

General Terms and Conditions Noyes Cloud Solution

1. Scope, Form

- 1.1 These General Terms and Conditions for the Noyes Cloud Solution ("**GTCC**") apply to the subscription of the "NoyesController" ("**NC**"), a SaaS solution provided by us, Noyes Technologies GmbH (hereinafter "**Noyes**" or "**we**"/"**us**"), which can be accessed via a client (the "**Access Client**") and by means of which the Customer (hereinafter the "**Customer**") can, in particular, control the SWS purchased by them in a cloud-based manner.
- 1.2 Our GTCC apply exclusively. Deviating or conflicting terms and conditions shall not be recognized by us unless we have expressly agreed to them.
- 1.3 Individual agreements and specifications in our order confirmation take precedence over the GTCC.
- 1.4 Legally relevant declarations by the Customer (such as setting of deadlines, notification of defects or withdrawal) must be made in writing or text form (e.g. letter, e-mail, fax). Legal form requirements and further proof, in particular in the event of doubts about the legitimacy of the person making the declaration, shall remain unaffected.
- 1.5 References to the applicability of statutory provisions shall only have clarificatory meaning. Therefore, even without such clarification, the statutory provisions shall apply unless they are directly amended or expressly excluded in these GTCC.

2. Conclusion of Contract

- 2.1 Our offers are subject to change without notice (*freibleibend*) and are non-binding, unless they are expressly designated as binding or include a specific acceptance period.
- 2.2 The order by the Customer shall be deemed to be a binding contractual offer. Unless otherwise stated in the order, we shall be entitled to accept this contractual offer within two weeks of its receipt by us. Acceptance may be declared either in writing (e.g. by order confirmation) or by provision of NC.
- 2.3 The legal relationship between us and the Customer shall be exclusively governed by the contract concluded in writing, including this GTCC. This contract fully reflects all agreements between the contracting parties on the subject matter of the contract. Verbal commitments on our part prior to the conclusion of the rental agreement are legally non-binding and verbal agreements between the contracting parties are replaced by the written contract, unless expressly agreed otherwise between the contracting parties in each case.

3. Making available of NC

- 3.1 We shall make NC available to the Customer for the agreed term in the respective current version against remuneration via the Internet at the delivery point. If and to the extent required, we shall parameterize the Access Client for this purpose.

- 3.2 The handover point is the router exit at the data center used by us. We are not responsible for the telecommunication connection between the Customer and us up to the handover point.
- 3.3 If we provide the Customer with user names and user passwords, the Customer shall change them to user names and passwords known only to the Customer without undue delay.
- 3.4 We do not owe any further services such as customizing or installation services, training or individual further developments of NC beyond Sec. 3.1, unless specifically agreed.

4. Availability and Response Times

- 4.1 Unless otherwise agreed, we owe an availability (= technical usability at the transfer point) of NC of 99.5% as an annual average. The measuring instruments of the operator of the data center are decisive for determining the availability rate.
- 4.2 The promised availability is understood without maintenance times. Should we wish to carry out maintenance work outside these times, this shall require the prior consent of the Customer. The Customer shall not unreasonably withhold its consent to this.
- 4.3 Also excluded from the agreed availability are interruptions in availability that we may deem necessary for security reasons (e.g. in the event of a denial-of-service attack or a serious security vulnerability in third-party software used without an available patch), provided that we had taken appropriate security precautions.
- 4.4 The Customer shall report without undue delay any malfunctions to support@noyes-tech.com or to the support contact details provided on our website at www.noyes-tech.com. We shall respond to reports of serious malfunctions (Sec. 4.5) during our business hours (Monday – Friday, 9:00 – 18:00 German time, excluding federal and Bavarian holidays; (the "**Business Hours**") within 1 hours, to other malfunctions within 3 hours.
- 4.5 We will remedy serious malfunctions (the use of NC as a whole or a main function is not possible) within 48 hours after our response (Sec. 4.4). If and as soon as it is foreseeable that it will not be possible to remedy the malfunction within this time period, we will inform the Customer of this without delay and notify of the expected exceeding of the time period and provide a work-around solution until the remedy.
- 4.6 Other significant malfunctions (main or secondary functions of NC are disrupted but can be used; or other malfunctions that are not merely insignificant) will be remedied by us no later than within the next 48 hours of the Business Hours from our response (Sec. 4.4).
- 4.7 The rectification of insignificant malfunctions is at our discretion.

