



MEISTERPLAN

# Terms of Service

Meisterplan Software as a Service Terms and Conditions (hereinafter referred to as "Terms of Service")

to an agreement concluded via the Meisterplan Webshop or concluded in any other way (hereinafter referred to as "Agreement") between itdesign GmbH, Friedrichstr. 12, 72072 Tübingen, Germany (hereinafter referred to as the "Supplier") and you or the company / organization that you represent (hereinafter referred to as the "Customer"), hereinafter collectively referred to as the "Parties".

## 1 Subject of the Agreement, Definitions

(1) Under the Agreement, the Parties agree that the Supplier is to give the Customer the right, subject to a fee, to use the software application "Meisterplan" (referred to hereinafter as the "Application").

(2) The subject of the Agreement is the provision by the Supplier to the Customer, subject to payment of the fee for the term agreed in the Agreement or in a separate agreement, of the current version of the application made available by the Supplier for the use of its functionalities, the technical facility to use the application and the grant or transfer of rights of use to the application.

(3) A functional description of the Application is available for download at

**<http://meisterplan.com/wp-content/uploads/Meisterplan-Product-Description.pdf>**

The software environment approved by the Supplier for use of the Application, in particular the browser, is specified in the Application system requirements and is available for download at **<http://meisterplan.com/wp-content/uploads/Meisterplan-System-Requirements.pdf>**



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(4)

**Resource:** means, hereinafter, an individual person or material resource that you plan for using the Application. Each resource may also log in as a user of the Application. If the customer uses "placeholder", "proxy-resources" or roles, one resource must be licensed for every represented person or material resource.

**Connector:** means, hereinafter, an Application module via which a connection to a defined third-party application may be set up and via which data may then be exchanged.

**Environment:** An "Environment" is a logical unit on which the Application is operated. This may be a physical or virtual server; which can be accessed with the aid of a browser.

## 2 Provision of the Application, securing the Application Data

(1) The Supplier shall keep the latest version of the Application on a central data processing system or several data processing systems (referred to hereinafter as "**Server**", even if there are several of them), in accordance with the following provisions.

(2) The Application and the data generated by the Customer through use of the application (hereinafter the "Application Data") shall be backed up regularly on the Server, at least once daily, unless agreed otherwise between the Parties. The security backup generated shall be filed on the Server. The backup thus filed shall be held for one hundred (100) days before being automatically overwritten on the following working day.

(3) The point of delivery of the Application and the Application Data shall be the router output of the data processing center used by the Supplier (referred to hereinafter as the "**Delivery Point**").



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### **3 Application trial versions**

A free trial version of the Application shall be provided to the customer solely for trial purposes for a limited period. A trial version is not permitted to be used for normal business operations.

The data shall be deleted automatically at the end of the trial phase.

### **4 Technical availability of the Application**

The Parties understand availability as the technical usability of the Application and the Application Data at the Delivery Point for use by the Customer.

The Supplier shall be responsible for ensuring the availability of the Application and the Application Data at the Delivery Point.

The customer acknowledges that the service may not be free of bugs or errors, and may not be available at all times or without interruption, and agrees that the existence of any such bugs or errors or the occurrence of any such interruptions in availability will not constitute a breach of these Terms of Service.

### **5 Other services of the Supplier, online user manual**

(1) The Supplier shall provide the Customer with new versions of the Application developed during the Agreement term (in particular updates, upgrades or releases). The new versions may also contain extended functionalities.

The Customer shall not have the right to require new versions to be produced or to demand the inclusion of specific additional functionalities in the Application.

(2) The Supplier shall provide the Customer with an online user manual for the Application.



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## 6 Rights of use, rights of the Supplier in the event that rights of use are exceeded

(1) The Customer shall receive a simple, non-exclusive right of use for the Application, which may not be the subject of a subsidiary license and shall be non-transferable, shall be limited in time to the term of the Agreement and may be the subject of termination as set out in these Terms of Service.

The Customer may only use the Application for his own commercial activities involving his own staff or agents.

(2) The Customer may only use the Application according to the number of resources and connectors stated in clause 1 (4) of the Agreement.

(3) The Customer shall have access to one (1) environment. No additional environments will be provided for testing or quality assurance purposes. These may be ordered as required for an additional charge.

(4) The Customer shall have no rights other than those explicitly granted to him above. In particular, the Customer shall not be entitled to use the Application beyond what is agreed or to allow its use by third parties, or to make the Application accessible to third parties.

(5) If the Customer infringes upon the obligations under clause 6 (1) to (4) of these Terms of Service, the Supplier may block the Customer's access to the Application or the Application Data, if this demonstrably prevents continuation of the infringement.

