

1 General Part

1.1 Scope of application

The general part of the General Terms of Business

- of brain-tec AG, IT solutions,
- of brain-tec Germany GmbH
- as well as brain-tec Spain S.L.

("brain-tec") contains contractual conditions which apply to all types of contracts.

The commercial conditions which apply to individual transactions (such as products and service specifications, prices and deadlines) are regulated in individual contracts.

The General Terms of Business apply to all divisions (subject to items 2, 3 and 4 hereinafter) of brain-tec. Whenever brain-tec is mentioned hereinafter, this refers to the division or business unit which has concluded the individual contract with the customer.

Each contract conclusion, whether oral or written, implicit or formally agreed, will be subject to the General Terms of Business which at the time of such conclusion were published on brain-tec's internet site, or sent to the customer as an attachment to the offer at that party's request.

1.2 Contract conclusion

Contracts between brain-tec and its customer are concluded when an individual contract is reciprocally signed or an order confirmation is accepted without objection. If an order confirmation is accepted, brain-tec can assume that the customer agrees to the order confirmation unless that customer objects to it in writing within five days after receiving it.

1.3 Contract commencement

Unless otherwise agreed, written contracts will take effect on the date of their signing, order confirmations on the date of their issue.

1.4 Contract termination

Individual contracts on delivering hard- or software or rendering a one-time service will end when those contracts have been duly executed. Individual contracts on surrendering hard- or software (rent, leasing, outsourcing, etc.) or rendering an ongoing service (system or software maintenance, IT support) will end when those contracts expire or are terminated. Any termination must be in writing.

1.5 Rendering of services

brain-tec may either render the contractually owed services or have them partially rendered by third parties.

1.6 Deadlines

Deadlines for delivery, installation and commissioning are merely non-binding recommendations unless they have been expressly ensured in the individual contract.

1.7 Handover and acceptance

brain-tec will fulfil the owed service by handing over the product or work result. The parties will cooperate in a formal inspection and acceptance procedure only if this has been explicitly agreed. Defects which do not exclude intended use of the work result ("insignificant defects") will not prevent acceptance.

Services will be deemed accepted if acceptance is not agreed within 30 days after the agreed acceptance date (or if there is no such date, within 30 days after handover) and brain-tec is not to blame. In any case, they will be deemed accepted whenever the customer begins productively using products or service results.

1.8 Delay in acceptance

If the customer fails to accept the duly offered service, brain-tec may, after setting a reasonable grace period, either:

- 1) continue to uphold the fulfilled portion of the contract and demand the agreed compensation for that portion while definitely refusing to render further services, or
- 2) withdraw from the entire contract while demanding damage compensation and the return of all delivered products. The damage compensation will consist of the products' minimal value and in the full contractually agreed compensation for the services already rendered.

1.9 Default by brain-tec

If brain-tec culpably fails to meet a contractually agreed deadline, the customer will grant brain-tec a reasonable grace period of at least 30 days in writing. If brain-tec fails to meet this deadline as well, brain-tec will be in default and the customer may after setting an additional grace period in writing:

- 1) continue to insist on fulfilment;
- 2) dispense with subsequent performance (provided the customer declares this choice without undue delay);
- 3) if the customer declares this choice without undue delay and the outstanding service or delivery considerably impairs the usability of all the services purchased from brain-tec, the customer may withdraw from the contract. Terminating or withdrawing from the project contract (contract) will not be deemed rescission of the project contract (contract).

1.10 Prices

All pricing information is understood to exclude VAT and any additional fees. brain-tec may change its prices at any time. Price changes will not affect individual contracts on product delivery which have already been concluded and signed. Any new prices announced with three months' notice will apply to individual contracts for permanently relinquishing products or rendering services.

If brain-tec provides information on prices for services or overall systems, those prices will constitute neither fixed prices, binding cost ceilings nor cost estimates, but will serve merely to guide the customer and be subject to express assurance. Moreover, specifications of anticipated service expenses do not consider travel times or travel costs.

1.11 Payment conditions

Unless otherwise especially agreed, brain-tec's invoices are payable within ten days (date of maturity). After this period expires, the customer will automatically enter arrears.

1.12 Travel time

Travel time will be deemed working time. For compensating travel time, brain-tec may instead of the normal conditions introduce a lump-sum compensation which covers both costs and time spent.

1.13 Additional expenses

Besides the contractually agreed compensation, brain-tec may invoice the following services at cost:

- 1) Services not contained in the defined scope of services;
- 2) Services for analysing and remedying faults that were not caused by the delivered or maintained components or which are not replicable (such as operator errors, incorrect manipulation, unauthorised interventions, effects of third-party products, errors in the data material provided by the customer or third parties, and changes to the data pools which do not occur through the proper and licenced programmes of brain-tec);
- 3) Services for remedying malfunctions caused by external physical effects or force majeure (such as physical damage from the customer or a third party, loss of power, overvoltage, stroke of lightning, elemental damage, chewing by animals, influences through unusual physical, chemical or electrical stresses);
- 4) Expenses arising because the customer breached its obligations to cooperate;
- 5) Expenses caused by software, viruses or attacks.

1.14 Default in payment by the customer

If the customer is in arrears with paying an invoice from brain-tec, brain-tec may charge default interest of 5%. Moreover, after setting a grace period brain-tec may at its discretion:

- 1) continue to uphold the contract, sue for payment of the outstanding claim plus the damage caused by the delay, and refuse to render further services until due payment is made, or
- 2) continue to uphold the contract, sue for payment of the outstanding claim plus the damage caused by the delay, and definitely dispense with rendering further services, or
- 3) withdraw from the contract, demand the return of all officially delivered products, and invoice as damage compensation the contractually agreed remuneration for services already rendered.

