service of GBTEC AG in accordance with the current product specification (which can be found on the GBTEC website at <https://www.gbtec.com/user-documentation/> as Software as a Service (SaaS), or as a Cloud product as part of the use of a public cloud.
- 1.2 The Service is operated by GBTEC AG as a SaaS or Cloud solution. Subject to payment of the agreed fee, during the term of this contract the customer is allowed to use the Software that is stored and run on the servers of GBTEC AG or servers of a service provider engaged by GBTEC AG via an internet connection for its own purposes and to store and process its data with its assistance. No unlimited usage right to the Service is granted beyond the end of the contract.
- 1.3 These Contract Terms and Conditions and in addition the General Terms & Conditions of Business of GBTEC AG apply exclusively. The customer's terms of

contract do not apply. Counter-affirmations of the customer which refer to its own terms of business are expressly rejected.

## 2. Nature and scope of service

- 2.1 GBTEC AG provides the customer with the Service in the agreed version for its use at the service transfer point. The service transfer point for the use of the Service comprise the router ports of the computer centers used by GBTEC AG in which the respective servers used with the Software are located. The Service required for the use of the computing capacity is provided on servers and the memory on servers is provided by GBTEC AG. In addition to this, however, computing capacity and memory are required on the customer's computers in accordance with the system requirements (these can be found at <https://www.gbtec.com/terms-conditions/>).
- 2.2 Before first use of the Service of GBTEC AG and at regular intervals thereafter, the customer is obligated – where technically feasible – to carry out a backup to safeguard its data. Important note: In order to offer the customer the option of being able to work with the Service continuously, the Service or program can also be used offline. Before any planned offline use of the program – where technically feasible – the customer is also obligated to back up its data independently and comprehensively. On data protection by GBTEC AG see Para. 11.3.
- 2.3 GBTEC AG is not responsible for the creation and maintenance of the data connection between the customer's IT systems and the designated service transfer point.
- 2.4 The number of accesses is governed according to the information stated in the contract or in accordance with Para. 14.1 ff. (Contract conclusion and temporary use of a free test version) based on the data entered in the Service by the customer at the time of registration or after registration; in particular the number of users. Users must be natural persons who are either employees of the customer or employees of affiliated companies as defined in § 15 ff. of the AktG (Aktiengesetz [German Stock Corporation Law]), and who can be placed by the

customer under an obligation, comparable to that of an employee, to comply with the provisions of this contract based on this contractual agreement. Where GBTEC AG sends the customer access data that it has not selected itself (e.g., passwords, client certificates), these must be changed by the customer immediately and replaced with access data known only to it.

- 2.5 At the start of the contract, GBTEC AG shall provide the customer with electronic user documentation for the Service in German and in English for each download or in an online version which will be updated regularly. In addition to this, GBTEC AG intends to provide its customers with so-called webinars from time to time. GBTEC AG shall inform customers after the contract is concluded as soon as the dates have been fixed.

The customer is entitled to store and print this documentation subject to maintaining the intellectual property rights notices and to make an appropriate number of copies for the purposes of this contract. The restrictions on the use of the documentation apply accordingly as agreed for the Service under Para. 4.

- 2.6 Parts of the Service used or applied by the customer may be the property of partner companies (companies with which GBTEC AG has entered into a contractual partnership) (third-party service) and are supplied either by GBTEC AG or by these partner companies (third-party licensors). In the event that a provision is made by the partner company and the customer wishes to use this third-party service, it declares its agreement to use the third-party service in accordance with the conditions of use and other restrictions set out or referred to in the applicable license.

GBTEC AG shall ensure that the level of data protection between these companies is at least equivalent to that in this agreement between the customer and GBTEC AG, and that all statutory and contractual duties are observed.

### 3. Technical requirements

- 3.1 The technical requirements can be viewed on the website of GBTEC AG. By using the service of GBTEC AG, the customer confirms that it has read and understood the technical requirements.

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- 3.2 GBTEC AG is not responsible for the quality or capability of the hardware and/or software required on the customer's websites.

