

General Terms and Conditions for Software-as-a-Service (SaaS) for Enterprise Customers

Frontify AG, Version: May 2019



1. Scope of Application

These General Terms and Conditions ("**GTC**") govern the contractual framework conditions between Frontify AG ("**Frontify**") and a contractual partner of Frontify ("**Customer**") in connection with the provision of software for use via the Internet (Software-as a-Service).

The Customer recognizes the respective valid version of Frontify's GTC as an integral part of all existing and/or future contractual arrangements between the Customer and Frontify in connection with the provision of software for use via the Internet. They shall also apply irrespective of whether they are or are not expressly referred to.

A detailed description of the services to be provided by Frontify arises from the Agreements, incl. Appendices (jointly referred to as "**License Agreement**"), concluded between Frontify and the Customer in the context of the provision of software.

These GTC supplement the License Agreement. In the event of inconsistencies between these GTC and the License Agreement, the provisions of the License Agreement shall prevail over the provisions of these GTC.

Any deviations and/or supplements to these GTC require the express written approval of Frontify for their validity, in particular in the context of the conclusion of a License Agreement between the Customer and Frontify. Such deviating agreements shall only apply to the License Agreement that contains the deviating agreement and shall not have any prejudicial effect for other License Agreements between the contractual Parties.

Any General Terms and Conditions of the Customer are herewith expressly objected to. Their application to the contractual relationship between Frontify and the Customer is excluded.

2. Services Provided by Frontify

2.1. Right of Use

Frontify shall provide the software product named and described in the License Agreement ("**Software**") to the Customer for use via the Internet ("**Service**"). The Customer is not entitled to further rights associated with the Software, such as ownership, copyright, patent, trademark, or usage rights.



The Software shall be operated on computers of a computer center used by Frontify (Service). For the duration of this Agreement, the Customer is given the non-exclusive and non-transferable right to access the Software by means of a browser and an Internet connection and to use same for its own business purposes exclusively for the exercise of its commercial or independent professional activity. The Customer is responsible for the Internet connection between the Customer and the computer center and the hardware and software required for this purpose (e.g. PC, network connection, browser).

The right of use is limited to the number of usage units booked by the Customer in accordance with the License Agreement. Any sub-licensing or further licensing of the Software is prohibited. The Customer has no right to a copy and thus also no right to a backup copy of the Software. All rights in the Software or the Service over and above the right of use defined pursuant to the License Agreement and these GTC remain fully with Frontify.

2.2. Restrictions

Customer will not, directly or indirectly: reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Services or any software, documentation or data related to the Services ("Software"); modify, translate, or create derivative works based on the Services or any Software (except to the extent expressly permitted by Frontify or authorized within the Services); or remove any proprietary notices or labels.

2.3. Operation

Frontify shall take appropriate measures to make it possible for the Customer to use the Service as interruption-free as possible. Frontify cannot guarantee availability of the Service at all times and absence of any other disruptions and interruptions to the functioning.

The Customer shall notify Frontify of any disruptions to the Service without delay and provide information regarding the details of the circumstances of the issue. Frontify shall remedy the disruption to the Service within an appropriate period of time. Frontify is entitled to circumvent the disruption to the Service by means of a workaround solution if the cause of the disruption itself is only to be remedied with inappropriate expense and the usability of the Service is not significantly negatively affected.



2.4. Support

In support of use of the Software as a Service, Frontify shall provide online support. The support shall not include: general know-how transfer, trainings, configuration implementation or customer-specific documentation or modification of the Software.

Support shall be carried out by email to support@frontify.com. Frontify shall provide the support services during working hours from Monday to Friday between 8.30 am and 5.00 pm Central European Time (CET). Legal holidays are excluded. Inquiries received outside of these support times shall be regarded as received on the following working day.

2.5. Changes to Services

Frontify may modify the Software (Service, including its system requirements) for the purposes of adapting to technical or commercial market changes and for good cause. In particular, such shall be deemed to exist if the modification is required due to

- a) a necessary adaptation to a new legal situation or case law;
- b) changed technical framework conditions (new browser versions or technical standards);
- c) protection of system security, or;
- d) further development of the Software (disabling old functions that are largely replaced by new ones).

3. Involvement of Third Parties

Frontify is entitled to involve third parties for the purpose of meeting its contractual obligations. This shall, in particular, apply to hosting services.