In cases two and three, brain-tec may also demand lump-sum damage compensation for the forfeited future services. This amounts to 50% of the contract value of the products which will remain undelivered and the services which will remain unrendered. The right to assert further damages by producing appropriate evidence remains reserved.

1.15 Remuneration according to effort and expenditure

The customer is responsible for the successful execution of the project. If the customer cancels the project prematurely, the services already rendered will be remunerated according to effort and expenditure.

1.16 Obligations to cooperate

The customer will bring about all necessary conditions in its sphere of activity so that brain-tec can render the owed services. In particular, the customer is responsible for the following areas:

- 1) Overall responsibility for the successful economic use of the contractual product: Specifying the problem to be solved; choosing the products; adjusting the in-house operational processes to meet the requirements of the contractual product to the extent necessary and feasible; orienting brain-tec on the customer's operational processes, provided those processes are relevant for the rendering of services; providing ongoing information about any upcoming extensions of use; making strategic decisions or changes regarding the technical or legal environment with effect on the supported IT environment;
- 2) Contact partner and project management: Designating expert contact partners who are authorised to make decisions in customer's business operations, and designating a customer project manager if needed; approving this person for project tasks to the necessary extent;
- 3) Education: Training employees regarding the contractual products; conveying the generally typical user know-how and training superusers if necessary;

- 4) Fault and error message: Provide information when faults and errors occur, without undue delay and in the form prescribed by brain-tec; describe and document any occurring faults as precisely as possible;
- 5) Responsibility for data: Provide the data to be processed; enter the data; take over and recover the data; be responsible for data integrity and compliance with the provisions of data protection laws;
- 6) Data backups: Execute and monitor data backups; store the backup in a safe place;
- 7) Infrastructure: Provide suitable spaces in which to install contractual products; be responsible for compliance with provisions regarding the temperature and cleanliness of spaces in which components are found; ensure power supply; allow brain-tec employees to enter the customer's premises; provide the necessary number of workspaces for brain-tec employees if they are put to work on site; provide sufficient service windows if necessary; insure the contractual product against unintentional loss, damage, theft and elemental damage.
- 8) Usage regulations: Comply with the usage regulations prescribed by brain-tec or the manufacturer; handle the contractual product carefully and clean its exterior;
- 9) Supporting brain-tec: Cooperate as instructed by brain-tec when work is performed in customer's business; perform work which brain-tec assigns to the customer;
- 10) Interfaces: Defining and programming the interfaces to be realised by the customer;
- 11) Components of the customer: Prompt provision, operation and maintenance of the components to be procured by the customer;
- 12) Subcontractors: Coordinating and ensuring the rendering of services by subcontractors;
- 13) Communication: Providing and ensuring data communication, internet and telephone connection; managing the interfaces with the respective providers; maintaining the technical equipment for remote maintenance to be installed by the customer;
- 14) Obligations to inspect and accept: Receive the services and products offered; inspect delivered services and products immediately after handover; cooperate during system tests; carry out an inspection and acceptance procedure;
- 15) Consumable materials: Procure consumable materials such as toner, paper and discs; replace wear parts.

Additional obligations to cooperate can result mutatis mutandis from the scope of services agreed in the individual contract.

1.17 Rights to the work result

Unless otherwise stipulated in the individual contract, brain-tec will retain all rights to the work results created through brain-tec or its subcontractors. The customer will be given a non-exclusive, non-transferable right to use the work results anytime.

1.18 Exclusion of warranty for self-culpability

Neither the customer nor third parties may provide subsequent improvement autonomously. If the customer treats the hardware or software products improperly, changes or repairs them, or has such actions performed by a third party not authorised by brain-tec, the customer will lose all warranty and liability claims. Moreover, brain-tec may invoice the additional expenses caused thereby, under the applicable conditions.

1.19 Permit

If the customer proactively uses the products and work results, those services will be deemed approved in any case if no written notice of defects is issued within 30 days after acceptance (or if there was no acceptance, within 10 days after handover). This does not apply to defects which could not have been discovered during an ordinary inspection. Such defects may be asserted until ordinary expiry of the warranty period.

1.20 Liability

If brain-tec is to blame for material damage, it will be liable for up to 5% of the price of the defective product or service. If the service is recurring (such as maintenance), an annual fee will apply as the price of the service. Any liability for the following is excluded as permitted by law: auxiliary personnel, financial losses such as loss of potential profit,

unrealised savings, the customer's own expenses, third-party claims of recourse, default damages, damages caused by the loss of or damage to data, damages arising from the commercial use of the products, and costs resulting from the involvement of third parties.

1.21 Leasing

Any leasing or refinancing contract regarding the contractual object will influence only the ownership conditions and debtor position regarding the price. This will not affect the remaining rights and obligations (especially the obligations to cooperate and the usage authorisations regarding software).

1.22 Exclusion of offsetting

The customer may not offset brain-tec's claims against counterclaims unless brain-tec has acknowledged those counterclaims in writing.

1.23 Securities

brain-tec reserves its ownership of the sold hardware products until the customer has paid for those products in full. The customer will announce any retentions of title by third parties (especially lessors), will not sell any hardware products whose title is reserved, and will treat those products carefully.

Any granting of a usage licence will be subject to complete payment of the licensing fees. If the customer neglects to pay the licensing fees, that customer will lose all usage rights to the software that has not been paid for (after one written warning) and will delete all copies of the software and data storage devices, and return any documentation to brain-tec.

1.24 Re-exportation

The customer will observe existing restrictions on re-exportation.

1.25 Nondisclosure

Neither brain-tec nor the customer will disclose any perceptions or documents which belong to the business' private sphere. This obligation does not apply to information which is demonstrably public knowledge or becomes public knowledge without the involvement of the information's recipient.