#### 4. Software usage rights

- 4.1 The products of GBTEC AG are protected by copyright. For the term of the contract, GBTEC AG grants the customer the simple, non-exclusive, non-sublicensable, non-transferable right, limited to the agreed duration, to load and operate the user interface for the Service supplied by it for display on the monitor in the main memory of the end devices used for this under the contract, and to make copies of the user interface created in the process and to use the Service for the contractual purposes in accordance with the product specification. No right over and above this is granted to the customer.
- 4.2 The customer is entitled to use the Service itself or via its employees, provided these have been registered by it as authorized users stating in each case their relevant email addresses. The definition of user as per Para. 2.4 applies. Authorized users must be clearly identified to GBTEC AG by name in the course of registration and/or via the corresponding function within the Software. New users may be added, deactivated or replaced in the course of the contractual relationship (**Para. 10.1 must be observed**). The customer is the sole licensee with regard to GBTEC AG.
- The functional scope of the Service may be expanded or reduced as required at very short notice based on bookable options within the CLOUD solution (**Para. 10.1 must be observed**).
- 4.3 The customer is not authorized to use the Service over and above the use permitted under this contract or to allow it to be used by third parties or make it accessible to third parties not registered as authorized users.
- 4.4 The customer is not permitted to copy or sell the Service or parts thereof.
- 4.5 The customer is not entitled to make changes to the Service. In particular, it is not entitled to examine or decompile its functionality by way of so-called reverse engineering, to disassemble it into its component parts and/or use it as the basis

for the creation of its own software programs. This does not apply to changes required to correct faults, if GBTEC AG is behind schedule in rectifying the fault, refuses to rectify the fault or is unable to do so due to the opening of insolvency proceedings.

- 4.6 Where GBTEC AG implements new versions, updates, upgrades or other new additions with regard to the Service during the term of the contract, and provides this to the customer voluntarily or based on an additional contractual obligation, the above rights shall also apply to such applications.
- 4.7 If the customer is in breach of one of the rules stated above for reasons for which it is responsible, GBTEC AG is entitled to block the customer's access to the Service or effect extraordinary termination of the contract without notice if the customer continues to commit the breach one week after being given a prior written warning by GBTEC AG.
- 4.8 For each case that the customer culpably permits the Service to be used by third parties (or by persons not specified by the customer), the customer must pay an immediate contractual penalty equivalent to 3-times the monthly usage fee per authorized user, in accordance with Para. 10 (Remuneration). The right to claim compensation is reserved; in that case, the contractual penalty shall be added to the claim for compensation.

## 5. Intellectual property rights

- 5.1 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 Service 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 Special Terms & Conditions of Use) 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.

- 5.2 The customer is not permitted to change, remove or render unrecognizable a marking in relation to intellectual property rights to the Service. 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.

### **6. Customer data and content / indemnity from third party claims**

- 6.1 In order to be able to correct errors of the software or malfunction of the Service reported by the customer, GBTEC will, in some cases, require the data sets of the customer, during the use of which the error of the software or malfunction of the Service has occurred, in order to reconstruct the error/ malfunction or to perform test runs with these data sets, for example. The customer therefore agrees to the use of his data sets in this context.
- 6.2 By using the Service the customer confirms that it is in the legal position to grant this usage right to GBTEC AG. The customer shall retain all rights and title to its content. GBTEC AG shall not claim any title to such content.
- 6.3 If services include functions that allow the customer to share and publish its content, the following shall apply:  
Share means that customers make their content available to GBTEC AG and/or other users by sending it by email, providing, transferring, uploading it or in any other manner. Other users or GBTEC AG may use, copy, modify or pass on this shared content in a variety of ways. The customer should consider carefully what content it shares or publishes, since the customer bears full responsibility for the content it shares.
- 6.4 The customer undertakes to GBTEC AG not to install any criminal or otherwise absolutely illegal content or data or such that is illegal in relation to individual third parties, and not to use viruses or other programs containing harmful software in connection with the Service. The customer shall remain the responsible authority with regard to personal data and must therefore check on a continuous basis whether the processing of such data via the use of the Service is supported by the relevant permissions.

- 6.5 The customer is alone responsible for all content used and data processed by it, and any legal positions required for this. GBTEC AG does not take any note of the customer's content; it is stored for the customer without any prior check or monitoring by GBTEC AG and is provided for the latter; GBTEC AG does not carry out any checks regarding the accuracy and legality of such content.
- 6.6 The customer undertakes in this context to release GBTEC AG from all liability and all proven and adequate costs, including potential and actual costs of a judicial procedure, in the event that GBTEC AG is sued by third parties, including by employees of the customer in person, as a consequence of claimed actions or omissions by the customer. GBTEC AG shall inform the customer of the suit and give it the opportunity, in as far as this is legally possible, to defend against the claim made. At the same time, the customer shall inform GBTEC AG immediately and in full of any information available to it regarding the facts of the matter and the object of the claim.
- 6.7 Claims by GBTEC AG for compensation over and above this remain unaffected.