If, despite a written warning by the Supplier, the Customer continues the infringements described under clause 6 (1) to (4) of these Terms of Service, or is responsible for their continuation or repetition, the Supplier may terminate the Agreement for cause without notice.



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### 7 Fee and payment, Service providers

(1) The Customer shall pay the Supplier the fee for use shown in the Agreement, plus any required value added tax at the statutory rate, for the services to be provided, namely granting use of the Application.

(2) The fee is due for payment in advance of service, at the times set out in the Meisterplan Webshop or in a separate agreement.

(3) For processing the payment of the Customer as well as the administration of the licenses, the Supplier shall be entitled to involve certain service providers.

In this respect it can be referred to the data protection provisions set out in § 9 (7) of these Terms of Service.

(4) The Supplier shall be entitled to reasonably increase the agreed upon prices for the contractual services in order to meet staffing costs and other cost increases. The Supplier shall notify the Customer of a price increase in writing or via email; the price increase shall not apply to the period for which the Customer has already made payments.

If the price increase amounts to more than 5% per annum of the former fee, the Customer may terminate the Agreement upon receipt of the notification on the date at which the price increase would take effect, subject to 30 days' notice. If the Customer avails himself of his right of termination, then only the original fee shall be charged up to the point at which the termination takes effect.

The prices may not be increased within 12 months of the date of conclusion of the Agreement.

(5) If entering into a paid agreement after June 1<sup>st</sup>, 2018, the Customer hereby grants to the Supplier the right to use the Customer's company logo in marketing materials such as the



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Supplier's website solely to identify the Customer as a Meisterplan customer. The Supplier shall not use the Customer's logo without prior written permission in any other manner.

## 8 Customer's duties of cooperation

(1) The Customer shall fulfill all duties and obligations that are required in order to process the Agreement.

The customer undertakes in particular:

1. not to disclose the use and login credentials assigned to him or the users, to prevent them from being accessed by third parties and not to pass them to unauthorized users;
2. to protect the user IDs, passwords and the like through appropriate and customary means; the Customer shall notify the Supplier immediately in the event of any suspicion that the access data and / or passwords may have become known to unauthorized third parties;
3. to adhere to the restrictions / obligations in relation to the rights of use set out in clause 6 of these Terms of Service; and in particular:
  - o not to retrieve or allow retrieval of any information or data without authorization, or to interfere with or allow interference with programs operated by the Supplier, or to infiltrate or promote infiltration into the Supplier's data networks without authorization;
  - o to indemnify the Supplier in the event of claims by third parties that result from the unlawful use of the Application by the Customer, or that arise out of disputes under data protection law, copyright law or other legal disputes brought about by the Customer, which are associated with the use of the Application;
  - o to require authorized users to also adhere to the provisions of the Agreement and of these Terms of Service that apply to them;



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4. to check data and information for viruses before sending them to the Supplier and to install state-of-the-art antivirus software;
5. to immediately declare to the Supplier any defects in the contractual services, in particular defects in the services described in clause 1 of these Terms of Service; if the Supplier has not been able to remedy such defects as a result of a failure to declare them or their late declaration, the Customer shall not be entitled to fully or partially reduce the fee owed under the Agreement, to demand compensation for the loss caused by the defect or to terminate the Agreement for cause without notice as a result of the defect. The Customer must demonstrate that he was not responsible for the failure to make the declaration.

### 9 Data security, data protection

(1) The Parties shall observe the data protection provisions applicable to them, in particular those that are valid in Germany, including Regulation (EU) 2016 / 679 (General Data Protection Regulation).

(2) If the Customer gathers, processes or uses personal data, he shall be answerable for the fact that he is entitled to do so under the applicable legal provisions, in particular those under data protection law, and shall indemnify the Supplier for claims by third parties in the event of a breach of such provisions.

(3) The Supplier shall only gather and use Customer personal data to the extent necessary in order to perform the Agreement.

The Supplier may store server logs, which may include information such as IP address, timestamp, or web request. This is necessary for the detection of errors and to defend against threats.

In order to ensure a continuous provision of the services, to adapt to evolving requirements of users, to enhance the user experience of the Application, and to coordinate the Supplier's internal processes, it is necessary for the Supplier to collect



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and process statistical data on the usage of the Application. These data points do not contain any content that was entered by a user. The data may include a generalized description of user-triggered actions, a timestamp, information on the web browser, the internal ID of the respective database, the ID of a cookie created on the website or a non-invertible identifier of the user. If desired, this collection of statistical data can be deactivated by users with admin permissions. By accepting these Terms of Service, the Customer agrees to this. (4) The obligations set out in clause 9 (1) to (3) of these Terms of Service shall apply for as long as the Application Data remain within the Supplier's sphere of influence, including beyond the end of this Agreement.