The obligation to secrecy will survive this contractual relationship. However, brain-tec may disclose its collaboration with the customer in the form of references unless the customer expressly demands that this situation also be covered by brain-tec's nondisclosure obligation.

1.26 Nonsolicitation agreement:

The parties will not solicit any employee or contractor. This obligation will apply during the period of contractual obligations between the customer and brain-tec, and for two years after that period expires.

1.27 Change management

The parties may at any time alter the commercial conditions, such as scope of services, deadlines and costs, as part of the change management procedure. Such changes may be made orally or in writing. However, oral changes must be included in a written log. That log must be given to the counterparty to bring it to their attention. Otherwise, the oral changes will not be deemed to have taken place. Contract amendments which exceed paragraph 1 are valid only if they are made in writing. Any waiver of this requirement for the written form must be in writing.

1.28 Assignment

brain-tec may assign this contract or parts thereof to another company at any time, without the customer's consent, and under complete exoneration of brain-tec

1.29 Final provisions

Swiss law will apply under exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG; the Vienna Convention). The exclusive place of jurisdiction will be brain-tec's statutory seat.



2 Technology platform and system integration

2.1 Hardware purchase

2.1.1 Subject matter of the contract

brain-tec will sell to the customer any hardware products designated in the individual contract.

2.1.2 Delivery

brain-tec will deliver the hardware to the customer's appropriate place of business. The customer will bear the risk and expense for the delivery and shipping.

2.1.3 Prices

The customer will pay the purchase price stipulated in the individual contract. brain-tec may invoice the purchase price after contract conclusion. Unless otherwise regulated in the individual contract, the purchase price will include the lump-sum delivery costs to the place of business, but will not include costs for installation, unpacking or disposal.

2.1.4 Warranty

To protect its rights regarding defects, the customer will inspect the hardware products immediately after they have been delivered and give written notice of any defects without undue delay. Unless otherwise agreed in writing, the warranty period will be three months and will begin when the hardware products are delivered to the customer.

The customer's warranty rights are revealed by the manufacturer's conditions. Toward brain-tec, those warranty rights exist exclusively in that brain-tec may claim the warranty rights toward the manufacturer or supplier in accordance with the manufacturer's conditions. If the manufacturer or supplier does not voluntarily comply with its warranty obligation, brain-tec will transfer its warranty rights to the customer to be legally enforced. Other warranty claims against brain-tec are excluded. In any case, the customer will at its expense replace any wear parts or consumable materials such as toner, batteries, etc.

2.2 Licences for software from third-party suppliers

2.2.1 Usage right

By delivering the software license, brain-tec conveys to the customer the right to use the software products designated in the individual contract, exclusively in accordance with the manufacturer's licensing terms, which are normally enclosed with the software product or can be requested from the manufacturer. Otherwise, the customer is responsible for the correct licencing of the software and all associated documents, and brain-tec will not be liable for the manufacturer's legal claims if the customer knowingly or accidentally procures a license incorrectly.

If the manufacturer has issued no such licensing terms, the following provisions will apply:

- 1) brain-tec will grant the customer the non-exclusive, non-transferable right to use the software and documentation as intended, on the customer's system intended for such use, for an indefinite period.
- 2) "Intended use" includes and is limited to loading, storing, transferring, converting, running or reproducing part or all of the software in object code in the customer's system to execute the program instructions for processing the customer's data, temporarily manufacturing copies necessary to that end, and using documentation in accordance with the software's intended use.

- 3) The following are forbidden: using the software on a system other than the customer's, on more workstations or additional mobile devices than were indicated when the licence was acquired, operating a computer centre for third parties with the software, copying the software beyond the intended use, leasing, lending or disclosing the software to third parties, editing, changing or expanding the software, and reverse engineering the object code into source code.

2.2.2 Handover and installation

brain-tec will hand the software from third-party suppliers over to the customer on the data storage device specified to brain-tec by the manufacturer. Documentation will be issued only if this has been provided by the manufacturer. The software installation must be contracted separately.

2.2.3 Unpermitted use

Any breach of the provisions on software use will result in a contractual penalty (which will not have a debt-discharging effect) for each unauthorised intervention, amounting to twice the licensing fee.

2.2.4 Proprietary rights

The customer acknowledges the manufacturer's proprietary rights to the program and documentation, and will leave the corresponding notice of those proprietary rights unchanged. The customer will not publish or make available to third parties any or all of the software or documentation.

2.2.5 Payment conditions

The customer will pay the licensing fees—one-time or recurring—which are stipulated in the individual contract. Licensing fees are paid merely to compensate for the usage rights and authorisations granted—not to claim additional services such as maintenance or support. brain-tec may invoice one-time licensing fees after contract conclusion. Recurring licensing fees are due for payment in advance for each calendar year.

2.2.6 Warranty of quality

To protect its warranty rights, the customer will inspect the software immediately after it has been delivered and issue a transparent written notice of any defects without undue delay. Unless otherwise agreed in writing, the warranty period will be three months and will begin when the products are delivered.

The customer's warranty rights are revealed by the manufacturer's conditions. Toward brain-tec, those warranty rights exist exclusively in that brain-tec may claim the warranty rights toward the manufacturer or supplier in accordance with the manufacturer's conditions. If the manufacturer or supplier does not voluntarily comply with its warranty obligation, brain-tec will transfer its warranty rights to the customer to be legally enforced. Other warranty claims against brain-tec are excluded.

2.2.7 Warranty of title

The manufacturer's provisions will apply. brain-tec assigns the customer all claims to be asserted directly against the manufacturer. Any further warranty of title is excluded.