### **7. Maintenance of the service / warranty**

- 7.1 GBTEC AG uses data centers for the operation of the cloud, whose "system availability" is at least 99.5% of the annual average.
- 7.2 GBTEC AG is responsible for the availability of the Service (see also Para. 2) and thus the technical availability of the Service for use by the customer at the transfer point. Exceptions to availability are downtimes due to maintenance and service maintenance, updates etc. as well as the times during which the service is not reachable due to technical or other problems that are not within the sphere of influence of GBTEC AG. Support services are only available during service hours: Weekdays (Monday to Friday) from 9:00 a.m. to 5:00 p.m. (CET/CEST) with the exception of holidays in the federal state of North Rhine-Westphalia. With regard to restricted availability of the Service, see Paragraphs 3.2 and 3.3 of the current T&Cs.

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- 7.3 In the case of functional down times, disruptions or impairments to the Service, the customer is initially obligated to use the available user documentation and videos and the reports published by GBTEC AG regarding disruptions and how to rectify them (these can be found at <https://www.gbtec.com>), and to take steps to remedy the situation itself. If it is still not possible to rectify the fault, the customer has the option of reporting disruptions in writing by emailing [biccloudsupport@gbtec.de](mailto:biccloudsupport@gbtec.de). Doing this the customer specifies his own e-mail address, with which the contact with the support will take place exclusively. Disruption reports are only accepted during service hours: Weekdays (Monday to Friday) from 9:00 a.m. to 5:00 p.m. (CET/CEST) with the exception of holidays in the federal state of North Rhine-Westphalia. The latter are treated like Sundays.
- 7.4 GBTEC AG wishes to point out that the following services are excluded in the context of Para. 7.3 and Para. 7.5:
- rectification of problems caused by improper use of the service,
  - salvaging customer data, unless the data loss affects the entirety or an overwhelming part of the customer's data and is the fault of GBTEC AG,
  - data restoration, unless the data loss affects the entirety or an overwhelming part of the customer's data and is the fault of GBTEC AG,
  - individual programming services, in particular adaptation to new products and services, a changed hardware and software environment, and to changes in the operational processes of the customer or third-party software used by the customer,
  - on-site services at the customer's premises,
  - trainings,
  - support services with regard to the cooperation of the Software with third-party software used by the customer which is not the object of a maintenance contract with GBTEC AG,
  - development of a customized implementation such as scripts, programs, configurations and the like,
  - assistance with modeling issues .



These are not warranty rights, but merely support services which – if the customer wishes to make use of them – must be agreed separately between the Parties and must be remunerated separately at cost and by agreement.

- 7.5 GBTEC AG shall rectify Service defects notified by the customer within an appropriate period. Defects are categorized by the Parties by mutual agreement into three categories of faults. In the absence of any agreement, GBTEC AG shall decide the category, taking the justified interests of the customer into account. Depending on the category or class of the fault there are the following different response times (**response times begin and operate solely within the service hours stated in Para. 7.3**):
- a.) Fault Class 1 (“very high”): Service is unavailable or is (severely) restricted to a considerable degree (response time: 12 hours).
    - functions from a list of core functionalities explicitly laid down in the service description at the time of the order are affected (incident or fault is only treated as Fault Class 1 in the case of the failure or impairment of these functions) **AND**
    - users cannot use the function concerned and no workaround is possible, **AND**
    - the incident or fault affects the overwhelming part of the data (processes, documents, work flows).
  
  - b.) Fault Class 2 (“high”): Use of the Service is not impossible, but is impaired to a considerable degree (response time: 24 hours).
    - Not all the criteria of Fault Class 1 are met **AND**
    - the incident or fault affects a considerable part of the data **AND**
    - an available workaround requires considerable additional cost.
  
  - c.) Fault Class 3 (“low”): All other incidents or faults (rectification of fault as part of a new Software version).
- 7.6 The statutory warranty regulations apply. This eventuality is governed by § 536b of the BGB (Bürgerliches Gesetzbuch [German Civil Code]) (lessee is aware of the defect at the time of contract conclusion or acceptance) and § 536c BGB (defects

which occur during the lease period; notification of defect by the lessee).

