General terms and conditions of ifp Software GmbH for soft- and hardware-service

1. General and Scope

1. Ifp Software GmbH (Kalverbenden 31, 52066 Aachen), hereinafter referred to as contractor, provides its services in the field of software and hardware services (SaaS and HaaS) exclusively on the basis of these terms and conditions. They shall apply in accordance with the contract concluded between the contractor and the client.
2. Deviating, conflicting or supplementary General Terms and Conditions of the client shall not be a contractual component, even if they are known, unless their validity is expressly agreed.
3. Verbal agreements and collateral agreements without exception require the written confirmation of the contractor.

2. Offer and conclusion of contract – tender documents

1. The order of the client represents a binding offer, which the contractor can accept within two weeks by sending an order confirmation. Offers submitted beforehand or cost estimates by the contractor are permissive.
2. The contractor reserves the right to property and copyrights in illustrations, drawings, calculations and other documents. This also applies to such written documents, which are referred to as "Confidential". Prior to its transfer to third parties, the client explicitly requires the written consent of the contractor.

3. Description of services and changes in service

1. The contractor shall provide the client with the software and / or hardware product described and described in the service conditions for use over the Internet or for physical use. The software is operated in a computer center used by the contractor, the client is given the non-exclusive and non-transferable right to access the software by means of a browser and an Internet connection and for its own business purposes exclusively in the exercise of his commercial or independent professional activity to use.
   The client is responsible for the Internet and data connection between the client and the computer center and the necessary hardware and software (e.g. PC, network connection, browser, MQTT Client). The right of use is limited to the number of usage units booked by the client (e.g. number of users, managed devices, or measuring points). Any use or provision of the service to third parties is prohibited. The contractor does not provide his services to consumers, but solely for the purpose of the commercial or independent professional activity of the client.
2. The client submits the initial set-up of the service (individual settings, import of data, or data transfer in the case of waiving the physical sensor unit). A change of the service, in particular a reprogramming according to the wishes of the client, is not due. Corresponding services shall be specially agreed and remunerated.

3. The contractor will provide free online support to assist with the use of the service. The support does not include: general knowledge transfer, training, configuration and implementation, or client-specific documentation or adaptation of the software. The support is provided by E-Mail: info@oaa.ai or by telephone: +49 (0) 241 40184275. The support services are provided by the contractor from Monday to Friday between 9 am and 5 pm. Exceptions are public holidays in North Rhine-Westphalia as well as the 24 and 31.12. Each year. Inquiries received outside of these support hours are considered to be received during the next working day.

4. The contractor may amend the service (including its system requirements) for adaptation to technical or economic market changes and for important reasons. (i) a necessary adaptation to a new legal situation or jurisprudence; (ii) a modified technical framework (new browser versions or technical standards), (iii) the protection of system security, or (ii) (lv) the further development of the service (disabling old functions largely replaced by new ones). The contractor shall notify the client by e-mail in good time, as a rule two weeks before the entry into force, on a change which is disadvantageous to him. The client's consent to such a change shall be deemed to have been granted if the client does not object to the change in writing or by e-mail until the change deadline. When the amendment is announced, the contractor will refer to this legal sequence separately. If the amendment would not only affect the contractual balance between the parties to the detriment of the client, the amendment will be omitted.

4. Remuneration and late payment

1. The client owes the contractor the agreed payment for the use of the service during the contract period. The payment may consist of a one-time set-up fee, a fixed monthly basic fee and a monthly usage fee dependent on the number of booked or utilized units of use.

2. The basic and usage fee shall be due in advance with the commencement of the contract for the basic period (see item 10 (2)) and thereafter at the beginning of each renewal period (see item 10 (2)). An increase in the booked usage units (or a change to a higher performance package) is possible at any time; a reduction (or a change to a lower performance package) is only possible with effect at the end of the basic or an extension term or before this with the agreement of the contractor. In the case of an increase in the booked usage units within the basic or an extension period, the additional fees will be charged pro rata. For the additional usage units, the prices are valid according to the price list valid for the order of the additional usage units of the contractor.

3. The contractor shall charge in advance the fees at the beginning of the contract and then at the beginning of each renewal period. The invoice amount must be paid within 15 days without deduction. The start of the contract is defined as the day of first access or 14 days after the hardware has been shipped - whichever comes first.

4. All prices are subject to statutory value-added tax.

5. If, for two calendar months, the client receives the payment of the remuneration or a not insignificant part of the remuneration or in a period of more than two months with the payment of the remuneration in the amount of a double of a monthly basic plus The contractor shall be entitled to block access to the service or to terminate the contract in an extraordinary manner by e-mail or by letter. During the blocking, the client has no access to the data stored in the service.

6. The contractor shall be entitled to increase or reduce the prices agreed with the client at the end of at least 12 months after the last price change has taken place with effect at the beginning of the following extension period. The amended prices will be effective if (i) the contractor notifies the client in writing or by e-mail at least six weeks in advance of the contract, and (ii) the client does not object to them in writing or by e-mail within six weeks after the notification. When the price change is announced, the contractor will once again draw attention to this legal sequence. If the contractor refuses, the existing prices shall continue to apply. The contractor shall be entitled to terminate the contract in accordance with section 10 (2).