2.2.8 Contractual period

Individual contracts in which recurring licensing fees are agreed can be terminated at the end of a year with three months' notice. In addition, brain-tec may terminate such individual contracts for cause if the customer breaches the usage conditions, or fails to pay the licensing fees, despite a written warning. After the contract has ended, the customer will stop using the software and will destroy the copies of the software and documentation that have been relinquished to the customer. Individual contracts in which only one-time licensing fees were agreed have no contractual period and therefore require no termination.

2.3 Services

2.3.1 Subject matter of the contract

brain-tec renders IT services such as installing hardware and software, developing software, carrying out client-specific settings of the software (customization and parametrisation), rollouts, taking over data, carrying out projects, placing personnel, providing support when products are introduced and commissioned (project management), performing tests, training, and providing customer support. The services brain-tec is to render are described in the individual contract.

2.3.2 System integration

brain-tec will assume responsibility for integrating the system if this is expressly mentioned in the individual contract. This responsibility will not be accepted unless the customer has already met its requirements. If brain-tec assumes no responsibility for system integration, brain-tec will deliver on a "time and material" basis, and the sale of the hardware, the licensing of software, and the rendering of services will be deemed independent legal transactions.

2.3.3 Place of fulfilment

Services will be rendered at brain-tec's business address or on the customer's premises, at brain-tec's discretion.

2.3.4 Payment conditions

brain-tec will render the services according to effort and expenditure, under the applicable conditions. They will be invoiced monthly unless another payment method is provided for in the individual contract. Travel time will be deemed working time and will be invoiced just like expenses, under the applicable conditions.

2.3.5 Warranty

For each service, brain-tec considers its knowledge and experience, as well as the generally acknowledged scientific principles of information technology, and exercises due diligence.

If a work result must be handed over due to a service, brain-tec ensures that at the time of handover that work result meets the specifications defined in the individual contract. The customer will give brain-tec written notice of any defects without undue delay.

The warranty period amounts to three months after acceptance by the customer. The warranty is limited to subsequent improvement through brain-tec. Other warranty claims are excluded.

If a system is integrated, the warranty period for all products will begin when the system is accepted. Otherwise, paragraphs 1 and 2 will apply to the warranty.

2.4 System maintenance

2.4.1 Subject matter of the contract

brain-tec will render services for the customer in order to maintain the functionality of supported components under normal usage conditions. brain-tec's services are outlined in the following and specified in the individual contract with reference to these contractual conditions. They refer exclusively to the components also described in the individual contract.

2.4.2 Standard services

2.4.2.1 *Maintenance standby times*

brain-tec will provide the know-how and technical resources to be able to maintain and support the contractual products during the contractual period.

2.4.2.2 *Service desk*

brain-tec will maintain a service desk which will be the customer's first point of contact if faults occur.

2.4.2.3 *Troubleshooting*

If faults occur, brain-tec will introduce the necessary supportive measures for troubleshooting, either remotely or on site. These help diagnose the fault, define a suitable solution, or remedy the fault itself. The procedure is as follows:

- 1) Remote support: When faults arise, they will be remedied with remote support if possible. If no remote-access system is available, or if the fault cannot be remedied through telephone support within the practical period, support must be provided on-site.
- 2) On-site support: If faults cannot be remedied through remote support or over the phone, support will be provided on site. Unless an express agreement has been concluded, the expense this will incur is not covered by the maintenance fee and will be invoiced separately.

2.4.3 Additional services

2.4.3.1 *Fault management (triage)*

brain-tec and the customer agree that brain-tec will also accept fault messages which do not concern the maintained components. brain-tec will forward such faults to the competent provider for processing, and brain-tec will supervise the completion of the fault rectification.

2.4.3.2 *Spare parts inventory*

brain-tec and the customer agree that brain-tec will procure replacement parts and provide them in brain-tec's spaces or on-site, for exclusive use by the customer. Unless expressly agreed in the individual contract, keeping spare parts is not included in the scope of services.

2.4.3.3 *System monitoring*

On special order, brain-tec will monitor the ongoing operations of the contractual products to identify faults at an early stage.

2.4.3.4 *Managing updates and patches*

On special order, brain-tec will manage software updates and patches.

In this context, brain-tec will deliver and install the software updates and patches for the contractual products that are delivered by the manufacturer as standard and at no additional costs, in consultation with the customer. Moreover, brain-tec will keep an itemised list of the software installed on the customer's premises insofar as contractual products are involved.

If the manufacturer demands additional compensation for delivering the software updates, the customer will procure this software at its expense.

2.4.3.5 *User support*

brain-tec and the customer agree that brain-tec will also ensure “first level” user support. The applications and components to be supported must be precisely specified in the individual contract according to product, version and language.

2.4.3.6 *Quality assurance*

On special order, brain-tec will monitor the quality of the fault rectification. In so doing, the following resources will be used in accordance with the respective agreement:

- 1) Trouble tickets: Recording the feature “Call status feedback”, “Type of troubleshooting” and “Time required for troubleshooting” for each incident of fault
- 2) Quarterly reports: periodic reporting on troubleshooting
- 3) Quality reporting: Reports on special request
- 4) Quality review: Assessing the quality of troubleshooting

2.4.4 Troubleshooting in particular

The components supported by brain-tec are normally manufactured by third parties. Therefore, brain-tec’s services when a fault occurs consist of coordinating the troubleshooting with the manufacturer or supplier or those components. To that end, brain-tec proceeds as follows:

- 1) At first, brain-tec will try to remedy the fault, if this is possible considering the means available and based on the agreed service level.
- 2) If this fails, or if troubleshooting through brain-tec is not indicated from the start, brain-tec will call in the services of the manufacturer.

If the guarantee period which the manufacturer or supplier ensures for the components is still running, brain-tec will assert the rights thereunder toward the guaranteeing party. brain-tec will assume no responsibility for the success of the troubleshooting or the manufacturer’s or supplier’s guarantee services.

