

Terms and Conditions

These Terms govern Your acquisition and use of Our "Flowtap" cloud-based software service.

If You are entering into a Contract on behalf of a company or other legal entity, You represent that You have the authority to bind such entity to these Terms, in which case the terms "You" or "Your" shall refer to such entity.

These Terms shall apply to all present and future business transactions with Us, even if not explicitly referred to repeatedly. We expressly reject any deviating general terms and conditions of You. Any deviations from these Terms, additional agreements or any possible contradictory terms and conditions of You shall only be valid, if they have been confirmed in writing by Us.

1. Definitions

"Additional Services" – means services provided by Us in addition to the cloud-based software service, such as individual customizations and development, consulting services, training or data analysis services.

"Confidential Information" – includes all information exchanged between You and Us, whether in writing, electronically or orally, including in particular related to the Service.

"Contract" – has the meaning pursuant to section 2 of these Terms.

"Data" – means Your business data.

"Fees" – means the fees paid for the Service.

"Flowtap" or "Service" – means the cloud-based software service and any Additional Services provided by Us.

"Intellectual Property Right" – means any patent, trade mark, service mark, copyright, moral right, right in a design, know-how and any other intellectual property rights, anywhere in the world whether or not registered.

"Malicious Code" – means code, files, scripts, agents or programs intended to do harm, including for example, viruses, worms, time bombs and Trojan horses.

"Party" – means You or Us, and "Parties" means You and Us.

"Proposal" – has the meaning pursuant to section 2 of these Terms.

"Terms" – means these Terms and Conditions.

"Us", "We", "Our" – means FT Software Solutions GmbH, Wiedner Hauptstraße 100/2/15, 1050 Vienna, Austria, Commercial Register Number FN 429448t (Commercial Court Vienna).

"User" or "Users" – means the natural or legal persons which use the Service with the authorization of You, provided that you are entitled to grant such authorization.

"You" or "Your" – means the natural or legal persons or a partnership with legal personality who or which entering into a Contract, and any person or organization that uses the Service with the authorization of that person or entity, provided that you are entitled to grant such authorization. "Your" has a corresponding meaning.

2. Conclusion of a Contract

You receive a written proposal from Us, wherein the specific work assignment is defined with respect to type, extent and costs of the Services of Us (the "**Proposal**"). Unless otherwise expressly agreed, Proposals of Us shall be non-binding and merely represent an invitation for you to place an order. The contractual relationship between the Parties (the "**Contract**") shall only be concluded after written order confirmation by Us. Any subsequent modification of the Contract requires the written confirmation by Us.

Any deadlines specified regarding delivery of Services are only approximate and non-binding, unless they are expressly agreed as binding. Binding deadlines shall be agreed in writing or have to be confirmed by Us in writing.

We are entitled within our sole discretion to assign qualified third parties as subcontractors.

3. Our Obligations

3.1 Provision of Service

We will (a) make the Service available to You pursuant to these Terms and the Contract, (b) provide applicable support for the Service to You and (c) use commercially reasonable efforts to make the Service available 24 hours a day, 7 days a week, except for: (i) planned downtime (of which We shall give advance electronic notice), and (ii) any unavailability caused by circumstances beyond Our reasonable control, including, but not limited, for example, to an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labor problem (other than one involving Our employees), Internet service provider failure or delay or denial of service attack and (iii) downtime

resulting from outages of third party connections or utilities or other reasons beyond Our control.

You acknowledge that according to the state of technology there is no process to guarantee error-free execution of software. Therefore, We may not assume any liability for a continuous, error-free operation and a permanent usage of the Service as well as for the underlying software.

You agree that Your purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by Us regarding future functionality or features. We reserve the right at any time to modify and enhance the Service.

3.2 Data Protection

We will maintain administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Your Data. Those safeguards will include, but will not be limited to, measures for preventing access, use, modification or disclosure of Your Data by Our personnel except (a) to provide the Service and prevent or address service or technical problems, (b) as compelled by law, or (c) as You expressly permit in writing.

Where Your use of Our Service includes the processing of personal data within the European Economic Area (EEA), We warrant that We operate in compliance with the applicable Austrian and European data protection laws.

4. Your Obligations

You warrant and represent that You are acquiring the right to access and use the Service for the purposes of a business and that, to the maximum extent permitted by law, any statutory consumer guarantees or legislation intended to protect non-business consumers in any jurisdiction does not apply to the supply of the Service, the Contract or these Terms.