Frontify shall be liable for the conduct of its subcontractors as far as legally permissible and within the scope of the law, but only to the extent that Frontify would be liable for its own conduct as set forth in Section 7.



4. Remuneration and Payment Terms

4.1. Fee Structure

For the use of the Software during the contractual term, the Customer shall owe Frontify the license fees agreed to in the License Agreement. The remuneration may, in particular, comprise a one-off setup fee, a fixed monthly basic fee (e.g. for support, hosting and maintenance services) and a monthly usage fee depending on the number of usage units booked or used.

4.2. Due Date of License Fees

The total basic and usage fee shall be due for payment in advance upon commencement of the Agreement for the Basic Period (see Section 10.1) and thereafter upon commencement of each Extension Period (see Section 10.1) for the period of the extension. Any increase of the booked usage units (or change to a higher service package) is possible at any time. A reduction (or change to a lower service package) shall only be possible with effect as of the end of the Basic or an Extension Period or prior thereto with the agreement of Frontify.

The additional fees shall be invoiced on a pro rata basis in the event of an increase in the booked usage units within the Basic or Extension Period. The prices pursuant to Frontify's price list in accordance with an order for the additional usage units shall apply to the additional usage units. The Customer is responsible for monitoring the number of usage units used during the Basic or Extension Period.

4.3. Invoicing

Frontify shall invoice the fees on commencement of the Agreement and then on commencement of each Extension Period in advance. Frontify's invoices shall be due for payment with a payment term of 30 days, strictly net. The Customer shall be in default after expiry of this payment period without requiring a warning. The default interest shall be 5% p.a.

4.4. Net Prices

All prices exclude the respectively applicable statutory sales tax (Switzerland: value added tax). The Customer is responsible for any sales taxes due.



4.5. Measures in the Event of Payment Default

If the Customer defaults on the payment of fees, after relevant warning by email or letter, Frontify is entitled to block access to the Service or extraordinarily terminate the contractual relationship. The Customer shall have no access to the data saved by it in the Service during the block.

5. Customer Data and Data Protection

5.1. Customer Data (Intellectual Property Rights)

The Customer is exclusively entitled to the data input, generated thereby and allocatable to the Customer and the end users of Customer in the context of the use of the Software ("**Customer Data**").

Customer shall own all right, title and interest in and to the Customer Data, as well as any data that is based on or derived from the Customer Data and provided to Customer as part of the Services.

Frontify shall own and retain all right, title and interest in and to (a) the Services and Software, all improvements, enhancements or modifications thereto, (b) any software, applications, inventions or other technology developed in connection with Implementation Services or support, and (c) all intellectual property rights related to any of the foregoing.

The provisions of this Section shall survive any termination of this Agreement.

5.2. Data Protection

The Customer is aware that the use and processing of personal data within the meaning of the applicable domestic and/or foreign data protection legislation, in particular and as far as applicable the EU General Data Protection Regulation ("**EU-GDPR**") and the Swiss Data Protection Act (Schweizerisches Datenschutzgesetz ("**DSG**")) may require the prior consent of the affected persons and/or the registration of the relevant database with a domestic or foreign authority.



If the Customer Data are personal data, Frontify shall process the Customer Data solely on behalf of and/or according to the instructions of the Customer. The processed data is used exclusively to provide the Software and is handled in accordance with Frontify's Privacy Policy (frontify.com/privacy). The Customer remains responsible for the lawfulness of the collection, processing and use of the Customer Data in accordance with the applicable legal regulations, in particular pursuant to EU-GDPR and DSG.

Frontify is, as far as applicable, fully compliant with the regulations of the EU-GDPR. Therefore, Frontify provides the customer with the opportunity to sign a Data Processing Addendum ("DPA"), which then forms an integral part of the contractual relationship between Frontify and the customer. Further information about Frontify's EU-GDPR compliance and a pre-signed DPA can be found at frontify.com/gdpr.

6. Release and Indemnification

6.1. Release

The Customer shall release Frontify and involved third parties of all third-party claims that may arise from (a) unlawful use of the Software by the Customer and/or, with the consent of the Customer, by third parties, (b) disputes arising from data protection laws, copyright laws or other legal disputes associated with the use of the Software by the Customer.

Customer hereby agrees to indemnify and hold harmless Frontify against any damages, losses, liabilities, settlements and expenses (including without limitation costs and attorneys' fees) in connection with any claim or action that arises from an alleged violation of the foregoing or otherwise from Customer's use of Services.