However, § 536a Para. 2 BGB (right of lessee to rectify the fault itself) does not apply. Application of § 536a Para. 1 BGB (lessor's duty to pay compensation) is also excluded, if the rule provides for liability irrespective of fault.

- 7.7 If no defect in the Service reported by the customer is found, GBTEC AG is entitled to claim and bill for the resulting cost separately.

### **8. Support, maintenance and care services / training / user support**

GBTEC AG shall provide its customers with detailed user documentation and videos for the operation of the Service; these can be viewed at any time at <https://www.gbtec.com>. GBTEC AG shall also implement regular updates, upgrades and releases with regard to the BIC CLOUD Service.

In addition, GBTEC AG offers a user support. This includes, in particular, the application/operation support of the service as well as the support and consultation of errors due to misapplication of the service by the customer. Professional consultation and questions are not covered.

User support is provided in each case by telephone via support hotline and/or by email "biccloudsupport@gbtec.de". For this purpose, the customer determines two administrators. The contact is made exclusively by these two administrators and GBTEC.

The customer shall only be entitled to obtain user support if he has previously fundamentally basic training or attended training courses by GBTEC AG, has sought advices in the user documentation and participated in webinars about this problem.

GBTEC AG provides the two customer administrators to be nominated by the customer exclusively during the following service periods: Weekdays (Monday to Friday) from 9:00 a.m. to 5:00 p.m. (CET/CEST) with the exception of holidays in the federal state of North Rhine-Westphalia. The latter are treated like Sundays.

In addition, GBTEC AG is not responsible under this contract for providing advice/training/support or maintenance services with regard to the product and its possible

application. The Parties may reach a separate agreement on these issues (subject to cost) (see also Para. 7.4)

### **9. Customer's duty of Cooperation**

The customer shall assist GBTEC AG in the performance of the contractual services to an appropriate extent as set out below.

- 9.1 Upon the conclusion of the contract the customer provides GBTEC AG immediately with all information required by GBTEC AG to set up the customer's access to the Software. The customer undertakes to handle the access and user data provided to it in confidence, safeguard it from access by third parties and not to share it with unauthorized third parties or users, unless expressly agreed by the Parties. The customer must take care to ensure that any employees provided with access data safeguard these in the same manner. The customer shall notify GBTEC AG immediately as soon as there is the suspicion that access data and passwords might have become known to unauthorized persons.
- 9.2 It is the customer's responsibility to ensure proper and regular protection of its data only to the extent that the Software provides the necessary technical requirements for this. This also applies to any documents supplied by GBTEC AG in the course of the implementation of the contract.
- 9.3 The customer must fulfill the system requirements for the use of the Software which are derived from the service description. The customer shall bear the responsibility for this itself.

### **10. Fee / default**

- 10.1 A usage fee is charged for the services provided as stated in Para. 1. The amount of the fee is determined by the functions of the Service selected, the number of users registered by the customer and the duration of registration of these users (Para. 4.2 must be observed), the components/options and packages selected, and

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the selected duration of the contract. Price information can be found in the current price list or the documents sent by GBTEC AG during the order process. New users can be added, replaced or deactivated in the course of the contractual relationship. If a new user is added for whom the user fee has not already been paid by the customer, the respective fee for the addition of the user comes immediately into effect. In the case of deactivation of existing users who were not included in the contingent originally booked by the customer and for whom an extra fee therefore had to be paid, the fees shall not be adjusted or reduced within a booked contract period. The increased fee for the additional users shall apply.

The relevant fee for an expansion of the range of functions comes to effect immediately; in the case of a reduction in the range of functions, the fees shall not be adjusted during the initially agreed performance period.

Where months are calculated only on a proportional basis, each calendar day is calculated at 1/365 of the annual usage fee.

- 10.2 Other services shall be provided by GBTEC AG at prices to be agreed by the Parties in each case at cost.
- 10.3 Fees are payable plus value added tax at the respective statutory rate. Contracts with an agreed minimum term of one (1) year are payable annually in advance. The usage fee is due upon the conclusion of the contract but no later than upon the provision of the access data for the use of the system. The fee is payable – unless otherwise agreed in writing – **within 30 days** of receipt of the invoice. Customers are automatically in default in settlement of the invoice **30 days** after receipt **of the invoice**. If the Customer fails to settle the full amount of the invoice within a further 14 days of receipt of a payment reminder, GBTEC shall have the right to suspend, terminate or restrict the customer's access to the content stored, to delete the content stored or cancel the customer's account (see also Para. 15.5).
- 10.4 Invoices and payment reminders are generally produced in electronic form. If the customer wishes to receive invoices by post, these are subject to cost and are calculated in accordance with the price information in the current price list.