You will (a) be responsible for Users' compliance with these Terms and the Contract (b) be responsible for the accuracy, quality and legality of Your Data and the means by which You acquired Your Data, (c) use commercially reasonable efforts to prevent unauthorized access to or use of the Service, and notify Us promptly of any such unauthorized access or use, (d) use the Service only in accordance with these Terms, the Contract and applicable laws and government regulations.

You will not (a) make the Service available to, or use the Service for the benefit of, anyone other than You or Users, unless expressly stated otherwise in the Contract (b) sell, resell, license, sublicense, distribute, make available, rent or lease the Service,

or include the Service in a service bureau or outsourcing offering, (c) use the Service to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) use the Service to store or transmit Malicious Code, (e) interfere with or disrupt the integrity or performance of the Service or third-party data contained therein, (f) attempt to gain unauthorized access to the Service or its related systems or networks, (g) copy the Service or any part, feature, function or user interface thereof, (h) reverse engineer the Service (to the extent such restriction is permitted by law).

Any use of the Service in breach of these Terms or the Contract by You or Users that in Our judgment threatens the security, integrity or availability of Our Services, may result in Our immediate suspension of the Service, however We will use commercially reasonable efforts under the circumstances to provide You with notice and an opportunity to remedy such violation or threat prior to such suspension.

Moreover, Your obligations include the obligation to make timely payment of the agreed Fees. We shall be refunded by You any and all costs incurred for any direct debit which is not honored or returned. You have to pay Us for any costs, relating to the recovery of any Fees that are due but have not been paid by You.

Further, you are obliged to protect the User and access authorizations assigned to You and Users (in particular passwords) as well as identification and authentication backups from third-party access and not to disclose these to unauthorized users.

You will indemnify Us against all claims, costs, damage and loss arising from Your breach of any of these Terms, the Contract or breach of statutory duty.

You have to pay Us for any costs, relating to the recovery of any Fees that are due but have not been paid by You.

5. Intellectual Property Rights

Title to, and all Intellectual Property Rights in the Service and any documentation relating to the Service remain the property of Us. No rights are granted to You hereunder other than as expressly set forth herein.

Title to, and all Intellectual Property Rights in, the Data remain Your property. You grant Us a license to use, copy, transmit, store, and back-up Your information and Data for the purposes of enabling You to access and use the Service and for any other

purpose related to the provision of the Service to You.

If You enable third-party applications for use in conjunction with the Service or We integrate the Service with third-party applications on Your request, You acknowledge that We may allow the providers of those third-party applications to access Your Data as required for the interoperability of such third-party applications with the Service. We shall not be responsible for any disclosure, modification or deletion of Your Data resulting from any such access by third-party application providers.

You grant to Us a worldwide, perpetual, irrevocable and royalty-free license to use and incorporate into Our Service the result of any customization or Additional Service, suggestion, enhancement request, recommendation or other feedback provided by You or Your Users on behalf of You, without any further compensation to You and without Your approval.

6. Confidentiality

We and You shall treat any Confidential Information as private and confidential and shall not publish or disclose any particulars without prior written consent with the exceptions of (i) any information which is or subsequently comes into the public domain other than by breach of this section, (ii) any information for which disclosure is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction, (iii) any information which comes into the possession of Us prior to its disclosure by You, or which is acquired lawfully and in good faith from an independent third party.

We and You shall only disclose such Confidential Information to those of our employees, agents and subcontractors who need to know it for the purpose of discharging the receiving Party's obligations and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this section as though they were a party to the Contract.

7. Warranty and Limitation of Liability

7.1 Warranty (*Gewährleistung*)

Any statutory warranty claims against Us are excluded to the extent permitted by law. For the avoidance of doubt, there are also no implied, warranties, guarantees or other covenants of any kind.

7.2 Limitation of Liability

We shall be liable to You, irrespective of the legal ground, for any claims and related costs, damages and losses only to the extent that any such claims are caused by gross negligence or willful misconduct of Us.

We shall not be liable for any data or content provided by You or Your Users.

We assume no liability for system failures, disturbances, data loss and viruses due to external attacks or any other reasons.

In no event shall the aggregate liability of each Party arising out of or related to these Terms or the Contract exceed the total amount paid by You for the Service giving rise to the liability in the twelve months preceding the first incident out of which the liability arose.