2.4.5 Supported components

The services brain-tec is to render refer exclusively to the components enumerated in the individual contract. If this involves software, brain-tec may demand that the customer use the most current versions delivered by the manufacturer and procure new ones when they appear even if they incur a cost. If it involves hardware, brain-tec may make the rendering of services contingent on the manufacturer offering product support and keeping replacement parts for the product.

If those requirements are not met, brain-tec may discontinue services for the components concerned at any time, after one month’s notice. This will not affect the system maintenance contract regarding the remaining contractual products.

2.4.6 Level of readiness

brain-tec differentiates between the following levels of readiness:

2.4.6.1 *Service time*

The service time lasts from Monday to Friday 8 am to 12 noon, and 1:30 pm to 5 pm, excluding general local holidays, at brain-tec’s competent office. All the resources brain-tec maintains will generally be available during those times.

2.4.6.2 On-call service

During the on-call times stipulated in the individual contract, brain-tec will maintain an emergency organisation, up to a maximum of 7 * 14 hours, which is equipped to remedy significant operational disturbances.

If work cannot be completed during the service time, it will be resumed at the beginning of the next working day. Furthermore, work that has begun can be continued past the end of the service time, for a surcharge, if the customer requests it or brain-tec's service employee considers it expedient.

2.4.7 Times for reaction and troubleshooting

The reaction times are stipulated in the individual contracts and apply only within the agreed service times. Troubleshooting times are guaranteed only if especially agreed in the individual contract. The estimated troubleshooting time does not include the time for recovering data pools.

2.4.8 Lump-sum fee

As compensation for the services in accordance with item 2.4, the customer will pay brain-tec the lump-sum remuneration described in the individual contract, at the beginning of each calendar year in advance.

2.4.9 Support hours

The customer may bindingly undertake as part of a service subscription to purchase a certain number of support hours in return for advance payment. The service subscription will be invoiced after it is ordered.

Unused support hours will expire within one year after the order, or, if the customer terminates the system maintenance contract, at the end of the contract.

However, the customer is at liberty to credit the prepayments for the expired hours toward purchasing other brain-tec services, provided the customer declares that intention without undue delay and those brain-tec services can be invoiced within 30 days after the expiry of the prepayment.

2.4.10 Third-party costs

If brain-tec must be supported by troubleshooting (such as manufacturers) when rendering its services because interventions or replacement parts are needed for troubleshooting that go beyond the agreed service level, ensuing costs can be invoiced as third-party costs.

2.4.11 Warranty

brain-tec will render the services diligently, but cannot guarantee that the contractual products can be used without interruption or errors, in all desired combinations, or with any desired hardware or software products and data.

2.4.12 Contractual period

Individual agreements are concluded for indefinite terms. Unless otherwise expressly agreed, they will enter force on the first day of the month following the date on which the supported components were installed on the customer's premises.

Individual contracts may be terminated at the end of a calendar year with three months' notice.

2.4.13 Consequence of contract termination

When the individual contract ends, brain-tec's obligation to render services will end as well. The customer will take over at their residual value any replacement parts which brain-tec acquires and keeps on the customer's behalf. To

that end, the residual value will be calculated on the basis of a straight-line amortisation period of 36 months and an interest rate of 7% per year.



3 brain-tec software

3.1 Licences for brain-tec software

3.1.1 Usage right

brain-tec will grant the customer the non-exclusive, non-transferable right to use as intended the software and its documentation designated in the contract cover sheet, on the customer's system intended for such use, for an indefinite period. "Intended use" includes and is limited to:

- 1) loading, storing, transferring, converting, running or reproducing part or all of the software in object code in the customer's system to execute the program instructions for processing the customer's data,
- 2) temporarily manufacturing copies necessary to that end, and using documentation in accordance with the software's intended use. The following are forbidden: using the software on a system other than the customer's, or on more workstations or additional mobile devices than were indicated when the licence was acquired; operating a computer centre for third parties with the software; copying the software beyond the intended use; leasing, lending or disclosing the software to third parties; editing, changing or expanding the software; and reverse engineering the object code into source code.

brain-tec software is also being "used as intended" if an individual contract stipulates that certain modules are to be relinquished to the customer in the form of source code to be independently changed or expanded. In this case, brain-tec's warranty obligation will expire as soon as the customer performs such a change or expansion.

3.1.2 Handover and installation

brain-tec will hand the software over to the customer on a suitable data storage device or provide it in electronic form. Documentation will be issued only if this has been provided by brain-tec as standard. The software installation must be contracted separately.

3.1.3 Forwarding software

With brain-tec's prior written consent, the customer may forward the software to a third party if the customer confirms in writing that no copies have been retained and use has definitely been discontinued.

3.1.4 Forbidden use

Any breach of the provisions on software use will result in a contractual penalty (which will not have a debt-discharging effect) for each unauthorised intervention, amounting to twice the licensing fee.

3.1.5 Proprietary rights

The customer acknowledges brain-tec's proprietary rights to the software and documentation, and will leave the corresponding notice of those proprietary rights unchanged. The customer will not publish or make available to third parties any or all of the software or documentation.

3.1.6 Payment conditions

The customer will pay the licensing fees—one-time or recurring—which are stipulated in the individual contract. Licensing fees are paid merely to compensate for the usage rights and authorisations granted—not to claim additional services such as maintenance or support.

Brain-tec may invoice one-time licensing fees after contract conclusion. Recurring licensing fees are due for payment in advance for each calendar year.

3.1.7 Warranty of quality

To protect its rights regarding defects, the customer will inspect the software immediately on delivery and issue a transparent, written notice of any defects without undue delay. Unless otherwise agreed in writing, the warranty period will be three months and will begin when the products are delivered. During this time, replicable program errors will be remedied or workaround solutions offered within a reasonable period if the software fails to meet contractual specifications. Other warranty claims are excluded.