### 11. Data processing rights / data backup

- 11.1 GBTEC AG complies with the statutory data protection regulations.
- 11.2 For the purposes of contract implementation, the customer shall grant GBTEC AG the right to be allowed to copy the data stored by GBTEC AG for the customer, to the extent this is required for the performance of the services due under this contract. GBTEC AG is also entitled to maintain the data in a backup system or separate backup computer center. GBTEC AG is further entitled to carry out modifications to the structure of the data or the data format to eliminate disruptions.
- 11.3 GBTEC AG shall back up customers' data daily for the purposes of restoring the data in its entirety. The backed-up data shall be stored in each case for a period of seven days and may be provided to the customer as required.
- 11.4 The BIC CLOUD Software works using a check-in-check-out system. This means that the customer downloads diagrams for processing onto its own computer. These diagrams can then be found in the browser memory. This gives customers the option of working offline as well as simply online. GBTEC AG wishes to point out to the customer that data generated or amended by the customer during processing, and in particular in offline operations, cannot be backed up by GBTEC AG. The customer is responsible for ensuring that the browser memory is not deleted during this work phase. The processed data is only stored again in the BIC CLOUD when the data is successfully checked in again. **NOTE: Working in the private mode of the browser is of course possible, but GBTEC AG strongly advises against this. All the data in the session is deleted by closing the window. When the browser is closed, depending on the company's settings, the browser memory can also be emptied and thus the local data discarded.**
- 11.5 If and to the extent that the customer processes personal data or causes it to be processed on IT systems for which GBTEC AG is technically responsible and the order data processing is carried out within the EU or the EEA, the Parties shall conclude a separate **order data processing agreement** in writing (article 28 III GDPR).

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- 11.6 The services under this contract are provided by GBTEC AG as data processing on behalf of the customer, to the extent that the data processed is personal data. The customer is the client and the responsible party as defined in article 24 GDPR. GBTEC AG is obligated to treat personal data processed on behalf of the customer in confidence and to process it only in accordance with the customer's instructions. Such instructions must be communicated promptly and in writing.
- 11.7 GBTEC AG shall take appropriate technical and organizational precautions and measures for the appropriate protection of the customer's data which satisfy the requirements of the GDPR (especially with regard to articles 25, 28, 32 GDPR).
- 11.8 GBTEC AG shall only collect and use customer-related data to the extent required for the execution of this contract. The customer consents to the collection and use of such data to this extent.
- 11.9 GBTEC AG shall employ subcontractors in third countries only subject to a prior written agreement to that effect between the Parties. In order to be able to ensure the high level of data protection among subcontractors as well, GBTEC AG as representative for the customer shall conclude additional standard EU contractual clauses on order data processing with the subcontractor.

## 12. Confidentiality / data protection

The provisions of the General Terms & Conditions of Business of GBTEC AG as well as those of the order data processing agreement concluded between the Parties apply.

## 13. Liability and compensation

- 13.1 The provisions of the General Terms & Conditions of Business of GBTEC AG apply. Irrespective of these, Paragraphs 13.2 and 13.3 apply.
- 13.2 The liability of GBTEC AG for initial defects (§ 536 (a) BGB) is excluded, unless GBTEC AG has fraudulently concealed the defect.
- 13.3 GBTEC AG is not liable for an infringement of the rights of third parties by the customer, provided and to the extent that this infringement results from the

customer exceeding the usage rights granted under this contract. In this case, the customer shall release GBTEC AG at first request from all claims by third parties.