(5) The Customer shall be responsible for the content that has been uploaded during use of the Application, and shall regularly prepare his own backups, in order to permit reconstruction of the content in the event of loss of the data and information.

(6) If and insofar as the Supplier provides the Customer with the requisite technical facilities to do so, the latter shall regularly download backups for the Application Data stored on the Server.

(7) Declaration of consent under German data protection law regarding transfer of data to service providers with residence or registered office outside the EU / EEA

To execute this contract it is necessary to collect, process and store the contact data of the customer (name of the company, contact person, address, phone, fax, e-mail). By signing up for a trial the Customer gives his consent so that the Supplier is entitled to involve Chargebee (<http://chargebee.com>) as service provider for administrating the trial with the aforementioned information. By clicking the "Order Now" button or by otherwise entering into an agreement with the Supplier, the Customer gives his consent so that the Supplier is entitled to involve Chargebee as service provider to also administrate the licenses and create invoices. This service provider will then therefore also receive information about the contractual services and licenses, billing- and





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delivery address as well as the general payment information by the Supplier to perform the administration of licenses and the generation of invoices. Additionally the service provider Zapier (<http://zapier.com>) is involved to inform the Supplier of changes in the contractual terms. By clicking the "Order Now" button or by otherwise entering into an agreement with the Supplier, the Customer furthermore gives his consent that the Supplier is entitled to give his credit card payment details (cardholder, credit card number, valid dates, secure code, amount, purpose of payment) to the service provider Stripe (<http://stripe.com>) to process the payment. If the Customer chooses to pay via direct debiting he gives his consent to the Supplier by clicking on the "Order Now" button or by otherwise entering into an agreement with the Supplier, that he is allowed to give these payment details (name of bank account holder, IBAN, BIC, amount, purpose of payment) to the service provider GoCardless (<https://gocardless.com/>) to process the payment. The Supplier assures that he selected the service providers in consideration of their technical and organizational security measures. If the service providers do not have their residence or registered office within the EU / EEA, the Supplier ensures furthermore that an adequate level of data protection is observed by them.

### 10 Claims in the event of defective performance

(1) If the services to be provided by the Supplier under the Agreement are defective, the Supplier shall remedy the defect within a reasonable period after receipt of a defect complaint by the Customer; the Supplier may also do so via the provision of a replacement or alternative solution, if and in as much as the Customer can reasonably be expected to accept such a solution.

(2) If such subsequent performance fails, the Customer shall be entitled, after a reasonable additional period has been set and has expired, to reduce the agreed fee by a reasonable amount. The reduction shall be limited to the amount of the (monthly) fee that relates to the defective part of the service.



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(3) If the use of the Application to the extent of the availability defined in clause 4 of these Terms of Service is not restored within a reasonable additional period to be set by the Customer after the Supplier has become aware of the defect, i.e. if use of the Application is impossible or is seriously restricted so that a defect remedy fails, the Customer may terminate the Agreement for cause without notice.

The defect remedy may only be assumed to have failed if it is impossible, if the Supplier has refused it or has unreasonably delayed it, if there are well-founded doubts regarding its likely success or if the Customer cannot reasonably be expected to accept it for other reasons.

### 11 Liability, liability limits, product liability

(1) The Supplier shall carry unrestricted liability for all losses:

1. involving loss of life, personal injury or impairment to health, which are the result of an intentional or negligent breach of obligation or of other intentional or negligent behavior on the part of the Supplier or one of its legal representatives or vicarious agents;
2. due to the absence or loss of a guaranteed feature or in the event of failure to adhere to a guarantee;
3. resulting from an intentional or grossly negligent breach of duty or other intentional or grossly negligent behavior on the part of the Supplier or one of its legal representatives or vicarious agents.

(2) The Supplier shall be liable for losses resulting from a minor negligent breach of material contractual obligations by the Supplier or one of its legal representatives or vicarious agents, in which case the compensation shall be limited to the typically occurring, predictable loss.

Material contractual obligations shall be those which are critical for proper execution of the Agreement and on whose adherence the Customer is entitled to rely.



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(3) The Supplier shall not be liable for losses caused through minor negligence, as a result of a breach of other non-material obligations by the Supplier or one of its legal representatives or vicarious agents.

The Supplier shall not carry strict liability for damages for any defects that existed at the time of conclusion of the Agreement. The above provisions shall also apply accordingly to the Supplier's liability in relation to the reimbursement of wasted expenditure.