3.1.8 Warranty of title

brain-tec ensures that it or another brain-tec company possesses all rights to the brain-tec software. However, if third-party claims are asserted, the customer will inform brain-tec early on and before introducing legal proceedings, and will follow all of brain-tec's subsequently issued instructions. If the customer fails to do so, brain-tec will be released from its warranty obligation and may take back the products concerned, in return for reimbursement of the purchase price, to avoid litigation.

3.1.9 Contractual period

Individual contracts in which recurring licensing fees are agreed can be terminated at the end of a year with three months' notice. In addition, brain-tec may terminate such individual contracts for cause if the customer breaches the usage conditions, or fails to pay the licensing fees, despite a written warning. After the contract has ended, the customer will stop using the software and will destroy the copies of the software and documentation that have been relinquished to the customer.

Individual contracts in which only one-time licensing fees were agreed have no contractual period and therefore require no termination.

3.2 Maintenance of brain-tec Software

3.2.1 Subject matter of the contract

brain-tec will render the following software maintenance services for the standard software listed in the individual contract. These services aim to remedy software errors which arise, support the use of the software by the user, and maintain the software. brain-tec's maintenance services are outlined in the following and specified in the individual contract with reference to these contractual conditions.

3.2.2 Standard services

3.2.2.1 *Fault analysis*

brain-tec will analyse faults which arise in the maintained software, assign the fault to a particular area of responsibility, and suggest a suitable solution if the fault is caused by the maintained software. The procedure is as follows:

- 1) Telephone; Email; Remote access: When faults arise, they will be analysed with an oral or written description or remote access if possible. If this is impossible (because no remote-access system is available, for example), support must be provided on-site.
- 2) On-site support: If faults cannot be analysed through remote support or over the phone, an intervention will be provided on site. Unless an express agreement has been concluded, the expense this will incur is not covered by the maintenance fee and will be invoiced separately.

3.2.3 Debugging

If bugs appear in the standard software, brain-tec will remedy them as follows, according to their urgency:

- 1) by developing a correction code or by workaround solutions, preferably tailored to the customer

- 2) by adjusting the operation sequence and instructing the customer accordingly
- 3) by delivering correction releases of the software.

If there are significant operational disruptions, the customer is entitled to customer-specific debugging if the reason for the disruption is clearly allocable to the standard software and was not brought about by a third-party system or changes in the IT platform. In all other cases, debugging normally occurs by delivering correction releases.

3.2.4 Upkeep of the software

New releases of the standard software will be provided to the customer. brain-tec will inform the customer whenever such releases are available and will give a recommendation about whether their installation in the customer's business operations is necessary. Installing new releases on the customer's system is not covered by the software maintenance fees and will be invoiced additionally. brain-tec may make the rendering of further software maintenance services contingent on a certain release being installed.

3.2.5 Archiving

brain-tec will archive the program versions used by the customer during the entire time the software is being used, both in source and object code. By doing so, brain-tec is ensuring the software can be reinstalled if it is destroyed. However, brain-tec will invoice the expense it incurs for reinstalling software unless the fault was attributable to a software error.

3.2.6 Service desk

brain-tec will provide a service desk which will answer questions related to the use of the software. But using the service desk will incur a cost besides the lump-sum maintenance fee, whereby the customer can choose between a lump-sum fee or compensation according to effort and expenditure.

The lump-sum fee will be stipulated in the individual contract and invoiced in accordance with item 8. If a lump-sum compensation is chosen, the customer will designate a person to be responsible for the system. That person will take users' questions as the first point of contact in the business and will forward those questions to brain-tec. For damage compensation based on effort and expenditure, an amount of CHF 50 per call or per mail request will be invoiced. This will cover a fifteen-minute consultation. For each additional uninterrupted fifteen minutes, an additional CHF 50.00 will be invoiced.

3.2.7 Support

brain-tec will render support services which go beyond the scope of services in accordance with item 2 on special order, against additional compensation, and under applicable conditions.

3.2.8 Maintenance of individual software

The software maintenance services in accordance with item 2 refer to the standard software mentioned in the individual contract. The maintenance of programs or parts thereof which were developed individually for the customer is not the object of the standard maintenance services and must be additionally agreed.

3.2.9 Delivery of new versions

New versions will neither be delivered nor installed as part of a software maintenance contract. The customer must procure them separately.

3.2.10 Service times and reaction times

brain-tec will render its software maintenance services during the following service times: Monday to Friday, 8 am to 12 noon and 1:30 pm to 5 pm, excluding general local holidays at brain-tec's registered office. If significant operational disturbances arise, brain-tec will ensure a reaction time of one working day during the service times.

3.2.11 Lump-sum fee

As compensation for the software maintenance services, the customer will pay brain-tec the lump-sum remuneration described in the individual contract, at the beginning of each calendar year in advance.

3.2.12 Warranty

brain-tec will render the software maintenance services with due diligence, but cannot guarantee that the software it maintains can be used without interruption and free from errors.

3.2.13 Contractual period

Individual agreements for software maintenance and the service desk are concluded for indefinite terms. Unless otherwise especially agreed, they will enter force on the first day of the month following the date on which the software was installed on the customer's premises.

Individual contracts may be terminated at the end of a calendar year with three months' notice.

3.3 No warranty for open source software

To the extent permitted by law, no warranty will exist for a program licenced without any cost. Unless confirmed in writing elsewhere, the copyright holder or third party (or both) will provide the program "as is", without any express or implied warranty, including but not limited to its market readiness or applicability for a certain purpose.

The customer will bear the full risk regarding the program's quality and performance capacity. If the program should turn out to contain errors, the customer will bear the costs for any necessary service, repairs or corrections.