#### **14. Contract conclusion and limited use of a free test version for a period of 30 days**

- 14.1 The use of the Service requires advance registration by the customer. After successful registration, a personal user account is set up for the customer. At registration and/or later during the use of the Service, the customer may designate further users, or may substitute users, who must be specified by name, during the term of the contract. All essential data requested by GBTEC AG must be communicated by the customer accurately and in full. The customer is obligated to notify GBTEC AG of any changes to its customer data immediately.
- 14.2 Before paid use of the Service, GBTEC AG shall provide its customer with temporary use of a test version of the Service free of charge for a period of 30 days. The test version contains the same content and functions as the subsequent paid version of the Service. The contract for the free use of the test version comes into effect once the customer has sent the complete registration entries to GBTEC AG, and GBTEC AG has declared its acceptance by email to the customer to confirm registration and conclusion of the contract. The customer will also be provided with its access data in this email. The free version shall run from the time of registration of the customer and thus of its administrators. The subsequent designation of further users by the customer shall not interrupt the running of the free version and also shall not lead to the free period starting again. Before the test version ends, GBTEC AG shall send the customer an email and advise it that its test version is ending, and that if it wishes to continue to use the Service it can make a new declaration on the registration page at <https://www.gbtec.de> sowie <https://biccloud.com> and request a non-binding offer from GBTEC AG for the paid use of the Service.
- 14.3 The rules of these T&Cs also apply to the use of the test version of the Service. The customer accepts these by its use of the test version.

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- 14.4 The contract for paid use of the Service (after the test version ends) comes into effect as set out below: Once the customer has sent the complete registration entries and its selection of products via the booking function, GBTEC AG will prepare an offer for use of the Service and send this to the customer by email. The contract comes into effect if the customer accepts this offer within four (4) days in text form (in writing or by email). At the end of the four (4) days, GBTEC AG is no longer bound by its offer. In that case, the GBTEC websites do not represent an invitation to submit an offer.
- 14.5 The implementation of the order and transmission of the information required in connection with the conclusion of the contract takes place by email in partially automated form. The customer must therefore ensure that the email address lodged by it with GBTEC AG is correct, ensure that the receipt of emails is technically feasible, and in particular that it is not prevented by SPAM filters.

### **15. Contract term and ending of the contract / (extraordinary) termination / exit management**

- 15.1 The customer can cancel the contract for free use of the test version of the Service at any time. Unless agreed otherwise in text form between GBTEC AG and the customer, the free test phase ends automatically after 30 days without requiring cancellation.
- 15.2 Paid contracts concluded for a specific period or for which a minimum term has been agreed shall be extended in each case by the agreed period or the minimum term, but no longer than one year, unless they are canceled by one of the Parties with three (3) months' notice at the end of the specific period or the end of the minimum term respectively. This applies subject to other agreements in writing with the customer.
- 15.3 Both Parties reserve the right to extraordinary termination for an important cause subject to the legal requirements being present. An important cause for extraordinary termination exists if it is not reasonable for the terminating party to continue the contractual relationship up to the end of the statutory cancellation



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period taking all the circumstances into account and giving due consideration to the interests of both parties. Important causes for GBTEC AG in particular are the following events:

- breach of its contractual duties by the customer. Here in particular:

the customer deliberately provides false contact data,  
the customer deliberately provides a false or invalid email address,  
the customer is in default with payment of the invoice for more than 14 days (see also Paragraphs 10.3 and 15.5),  
the customer transfers its user account to a third party,  
the customer allows its user account to be used by unauthorized third parties, in particular by individual persons not specified by name,

- non-compliance by the customer with the statutory regulations.

If the customer is responsible for the reason for termination, it is obligated to pay to GBTEC AG the agreed fee less any costs saved by GBTEC AG up to the earliest date on which the contract would end or would have ended in the event of ordinary termination.

- 15.4 Termination must be given in text form to be valid. Compliance with this form is a precondition for the validity of the termination.
- 15.5 If the customer does not fully settle the invoice within 30 days after receipt of the reminder (see sec. 10.3), GBTEC may additionally claim a lump-sum compensation equivalent to one quarter of the remaining monthly fee payable until the end of the regular contract term. The customer shall have the right to prove a smaller loss.
- 15.6 If providing the Service is no longer financially viable for GBTEC AG, GBTEC AG may terminate the existing contracts with one month's notice at the end of the month. Sums already paid for subsequent months shall be refunded.
- 15.7 After the end of the contract, GBTEC AG must delete all documents handed over by the customer which are still in the possession of GBTEC AG, together with data

carriers in connection with the present contract, within a maximum of 60 days. If the customer expressly wishes at the end of the contract, GBTEC AG shall confirm deletion in writing. This includes all the data installed and stored by the customer and its users in the course of the service, and the data generated, newly collected and stored as part of the service and its use by the customer, its users or by GBTEC AG on behalf of the customer. The customer shall acquire all rights to this data, including property rights and copyright. However, this does not include data which the customer or its users have stored in areas of the service which are accessible to third parties (e.g. contributions in community or support forums). The customer can export its data for display in corresponding programs via the system functions provided as part of the service. If the customer enters into a new contract to use the service or the underlying Software immediately following the end of the contract (e.g. as "Private Cloud" or "On Premise"), GBTEC AG shall offer a take-over of the data as part of the new contract.