5. Rights of Use

- 5.1 We grant the Customer a simple (non-exclusive) (*einfaches Nutzungsrecht*), non-sublicensable and non-transferable right to use NC for their own business purposes by their own personnel to the agreed extent of the license for the duration of the contract.
- 5.2 The Customer shall not be entitled to any rights not expressly granted to the Customer above. Unless otherwise agreed, the Customer shall in particular not be entitled to make NC available to third parties - including companies affiliated with the Customer within the

meaning of Sec. 15 et seq. German Stock Corporation Act (*Aktiengesetz*) - for use against payment or free of charge.

6. Granting of Storage Space

- 6.1 We also provide the Customer with sufficient server storage space to store their data for the purposes of the contract.
- 6.2 The Customer is not entitled to transfer this storage space to a third party for use, in part or in full, against payment or free of charge.
- 6.3 We will perform daily data backups. Reference is made in addition to Sec. 8.9.

7. Support

During Business Hours (see Sec. 4.4) we provide support to assist with questions regarding the use of NC under the contact data provided in Sec. 4.4.

8. Duties of the Customer

- 8.1 The Customer must grant us access to the server containing the Access Client for parameterization.
- 8.2 Beyond the parameterization, unless otherwise agreed, the Customer shall perform and be responsible for the setup of NC (individual configuration, input/import of data, etc.).
- 8.3 The Customer shall ensure that (e.g. when transferring third party data to our server) observes all third party rights.
- 8.4 The Customer shall not store any illegal content or content that violates the law, official requirements or the rights of third parties on the storage space provided. We are entitled to immediately block the storage space if and as long as there is reasonable suspicion that the stored data is illegal and/or violates the rights of third parties. We will inform the Customer of the block and the reason for it without undue delay.
- 8.5 The Customer is obliged to comply with the relevant legal provisions (e.g. competition and data protection law, e-commerce obligations) when using NC. The Customer indemnifies us against claims by third parties based on unlawful use by them or resulting from data protection, copyright, competition or other legal disputes caused by the Customer that are connected with the use of NC.
- 8.6 Before sending data and information to us, the Customer shall check them for viruses and shall use state-of-the-art virus protection programs.
- 8.7 The Customer shall keep secret any usage and access authorizations provided, protect them from access by third parties and not pass them on to unauthorized users. This data shall be protected by appropriate and customary measures. The Customer shall inform us without undue delay if it is suspected that the access data and/or passwords may have become known to unauthorized persons and shall change the passwords without undue delay.
- 8.8 The Customer shall obtain the necessary consent from the respective data subject insofar as they collect, process or use personal data when using NC and no statutory permission applies.

- 8.9 Without prejudice to Sec 6.3, the Customer shall back up the data transmitted to us by means of NC regularly and in accordance with the significance of the data and make its own back-up copies in order to enable the reconstruction of the data and information in the event of loss thereof and, if and to the extent that it is given the technical opportunity to do so, regularly back up the data stored on our server by download.
- 8.10 The contents stored by the Customer on the storage space intended for them may be protected by copyright. The Customer hereby grants us the right to make the content stored on the server accessible to the Customer when the Customer queries it via the internet and, in particular, to reproduce and transmit it for this purpose and to reproduce it for the purpose of data backup.
- 8.11 The Customer shall notify us without undue delay of any changes to their contractual data (e.g. changed addresses, etc.).