5. Duties and obligations of the client

1. The client is responsible for regularly exporting copies of the data he has entered and for securing backup copies or for printing and storing the corresponding information.
2. The client has to use a common and current browser version (eg Chrome, Firefox, Safari) for the use of the software services.
3. At the request of the contractor it may be necessary to exchange hardware in whole or in part. In this case, the expert return of the replaced hardware takes place at the expense of the client.

6. Client data and data protection

1. The data entered by the client within the framework of the use of the service and the data generated and assigned to the client are exclusively for the client. The contractor shall treat these client data confidentially.
2. In the context of analyzes, benchmarks or similar data evaluations, the contractor has the right to use and process data from the client in anonymized form.
3. As far as the client data are personal data, the following applies: The contractor processes the client data as an order data processor within the meaning of § 11 Bundesdaten-schutzgesetz (BDSG) exclusively in the order and according to the instructions of the client and exclusively for the purpose of providing the service. The contractor shall take appropriate technical and organizational measures to protect the client's data. The client remains responsible for the legality of the collection, processing and use of the client data according to the legal regulations, in particular the BDSG. The contractor shall be entitled to use as a data center a hoster established in the European Union or the European Economic Area. Details are regulated by the parties in a separate contract for order data processing.

7. Deficiency claims

1. The client shall inform the contractor immediately of any deficiencies in the service and explain the specific circumstances of the condition. The contractor will remedy the defect within a reasonable period. The contractor is entitled to circumvent the defect by means of a workaround solution if the cause of the defect itself is to be eliminated only with disproportionate effort and the usability of the service does not significantly suffer.
2. Liability-independent liability for initial deficiencies pursuant to § 536a para. 1, Alt. 1 of the Civil Code is excluded.

8. Release obligations

1. If third parties (including public bodies) assert claims against the contractor which are based on the allegation that the client has violated its contractual obligations, in particular unlawful data has entered the service or used the service in an anti-competitive or otherwise unlawful way, the following shall apply: The client shall immediately release the contractor from these claims, provide adequate assistance to the contractor in the case of legal defense and shall release the contractor from the costs of the defense.

2. A precondition for the exemption obligation according to no. 8 (1) is that the contractor shall notify the client of any claims made in writing without undue delay, does not give any acknowledgments or equivalent declarations and shall allow the client to negotiate all judicial and extrajudicial negotiations at the expense of the client over the claims.

9. Liability for damage

1. The contractor shall be liable for damages as far as these
   - Intentionally or through gross negligence on the part of the contractor, or
   - Slightly negligently caused by the contractor and on material breaches of duty
   Or the breach of obligations which the fulfillment of which is the only way to ensure the proper performance of this contract and which the client may trust to comply with (eg, client data are completely lost and also old stocks can not be reconstructed).

2. In addition, the contractor's liability is excluded irrespective of their legal grounds, unless the contractor is liable by law, in particular for injury to a person's life, body or health, assumption of an express guarantee, fraudulent concealment or product liability law. Guarantees by the contractor shall only be made in writing and shall be designated as such.

3. In the case of paragraph (1) b), the contractor shall be liable up to an amount of € 50,000.

4. 9 (1) and 9 (2) shall also apply to claims against employees and agents of the contractor.

10. Termination

1. The contract is concluded for a specific term ("contract term"). It is automatically extended by the same period after expiry if the contract has not been terminated by one of the parties giving three months' notice ("notice period") to the end of the contract period. The right to terminate for good cause remains unaffected.

2. A "minimum term" independent of the contract term is agreed. During this minimum term, the right to cancel is excluded.

3. At the end of a contract period, the client will send hardware back to the contractor at his own expense to an address specified by the contractor.

4. The termination must be in writing.

5. The client can export the client data via the export function of the respective service during the contract period. After the end of the contract period, the client no longer has access to the client data. The contractor shall definitively and completely delete the client data with the expiry of one month from the date of the contract – or beforehand at the request of the client, insofar as the contractor's non-statutory storage obligations are contrary. The contractor is only obliged to deviate the client data (for example regarding time, format or migration) if this is agreed separately and remunerated.

11. Loss or damage

1. All sensors, accessories and tablets must be returned in suitable transportation packaging to the contractor at own expense 14 days after the end of the rental period.
2. Damage or loss of components are borne by the client and will be invoiced with the following amounts: Sensor complete: 1,500 EUR, sensor partial starting from 250 EUR; Tablet: 800 EUR; Security infrastructure incl. keys: 100 EUR
3. Damages to the sensor must be indicated to the contractor immediately after discovery, even without functional restrictions.

12. Others

1. German law applies. To the extent that the United Nations Convention on the International Sale of Goods, which was incorporated into German law, applies to foreigners, this is excluded.
2. Amendments and supplements to these terms and conditions or to the contract are only valid in written form.
3. Jurisdiction to buyers, legal persons of public law or a public special fund is Aachen.

13. Severance clause

1. Should individual provisions of this contract be or become invalid, the legal validity of the remaining provisions shall not be affected thereby. The provision in question must be replaced by an effective one which is as close as possible to the intended purpose.

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