In the assertion of relevant claims, the Customer is obligated to notify Frontify thereof in writing without delay. In this case, Frontify is entitled to block the Service for the Customer without delay and without providing a grace period. Any compensation claim asserted by the Customer based on the blocking of the Service is excluded.



6.2. Indemnification

Frontify shall hold Customer harmless from liability to third parties resulting from infringement by the Service of any patent or any copyright or misappropriation of any trade secret, provided Frontify is promptly notified of any and all threats, claims and proceedings related thereto and given reasonable assistance and the opportunity to assume sole control over defense and settlement. Frontify will not be responsible for any settlement it does not approve in writing.

The foregoing obligations do not apply with respect to portions or components of the Service (a) not supplied by Frontify, (b) made in whole or in part in accordance with Customer specifications, (c) that are modified after delivery by Frontify, (d) combined with other products, processes or materials where the alleged infringement relates to such combination, (e) where Customer continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement, or (f) where Customer's use of the Service is not strictly in accordance with this Agreement. If, due to a claim of infringement, the Services are held by a court of competent jurisdiction to be or are believed by Frontify to be infringing, Frontify may, at its option and expense (a) replace or modify the Service to be non-infringing provided that such modification or replacement contains substantially similar features and functionality, (b) obtain for Customer a license to continue using the Service, or (c) if neither of the foregoing is commercially practicable, terminate this Agreement and Customer's rights hereunder and provide Customer a refund of any prepaid, unused fees for the Service.

7. Liability

Notwithstanding anything to the contrary, except for bodily injury of a person, Frontify and its suppliers (including but not limited to all equipment and technology suppliers), officers, affiliates, representatives, contractors and employees shall not be responsible or liable with respect to any subject matter of this agreement or terms and conditions related thereto under any contract, negligence, strict liability or other theory: (a) for error or interruption of use or for loss or inaccuracy or corruption of data or cost of procurement of substitute goods, services or technology or loss of business; (b) for any indirect, exemplary, incidental, special or consequential damages; (c) for any matter beyond Frontify's reasonable control; or (d) for any amounts that, together with amounts associated with all other claims, exceed the agreed amount of a yearly license fee in the respective SaaS Service Agreement, in each case, whether or not Frontify has been advised of the possibility of such damages.



The exclusions and limitations set will not apply to any claim, damages or other liabilities arising out of or related to fraud or willful misconduct.

8. No Warranties

Except as represented in this agreement, the Software and the Service of Frontify is provided "as is". Other than as provided in this agreement, Frontify makes no other warranties, express or implied, and hereby disclaims all implied warranties, including any warranty of merchantability and warranty of fitness for a particular purpose.

9. Insurance

During the term of the Agreement between Frontify and Customer, Frontify warrants that it shall maintain sufficient insurance coverage to meet its obligations towards Customer and the governing law. Frontify will maintain the insurance policy at its sole cost and expense.

Neither the existence of nor the assent by Customer to the types or limits of insurance carried by Frontify shall be deemed as a waiver or release of Frontify's liability or responsibilities.

10. Term and Termination

10.1. Term

The License Agreement is concluded for a particular term (e.g. twelve, eighteen or twenty four months) depending on the Customer's order ("**Basic Period**") and shall thereafter extend automatically by the same period ("**Extension Period**") if the Agreement is not ordinarily or extraordinarily terminated pursuant to Section 10.2 below by one of the contractual Parties.

The provisions of Section 10.2 shall apply as aforesaid with respect to a reduction in usage units during the term.



10.2. Termination

a) Ordinary termination

The Agreement may be terminated by any of the contractual Parties by giving 3 months' notice at the end of the Basic Period or an Extension Period. Notice shall be given in writing.

b) Extraordinary termination

Frontify may extraordinarily terminate the License Agreement for good cause at any time and with immediate effect. Good cause entitling Frontify to extraordinary termination shall include, in particular:

1. if the Customer violates its contractual obligations insofar as this defect was not or cannot be remedied by the Customer within 10 days despite prior written warning by Frontify;
2. if the Customer defaults on the payment of fees;
3. if insolvency proceedings are instituted against the Customer.