4 Hosting

4.1 Cancellation and termination

Hosting always encompasses 12 consecutive months. Hosting will be renewed automatically by one additional year unless a contracting party terminates it in writing at the end of an ongoing year with three months' notice. At the customer's request, the minimum duration, the notice period and the date of termination can also be regulated with brain-tec in the respective type of contract. If termination does not occur before the agreed minimum period expires, or on an agreed date, reimbursement of the amount on a pro-rata basis will not be possible.

Termination must be declared on time using a registered letter.

If the customer terminates before the service is commissioned, the customer will owe brain-tec all costs incurred in this respect.

If brain-tec terminates the contract because the customer has acted unlawfully or in breach of the contract, or otherwise misuses the offered services, the customer will owe brain-tec all costs incurred in this respect even if brain-tec terminates without notice.

brain-tec will not guarantee its services will operate without interruptions or faults, or operate without faults at any given point in time. Any liability for interrupted operations which serve troubleshooting, maintenance or the introduction of new technology is hereby excluded.

brain-tec makes no guarantee regarding the data that is stored or transmitted via its system or the internet. Any warranty regarding data sent or received through brain-tec's system, or stored there, that is unintentionally disclosed, damaged or deleted is excluded.

brain-tec will not assume responsibility for damages which the customer suffers because third parties misuse the connection (including viruses).

Any further liability of brain-tec and its vicarious agents for a certain technical or economic success, for indirect damages such as loss of potential profit, third-party claims, consequential damages arising from production downtime or loss of data, and liability for slight negligence, are expressly excluded, subject to further compulsory statutory liability provisions.

In all cases, brain-tec reserves the right to assert damage compensation against users in the event of tort (especially in the event of data crime, misuse of data and hacking) committed regarding brain-tec's network or infrastructure.

4.2 Rights and responsibilities of the customer

The user may present its goods, services and other offerings in the internet in accordance with the chosen contract. The user is fully responsible for the content and presentation of its display, and will not send bulk mail. The user will comply with ethical and generally accepted rules of cooperation on the internet. The user will be fully liable for the content, and will assume any costs which brain-tec incurs due to the user's presentation. The user ensures that its use of the internet is legal. The user will respect and comply with international agreements, especially those concerning data protection, copyright, business secrets, trademark rights, fair competition and related areas, and will not disseminate any content or services which breach good taste, common decency or customs

or otherwise display dubious content. In particular, this applies to disseminating, referring to or providing the connections to spread pornography, incite violence or crimes, for discrimination of any type, or other offensive content. brain-tec is under no obligation to inspect the content of the customer's offerings. brain-tec reserves the right to unilaterally terminate the contract without notice if it becomes aware of a case which calls for such termination, and to switch off internet access immediately; damage compensation claims remain reserved, as do corresponding

legal and criminal steps. In particular, the following information with illegal content may not be disseminated or retrievable from the customer's connection:

Forbidden gambling, especially for the purposes of the Lottery Act;
Information which breaches copyright, similar proprietary rights, or intellectual property rights;
Depictions of violence (StGB (German Penal Code) 135)
Pornographic writing, depictions or images (StGB 197);
Calls to violence (StGB 259);
Racially discriminating content (StGB 261 bis);

Any customer learning of such illegal information is asked to notify brain-tec thereof. brain-tec will clear up the matter if possible and take the necessary and possible measures.

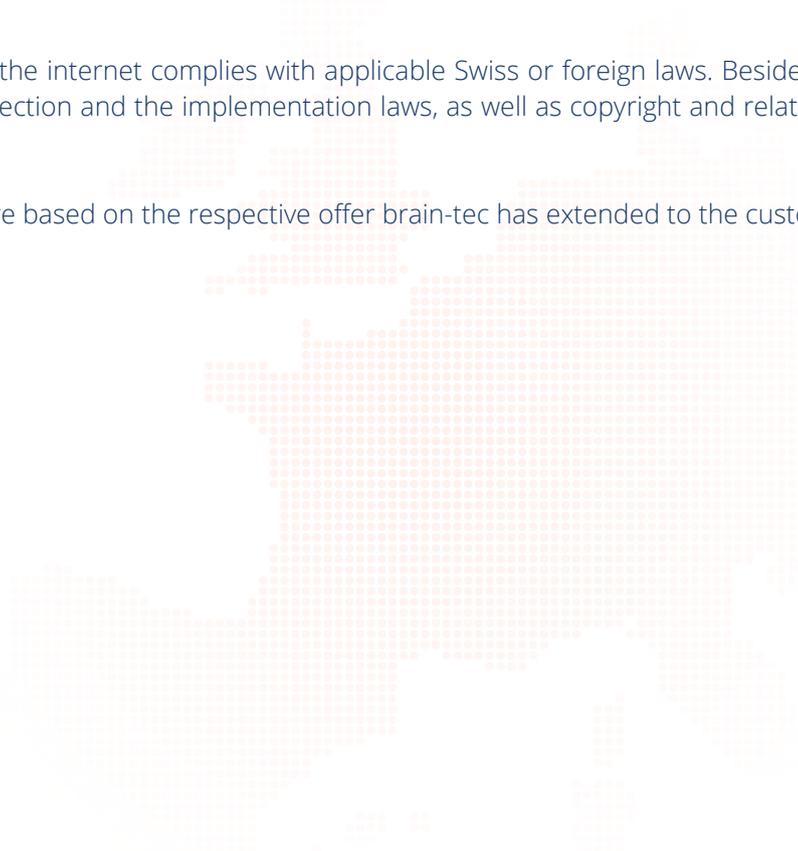
Services purchased from brain-tec may not be sublet to third parties unless an agreement to that effect is concluded with brain-tec. In the event of contravention, brain-tec reserves the right to terminate the contract in question without notice or assert appropriate damage compensation claims.