In no event will either Party have any liability arising out of or related to the Contract or these Terms for any lost profits, goodwill, or indirect, incidental, consequential, business interruption or punitive damages, whether an action is in contract or tort and regardless of the theory of liability. The foregoing disclaimer will not apply to the extent prohibited by law.

We shall not be responsible for failure to fulfil any obligation if due to an act of God, strike, lockout or other interference with work, war, blockade, disturbance, lightning, fire, earthquake, storm, flood, explosions, governmental or quasi-governmental restraint, intervention, direction or embargo.

Any compensation claims of You shall lapse (*verjähren*) six months after You received knowledge of the respective claim against Us.

8. Term and Termination

The term for providing the Service to You shall be as specified in the applicable Contract. Except as otherwise specified in a Contract, Contracts will automatically renew for additional periods equal to the expiring Contract term, unless either Party gives the other notice of non-renewal at least 30 days before the end of the relevant Contract term. The per-unit pricing during any renewal term will increase by up to 5% above the applicable pricing in the prior term, unless We provide You notice of different pricing at least 60 days prior to the applicable renewal term.

A Party may terminate the Contract for cause in writing (i) upon 30 days written notice to the other Party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if

insolvency proceedings are opened over the assets of a Party. If the Contract is terminated by You for cause in accordance with this section We will refund You any prepaid fees covering the remainder of the term of all Contracts after the effective date of termination. If the Contract is terminated by Us for cause in accordance with this section, You will pay any unpaid fees covering the remainder of the term of all Contracts. In no event will termination relieve You of Your obligation to pay any fees payable to Us for the period prior to the effective date of termination.

9. Fees and Payment

You will pay all Fees as specified in the Contract. Except as otherwise specified herein or in the Contract (i) payment obligations are non-cancelable and Fees paid are non-refundable, and (ii) quantities purchased cannot be decreased during the relevant subscription term.

Fee payments shall be made in advance, either annually or in accordance with any different billing frequency stated in the Contract. If the Contract specifies that payment will be by a method other than a credit card, We will invoice You in advance and otherwise in accordance with the relevant Contract. Unless otherwise stated in the Contract, invoiced charges are due net 14 days from the invoice date. You are responsible for providing complete and accurate billing and contact information to Us and notifying Us of any changes to such information.

If any invoiced amount is not received by Us by the due date, then without limiting Our rights or remedies, those charges may accrue late interest at the rate of 8% p.a of the outstanding balance, or the statutory default interests for two-sided business-related transactions, whichever is higher.

Furthermore, in case of default of payment by You, any dunning charges or collecting fees, which are necessary for an appropriate legal prosecution, shall be borne by You. The assertion of other claims or rights remains unaffected.

If any amount owing by You under the Contract or any other agreement for Our Services is 30 or more days overdue We may, without limiting Our other rights and remedies, accelerate Your total unpaid fee obligations under the Contract or any other agreement so that all such obligations become immediately due and payable, and suspend Our Services to You until such amounts are paid in full.

Unless otherwise expressly agreed in the Contract, travel expenses are not included in Fees and are charged separately.

10. Final Provisions

We are entitled – in due consideration of confidentiality agreements – to name You as a reference customer and to describe the services provided by Us to You in general terms. This includes use of logos protected by trademark laws, product names and descriptions and other brands of You. You can object to be mentioned as reference customer in written form.

The provisions of these Terms may be amended by us without giving any reasons at any time. Such later amendments will take effect if You not object thereto within six (6) weeks from notification of the change. We will expressly indicate to You at the beginning of such period for objection that tacit consent results in the acceptance of the contractual change and will give You an opportunity for an express declaration of intent during such period. If You object within the deadline, both You and Us shall be entitled to immediate termination of the contractual relationship by written notice to the other Party.

Any changes, amendments and side agreements to these Terms are only valid if made in writing. This shall also apply to any agreed waiver of the written form requirement. In case of inconsistencies between these Terms and the Proposal, the provisions of the Proposal shall prevail.

If any provision or part-provision of these Terms or the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable whilst retaining the original balance of risk and reward between the Parties. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this section shall not affect the validity and enforceability of the rest of these Terms or the Contract.

All legal disputes which may arise out of or in connection with the legal relationship between Us and You shall be governed by the laws of Austria without giving effect to its conflict law rules and the UN Sales Convention.

Each Party irrevocably agrees that the competent commercial court of Vienna, Austria shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the legal relationship between Us and You.