10.3. Customer's Data at the End of the Agreement

At the end of the Agreement and upon written request by the Customer, Frontify shall provide a copy of the Customer's data saved on its servers as of the date of the end of the Agreement on a customary data carrier or by electronic transfer and in a customary format.

At the end of the 60 days from the end of the Agreement or upon request by the Customer already prior to this period, Frontify shall delete the data of the Customer saved on its servers finally and in full. This action shall be subject to mandatory legal retention obligations.

Frontify is not obligated to surrender its data to the Customer in deviation to these provisions (in particular relating to time, format or migration). Any deviating surrender of the Customer's data shall require the prior written consent of Frontify as well as separate remuneration by the Customer.

11. Confidentiality

The contractual Parties obligate themselves and their employees and involved support persons reciprocally to maintain the confidentiality of all documents and information not generally



known that relate to the business sphere of the other contractual Party and, which become accessible in the preparations for and execution of the License Agreement.

To the extent that confidential and proprietary information of a Party ("**Confidential Information**") is exchanged and received in connection with this Agreement, the receiving Party agrees to maintain the confidential nature of the Confidential Information of the disclosing Party in its possession by taking reasonable steps to protect such Confidential Information from unauthorized use, access and disclosure; such steps shall be at least equal to those taken by the receiving Party to protect its own Confidential Information. The receiving Party may disclose the Confidential Information of the disclosing Party to its or its affiliates' employees or independent contractors provided that such employee or independent contractor has a need to know and is required to maintain the confidentiality of such information on terms no less stringent than those contained in this Section. Confidential Information does not include: (a) information that was publicly available at the time of disclosure or that becomes publicly available other than by a breach of this provision by the receiving Party; (b) information previously known by or developed by the receiving Party without use of or access to the Confidential Information of the disclosing Party; or (c) information that the receiving Party rightfully obtains without restrictions on use and disclosure. The receiving Party may disclose Confidential Information of the disclosing Party in accordance with a judicial, government or agency order or law, provided that the receiving Party required to make such disclosure shall, to the extent permitted, provide the disclosing Party with reasonable prior notice of such disclosure and shall comply with any applicable protective order or equivalent that applies to such disclosure. The receiving Party shall be liable to the disclosing Party for any breach of the receiving Party's confidentiality obligations committed by any person or entity to whom the receiving Party is permitted to disclose the Confidential Information of the disclosing Party pursuant to this Section.

The confidentiality obligation shall continue to endure even after termination of the contractual relationship to the extent there is justified interest therein.

12. Final Provisions

12.1. Amendments to these GTC

Frontify shall notify the Customer of any amendments to these GTC. Any amendments to the GTC shall enter into force for the contractual relationship between Frontify and the Customer



insofar as the Customer does not object to the amended GTC within a period of 10 days in writing. The Customer shall be expressly notified of the meaning of silence in the notification regarding amendments to the GTC.

12.2. Offsetting and Assignments of Claims

The offsetting of any claims of Frontify against counterclaims of the Customer shall require the prior written consent of Frontify.

The Customer is not entitled to assign any claims from the contractual relationship with Frontify to third parties, in whole or in part, including not to any Group or subsidiary companies.

12.3. Place of Performance

The place of performance shall be the registered offices of Frontify.

12.4. Severability Clause

Should individual provisions of these GTC be invalid or incomplete or should performance be impossible, this shall not negatively affect the validity of the remaining provisions of these GTC. Invalid provisions shall be replaced by an admissible, valid provision that is as close as possible to the content of the original in terms of its intent.

13. Applicable Law and Place of Jurisdiction

The contractual relationship between Frontify and the Customer, including the License Agreement and its Appendices, are subject to Swiss law, under exclusion of any national or international treaties or agreements legally valid at the time of entry into force or a dispute (e.g. United Nations Convention on Contracts for the International Sale of Goods (CISG) or the Hague Convention on Purchases).

In the event of any differences of opinion in connection with the License Agreement or its Appendices, the contractual Parties undertake to attempt to agree to a mutually agreed regulation in good faith. If, despite the efforts of the contractual Parties, no agreement can be made by amicable means, the place of jurisdiction for all disputes, differences of opinion or claims



arising from or in connection with the contractual relationship between Frontify and the Customer, including the License Agreement and its Appendices, including their validity, invalidity, violation or dissolution, shall be St. Gallen, Switzerland. Irrespective thereof, Frontify is entitled to sue the Customer at its general place of jurisdiction.