The customer is responsible for its own hard- and software components (including programs and PC configuration). brain-tec cannot guarantee that flawless internet access will be possible for all end devices. If faults occur which make it necessary to take action at the customer's premises, and if the fault cannot otherwise be remedied, the customer will adjust its system at that party's expense or discontinue operations. Otherwise, brain-tec may discontinue the connection unilaterally.

The customer is responsible for taking the necessary security precautions to ensure safe data flow. The customer is responsible toward brain-tec for using the customer's accounts. Passwords and identification may not be disclosed to third persons. If this is done by or on behalf of the user anyway, the account holder is responsible for any consequences. In particular, the customer will ensure that applicable age limits for accessing the internet are observed.

The user ensures that its use of the internet complies with applicable Swiss or foreign laws. Besides criminal law, this especially includes data protection and the implementation laws, as well as copyright and related proprietary rights.

The fees to be paid in advance are based on the respective offer brain-tec has extended to the customer.



5 Definitions

5.1 Active network components

All components of the network which are not physically connected with the building (such as the hub, router, switch, and network software).

5.2 Service time

The normal office hours during which brain-tec renders its services. Depending on the type of contract, the service time is defined in the individual sections or in individual contracts.

5.3 Call status feedback

Written, electronic, or telephonic confirmation of the acceptance of the fault message toward the customer.

5.4 Individual contract

Reciprocally signed contract document or order confirmation of brain-tec which regulates the commercial conditions.

5.5 Single malfunction

One or more persons cannot use, or can no longer use, individual system components to their full capacity.

5.6 ERP Software (Odoo)

ERP (Enterprise Resource Planning) Software is business software used as application software to manage the administrative workflows in the area of a company's operational activities (such as finances, purchasing, orders, warehousing, production, etc.).

5.7 Escalation

Informing one level higher if faults happen in a problem-solving process.

5.8 Remote support

Support over the phone through the helpdesk or support via a remote maintenance device.

5.9 Components

Individual components of the IT environment (such as hardware, software or the network).

5.10 Communication software

Software used for electronic communication with internal or external network participants.

5.11 LAN (Local Area Network)

In-house company network whose connections are enabled without access to telecommunication services.

5.12 Object code

Program in machine language

5.13 Office software

Software used to perform technical office tasks (text processing, tabular calculation, appointment planning, address management, etc.).

5.14 Open source software

Open source software is a palette of licences for software whose source text is publicly accessible and thereby promotes further developments. The licence may not demand any licensing fees.

5.15 Passive network components

Network components which are physically connected with the building (especially cables).

5.16 Patch

Correction of program errors by the manufacturer (mostly in the form of binary files) without functionally expanding the software.

5.17 Priority levels

The priority levels outline the extent to which the customer is prevented from filling tasks.

- 1) Priority 1: Total failure
- 2) Priority 2: Partial failure
- 3) Priority 3: Individual failure

5.18 Release

New version of the software which

- 1) remedies errors that have occurred, or contains technical improvements, or both (technical release) or
- 2) contains program expansions which do not significantly expand the software's scope of services (functional release).

5.19 Reaction time

Time from the acceptance of a fault message until the work on troubleshooting begins through brain-tec. The time at which a brain-tec system specialist makes contact is especially deemed the beginning of troubleshooting.

5.20 Rollout

Delivery to the customer of a large number of similar components which brain-tec has preconfigured.

5.21 Standard software

Software developed for a majority of customers as part of an ordinary release process.

5.22 Second level support

Problem rectification in the second instance through specialists who have a high level of product knowledge (such as a manufacturer) or intensified consultation from specially trained employees of the customer. Second level support is not available for questions from the customer's end users in connection with the operation of products.

5.23 Service level

Standard description of services regarding their extent.

5.24 Service Level Agreement (SLA)

Detailed description of the services to be rendered.

5.25 Software defect

Replicable and documentable faulty performances of the functions of the software indicated in the service description, so that the software delivers false results, stops working uncontrollably, or otherwise does not behave functionally. The following do not constitute software defects:

- 1) The individual appearance of malfunctions which neither cancel nor significantly impair the software's functionality,
- 2) Faults which were not caused by the software (incorrect operation or manipulations, unauthorised intervention, the effects of third-party products, errors in the data material provided by the customer or third parties, or changes to the data pools that did not occur through the proper and licenced programs of braintec);
- 3) Faults which the customer caused by breaching its obligations to cooperate,
- 4) Faults which were caused by virus attacks.

5.26 Troubleshooting time

The troubleshooting time is the period between the acceptance of the fault message and the troubleshooting.

The troubleshooting is deemed complete when the system affected by the fault can be fully used again or an adequate replacement system has been made available. The estimated troubleshooting time does not include the time for recovering data pools.

5.27 Source code

The original version of the program, which an interpreter program converts into the machine-readable object code. The source code is not available to licencees.

5.28 System integration

Services which involve merging various components into an overall system, such as a technology platform, architecture (layout of an IT system), hardware, operating systems, peripheral devices, network technology, etc.

5.29 Partial failure

At least one service or its data is no longer available for most of the customer's users.

5.30 Total failure

No services or their data are available anymore for most of the customer's users.

5.31 Update

Summary of multiple patches (correction) by the manufacturer to simplify maintenance.

5.32 Upgrade

Another name for a new version.

5.33 Version

New edition of the software which

- 1) contains a significant expansion of the functionality or
- 2) a fundamental technical improvement.

5.34 WAN (Wide Area Network)

Network extending beyond the individual business location, whose connections occur through telecommunication services.

5.35 Significant error and significant breakdown

A fault which makes it impossible for the customer to use the components productively.