- 15.8 Where there are no rights or duties of retention, GBTEC AG must delete the data stored by the customer. As part of customer-friendly exit management, GBTEC AG shall continue to store the data filed by the customer in the Cloud for a period of one (1) month after the end of the contract for the purpose of downloading by the customer. The same applies after the end of the use of the free test version. All data will then be irrevocably deleted. Access to the data will then no longer be possible.

### **16. Transfer of rights and duties**

The assignment of rights and duties arising from this contract is only permitted with the prior written consent of GBTEC AG. GBTEC AG is entitled to entrust third parties with the fulfillment of duties arising from this contract.

### 17. Final provisions

17.1 GBTEC AG reserves the right to make changes unilaterally to the content of these Terms & Conditions of Use and the service and product specification at any time, 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 to these Terms & Conditions of Use 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. The Consent shall be deemed given and the General Terms & Conditions of Business, or new service and product specifications, will be included in the contract relationship unless the customer objects to the change, for the time the change comes into effect, by email or in writing within four (4) weeks after receipt of notification of the change. If the customer does object, it shall continue to be governed by the previous contractual provisions. GBTEC AG shall give the customer the appropriate deadline to respond as stated above as part of the communication regarding the changed version and point out the consequences of a failure to respond.

- If the customer objects, each Party has the right to cancel the contract in writing or by email with the notice period applicable for ordinary termination.
- 17.2 GBTEC AG is entitled to increase its usage fees as part of Cloud Computing and its recurrent services in order to balance out any increase in overall costs (general price movements). The overall costs consist, in particular, of costs for maintaining and operating the Cloud, including material costs, wage costs and overheads, service costs, costs for customer administration (IT support) and costs of general administration. The price adjustment may only be made up to the amount of the increased costs and according to the proportion of the increased cost elements to the overall costs; it is only permissible if the increased costs are based on changes that have occurred after the conclusion of the contract and which were not originally caused by GBTEC AG. Only one price increase for each product is permitted for each calendar year.
- 17.3 If a price increase amounts to more than 5% of the price valid at the time of the increase, the customer is entitled to cancel the contract by email or in writing to the extent of the products affected by the price increase and – if the product concerned is a precondition for another product – also to the extent of such other product within four (4) weeks of receipt of the notification concerning the increase with effect from the time the increase comes into effect. If the customer makes use of this special cancellation right, the increase does not come into effect and the contract ends at the time the price increase comes into effect. If the customer does not cancel or does not do so within the deadline, the contract is continued at the new price at the time specified in the notification. GBTEC AG shall inform the customer of its right to cancel as part of the notification of the price increase, and specifically of the consequences of a cancellation that is not received within the deadline.
- 17.4 If the actual overall costs at GBTEC AG, as defined in Para. 17.2, are reduced for reasons that occurred after contract signature and which were not caused by GBTEC AG, GBTEC AG shall take this into account appropriately and pass the reduction on to the customer at the amount of the cost reduction and according to the proportion of the reduced cost element to the overall costs.

# BIC-Software-as-a-Service

## Public Cloud Terms and Conditions



as amended on 08/12/2020

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- 17.5 GBTEC AG shall inform the customer of any price adjustment at least four (4) weeks before it comes into effect.
- 17.6 The present contractual relationship is governed solely by the law of the Federal Republic of Germany. The UN Sales Convention – CISG – does not apply.
- 17.7 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.
- 17.8 This agreement and its amendments, and all contractually relevant declarations, duties of communication and documentation require the written form, unless another form has been agreed or is stipulated by law.
- 17.9 If individual provisions of this agreement are invalid, the validity of the remaining provisions is not affected thereby. In this case, the Parties shall work together to replace invalid rules with rules which as far as possible correspond to the invalid provisions.
- 17.10 This agreement contains all the understandings between the Parties and replaces all other previous or simultaneous communications, negotiations, discussions, understandings, rules or agreements made verbally or in writing between the Parties in relation to the relevant products and services.

**GBTEC Software AG**