(4) This shall not affect the Supplier's liability under the Produkthaftungsgesetz (*German Product Liability Act*).

## 12 Proprietary rights of third parties

(1) The Supplier hereby guarantees that the Application is free from industrial property rights and copyrights of third parties.

If a third party asserts justified claims against the Customer owing to the infringement of proprietary rights by the Supplier's Application, the Supplier shall be liable towards the Customer as follows:

1. The Supplier shall, at his own discretion and at his own expense, either obtain a right of use for the Application or the relevant part of the Application, or change the Application in such a way that the proprietary right is not infringed, or exchange the Application. If it is not possible for the Supplier to do so under reasonable conditions, then the Customer may avail himself of the statutory rights to withdraw from the Agreement or demand a reduction.
2. In the event of a legitimate claim being made against the Customer by a third party, the Supplier shall release the Customer from the costs that have arisen through the raising of these third-party claims (including reasonable lawyers' fees, which shall be



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limited, where applicable, in accordance with the Rechtsanwaltsvergütungsgesetz (German Law on the Remuneration of Attorneys).

3. The Supplier's obligation to pay damages is based on clause 11 of these Terms of Service.

The Customer undertakes to notify the Supplier immediately, in writing or by e-mail, of the claims being asserted by third parties; the Supplier reserves the right to take all defensive measures and to conduct settlement negotiations. If the Customer discontinues use of the Application in order to reduce the damage for other important reasons, he shall be obliged to point out to the third party that the discontinuation of use does not constitute acknowledgement of an infringement of a proprietary right.

(2) Claims against the Supplier in accordance with clause 12 (1) of these Terms of Service shall be excluded if

1. the Customer is responsible for the infringement of the proprietary right,
2. the assertion of an infringement comes about through unauthorized modification of the Application by Customer or is associated with such a modification,
3. the Application is not used in accordance with the provisions of the Agreement and of these Terms of Service or in accordance with the Application documentation.
4. the alleged infringement could have been prevented through the use of an update, upgrade or patch released by the Supplier,
5. the alleged infringement results from the use of the Application with a product from a third-party supplier that has not been made available by the Supplier.

(3) Further claims of the Customer against the Supplier and its vicarious agents owing to claims resulting from the infringement of proprietary rights of third parties are excluded.

## 13 Conclusion of the Agreement, Start of the Agreement, term, termination



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(1) The Customer makes an order by clicking the button "Order Now" on the Meisterplan Webshop or through other forms of communication.

The agreement is concluded and the contractual relationship shall commence with the acceptance of the Customer's order by order confirmation of the Supplier.

(2) The agreement shall have the minimum term as agreed in the agreement and may not be the subject of ordinary termination prior to that point.

The agreement shall be extended by further periods of the originally agreed term, unless one of the parties has terminated at the end of the minimum term or the extension period in question. Termination of the Agreement is subject to one week's notice, unless otherwise agreed by the Parties in writing.

(3) This shall not affect the right of the Parties to terminate the Agreement for cause.

### 14 Duties during and after the end of the Agreement

When the contractual relationship ends, all the Customer's rights to use the Application shall lapse. The Supplier shall delete the Customer's Application database no later than four weeks after the end of the Agreement.

The Customer himself shall be responsible for securing all personal data by that point.

### 15 Force majeure, delays in performance of the service

The Supplier shall not be liable for delays in performance of the service due to force majeure, which shall include events that make it significantly more difficult or impossible for the Supplier to perform the services under the Agreement, including in particular strike, lockout,



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official orders, failure of, or problems associated with, communication networks and gateways of other operators, inasmuch as the Supplier was not responsible for such events.

Such events shall entitle the Supplier to postpone or interrupt the services for the duration of the hindrance.

## 16 Final provisions, place of jurisdiction, governing law

(1) All agreements, ancillary agreements and assurances, and also subsequent amendments and supplements to the Agreement and / or these Terms of Service, must be set out in writing. The same shall apply to the cancellation, amendment or waiver of this written form requirement.

(2) If a provision of the Agreement and / or of these Terms of Service should be or become ineffective or should be incomplete, this shall not affect the remainder of the Agreement; the remaining provisions shall remain effective.

In such a case, and in the case of loopholes that the Parties have not foreseen, the Parties shall agree on a provision that best fulfils the intent and purpose of the Agreement and these Terms of Service and that reflects those of the invalid provision as closely as possible.

(3) The Agreement and these Terms of Service shall be governed by the law of the Federal Republic of Germany, to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

(4) The place of performance and exclusive place of jurisdiction for all disputes arising out of or in connection with the Agreement and / or these Terms of Service shall be Tübingen, Federal Republic of Germany.



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