9. Remuneration, Terms of Payment, Default

- 9.1 The Customer owes us the agreed remuneration for the provision of NC and the storage space as well as any further agreed services. Unless otherwise agreed, the remuneration shall be based on our price list valid at the time of conclusion of the contract.
- 9.2 Subject to Sec. 9.3 recurring fees will be due with the begin of the agreed billing period (e.g., monthly, yearly), beginning with the time of the usable provision for the Customer after completion of the parameterization (Sec. 3.1). Example: The contract begins on February 12 and monthly billing was agreed. Parameterization was completed on February 15, and NC is therefore available for use by the Customer from this date. The first monthly payment is due on February 15.
- 9.3 Insofar as the recurring remuneration is dependent on use (e.g. dependent on the number of transactions, if applicable from exceeding a certain included transaction quantity), this remuneration shall be due at the end of each calendar month, beginning with the time of usable provision for the Customer after completion of the parameterization. Example: The contract begins on February 12. Parameterization was completed on February 15, and NC is therefore available for use by the Customer from this date. The first monthly usage remuneration is due on March 15.
- 9.4 No remuneration is owed for parameterization.
- 9.5 Invoicing will be effected by sending an invoice. The Customer must raise objections in writing or in text form within a period of eight weeks after receipt of the invoice. After expiry of this period, the invoice shall be deemed to have been approved by the Customer. We shall specifically draw the Customer's attention to the meaning of their action when sending the invoice.
- 9.6 Notwithstanding our claim to commercial due date interest (Sec. 353 German Commercial Code - *Handelsgesetzbuch* – “HGB”), the Customer shall be in default at the latest if they do not make payment within 10 days of the due date. The outstanding rent shall bear interest from the first day of default at a rate of 9 percentage points above the base interest rate. If the Customer is more than one month in arrears with a monthly rent, we can claim the quarterly advance payment of the agreed rent.
- 9.7 All prices are subject to the applicable statutory sales tax.

9.8 Offsetting and rights of retention are excluded unless the underlying counterclaim is recognized or has been established by a court.

10. Adjustment of Remuneration

10.1 We are entitled to change the contractually agreed remuneration in the event of cost increases. The Customer shall be notified of the date of the change and the amount of the adjustment three months in advance in writing or in text form. However, the change may be made no earlier than 12 months after conclusion of the contract or after the last increase in remuneration.

10.2 We may change the remuneration at most to the extent that the index specified below under Sec. 10.3 has changed (range of changes). For the first adjustment, the index development between the index level published at the time of the conclusion of the contract and the index level last published at the time of the adjustment declaration shall be decisive. This shall apply accordingly to subsequent adjustments.

10.3 The index of average gross monthly earnings of full-time employees in Germany for the sector of information technology services (*Index der durchschnittlichen Bruttomonatsverdienste der vollzeitbeschäftigten Arbeitnehmer in Deutschland für den Wirtschaftszweig Erbringung von Dienstleistungen der Informationstechnologie*) (currently published in quarterly figures by the Federal Statistical Office (*Statistisches Bundesamt*) in „Fachserie 16, Reihe 2.4, Gruppe J 62“) is to be used as the basis for determining the scope of change.

10.4 The Customer has the right to terminate the contract prematurely with effect from the date of the change in remuneration. The termination shall be effective if it is made in the form agreed for ordinary termination and is received by us no later than four weeks before the date of the change in remuneration.

11. Changes in Service

11.1 The Customer is aware that NC is standard software provided as a Software as a Service service, with a large number of Customers accessing a central system. The economies of scale resulting from such a multi-tenancy or automated model can only be exploited if it is a uniform software product that can also be further developed. Therefore, the following applies:

11.2 If and to the extent that the provision of a new version or a change is accompanied by a change in functionalities of NC, workflows of the Customer supported by NC and/or restrictions in the usability of previously generated data, we will announce this to the Customer at least four weeks before such a change takes effect.

11.3 If the Customer does not object to the change in writing or in text form within a period of two weeks from receipt of the change notification, the change shall become part of the contract.

11.4 We will draw the Customer's attention to the aforementioned deadline and the legal consequences of its expiry in the event of failure to exercise the option to object whenever changes are announced.

12. Warranty

- 12.1 The statutory regulations shall apply unless otherwise stipulated below.
- 12.2 If the Customer discovers defects of NC, they have to inform us without undue delay.
- 12.3 The Customer shall not be entitled to claim a reduction by deducting the reduction amount from the current remuneration by themselves. The Customer's claim under the law of enrichment (*Bereicherungsrecht*) to reclaim the portion of the remuneration paid in excess due to a justified reduction shall remain unaffected by this.
- 12.4 The rights of the Customer due to defects are excluded insofar as the Customer makes or has made changes to NC without our consent, unless the Customer proves that the changes do not have any effects on the analysis and elimination of the defects that are unreasonable for us.

13. Liability

- 13.1 We shall not be liable for defects already existing at the time of conclusion of the contract, unless a case of Sec. 13.2 is given.
- 13.2 We shall be liable without limitation a) in the event of malice, intent or gross negligence; b) within the scope of a guarantee expressly assumed by us; c) for damages arising from injury to life, limb or health; d) for the breach of a material contractual obligation, the fulfillment of which is a prerequisite for the proper performance of the contract and on the observance of which the Customer regularly relies and may rely (cardinal obligation (*Kardinalpflichten*)) - in this case, however, limited to the damage reasonably to be expected at the time of the conclusion of the contract - and e) in accordance with the provisions of the Product Liability Act (*Produkthaftungsgesetz*).
- 13.3 We shall not be liable for the loss of data insofar as the damage is due to the Customer's failure to perform data backups and thereby ensure that lost data can be restored with reasonable effort.
- 13.4 In all other respects, our liability is excluded.
- 13.5 The above liability rules apply accordingly to the conduct of and claims against employees, legal representatives and vicarious agents of us.

14. Term and Termination, Liquidated Damages in Case of Default

- 14.1 The contract begins with the conclusion of the contract and runs, unless otherwise agreed, for an indefinite period. Unless otherwise agreed, it may be terminated with one month's notice to the end of the calendar month.
- 14.2 Subject to clause 14.3, the right to extraordinary termination shall remain unaffected.
- 14.3 Termination by the Customer pursuant to Sec. 543 para. 2 sent. 1 no. 1 German Civil Code (*Bürgerliches Gesetzbuch* – “**BGB**”) due to failure to provide use in accordance with the contract shall only be permissible if we have been given sufficient opportunity to rectify the defect and this has failed. The rectification of defects shall only be deemed to have failed if it is impossible, if we refuse to rectify the defect or if it is unreasonably delayed by us, if there are reasonable doubts as to the prospects of success or if it is unreasonable for the Customer for other reasons.

14.4 We may terminate the contract without notice if the Customer is in default of payment of the remuneration for two consecutive billing periods or of a not insignificant part of the remuneration or, in a period extending over more than two billing periods, is in default of payment of the remuneration in an amount equal to the remuneration for two billing periods. In this case, we may additionally demand liquidated damages (*pauschalierter Schadensersatz*) due immediately in one sum in the amount of one quarter of the monthly basic charge remaining until the end of the regular contract period. The Customer has the right to prove a lower damage.

15. Handling of Customer Data upon Termination of the Contract

15.1 At the end of the contract term, the Customer's right to access its data generated by means of NC and other data uploaded to the storage provided by us (collectively, the "**Customer Data**") shall also end.

15.2 The Customer is obliged to ensure the availability of the Customer Data still required by them beyond the end of the contract. They shall take suitable measures for this purpose during the term of the contract, for example by regularly exporting the Customer Data using the export function provided by us and, if necessary, printing it out.

15.3 We are not obligated to provide Customer Data beyond this.

16. Data Privacy

16.1 The parties shall observe the requirements of data privacy law.

16.2 The parties will conclude a Data Processing Agreement (Art. 28 GDPR), if required.

17. Changes to this GTCC

17.1 Notwithstanding Sec. 11 we may amend these GTCC during the ongoing contractual relationship if and to the extent that there is good cause to do so. Such good cause may, for example, be a relevant change in the law, a change in supreme court rulings or a change in market conditions.

17.2 Changes shall be offered to the Customer in text form no later than one month before the proposed date of them coming into effect. The Customer shall be deemed to have given their consent if they have not notified us of their rejection before the proposed date on which the changes are to take effect. We shall specifically draw the Customer's attention to this consequence in our offer.

18. Subcontractor

Unless otherwise agreed, we shall be entitled to use third parties to perform our contractually owed services.

19. Force Majeure

19.1 In the event of and for the duration of force majeure, we shall be released from our performance obligations. Force majeure is any event beyond our control that prevents us from fulfilling our obligations in whole or in part, such as fire damage, floods, epidemics, strikes and lawful lockouts as well as operational disruptions not negligently caused by us or official decrees.

19.2 We shall notify the Customer without undue delay of the occurrence and cessation of the force majeure and shall use our best efforts to remedy the force majeure and to limit its effects as far as possible.

19.3 If the force majeure lasts longer than two weeks, the Customer is entitled to terminate or withdraw from the contract.

20. Confidentiality

20.1 Confidential information is information expressly designated as confidential by the party providing the information and such information whose confidentiality is clearly evident from the circumstances of its provision ("**Confidential Information**"). Excluded from the confidentiality obligation is such information

- which were demonstrably already known to the recipient at the time the contract was concluded or subsequently become known to it from a third party, without this violating a confidentiality agreement, statutory regulations or official orders;
- which are public knowledge at the time of conclusion of the contract or are made public thereafter, insofar as this is not based on a breach of this contract;
- which must be disclosed due to legal obligations or by order of a court or authority. To the extent permissible and possible, the recipient obligated to disclose shall inform the other party in advance and give it the opportunity to object to the disclosure.

20.2 The parties shall treat all Confidential Information as confidential. Any use of the Confidential Information shall be limited to use in connection with the Agreement. The receiving party shall refrain from commercially exploiting or imitating (e.g. by means of "reverse engineering") the Confidential Information itself or through third parties outside this purpose, in particular from applying for industrial property rights to the Confidential Information disclosed.

20.3 The parties shall only grant access to Confidential Information to those consultants who are subject to professional secrecy or to whom obligations corresponding to the confidentiality obligations of these GTCC have previously been imposed. In addition, the parties shall only disclose the Confidential Information to those employees who need to know it for the performance of the contract and shall also oblige these employees to maintain confidentiality to the extent permitted by employment law for the period after their departure.

20.4 To the extent required by applicable law, the recipient shall be entitled to disclose and share Confidential Information. To the extent permitted by law, the recipient will inform the other party before disclosing Confidential Information.

20.5 The obligation to maintain confidentiality shall apply for the term of the contract and for a period of three years after its termination.

21. Set-off, Retention

The Customer shall only be entitled to rights of set-off or retention insofar as their claim has been established by a court or is undisputed. In the event of defects, the corresponding counter rights of the Customer shall remain unaffected.

22. Final Provisions

22.1 The Customer may not assign the rights to which they are entitled under the contract to third parties, either in whole or in part, without our prior written consent.

22.2 These GTCC and the contractual relationship between us and the Customer shall be governed by German law excluding international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods, and is to be interpreted exclusively consistent with German law and usage of terminology. Where these GTCC contain a German term as a translation for an English term, the German term shall be binding for the interpretation.

22.3 The place of performance is our registered office.

22.4 If the Customer is a merchant within the meaning of the HGB, a legal entity under public law or a special fund under public law (*öffentlich-rechtliches Sondervermögen*), the Regional Court Munich I (*Landgericht München I*) in Germany shall be the exclusive - also international - place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship. The same shall apply if the Customer is an entrepreneur within the meaning of Sec. 14 BGB. However, we shall always also be entitled to bring an action at the place of performance or a prior individual agreement or at the general place of jurisdiction of the Customer. Overriding statutory provisions, in particular regarding exclusive jurisdiction, shall remain unaffected.

Status of these GTCC: May 2022