

General terms and conditions for self-service customers

Frontify AG, version: March 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 respective Self Service Plan ("User Plan").

Any deviations and/or supplements to these GTC require the express written approval of Frontify for their validity. Such deviating agreements shall only apply to the agreement that contains the deviating agreement and shall not have any prejudicial effect for other 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 User Plan ("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. 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 respective User Plan. 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 in 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; 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 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 of 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 not accept any liability for the services of third parties involved to the extent legally permissible.

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 according to the respective User Plan.

4.2 Payment, upgrading and downgrading

A valid credit card is required for Customers of paying accounts. Customers of trial accounts are not required to provide a credit card number. An upgrade from the free trial plan to any paying plan will end the free trial. The Customer will be billed for the first month or year immediately upon upgrading. The Service for the Basic Period is billed in advance. If Customer does not terminate the agreement ordinary or extraordinary according to section 9.2, the Service will be billed for the Extension Period in advance at the end of the monthly or yearly invoice cycle and is non-refundable. There will be no refunds or credits for partial months or

years of service, upgrade/downgrade refunds, or refunds for months unused with an open account.

The Customer can upgrade or downgrade anytime. For any upgrade or downgrade in plan level, the Customer's credit card will automatically be charged the new rate on the next billing cycle. Downgrading of the Service may cause the loss of content, features, or capacity.

4.3 Net prices

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

4.4 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. In the event of a termination, Section 9.2 shall apply.

5. Customer data, data protection and references

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. Frontify is, as far as applicable, fully compliant with the regulations of the EU-GDPR (frontify.com/en/gdpr) and the DSG.

If Frontify acts as the data processor, Frontify shall process the customer data solely on behalf of and/or according to the instructions of the Customer. The processed data is used to provide the Software and is handled in accordance with Frontify's Privacy Policy (frontify.com/en/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. 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. The DPA can be downloaded [here](#).

5.3 References

In the context of its marketing activities and in the preparation of its offers for projects of other customers, Frontify is entitled to refer to the projects realized by it for the Customer and to document same, subject to the justified confidentiality interests and consent of the Customer.

In particular, Frontify is entitled, subject to the consent of Customer, to publish the orders placed with same in the context of marketing activities, in particular refer to the business relationship on Frontify's website with the name and corporate logo of the Customer.

6. 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.

7. Liability

Frontify shall not accept any liability whatsoever to the extent legally permissible, in particular for

a) Damages,

- arising from the Customer's violation of the contractual obligations;
- caused by Frontify's involved third parties or support persons;
- due to viruses;
- as a result of malicious code;
- subsequent to a hacker attack;
- subsequent to a software error;
- subsequent to an error in the operating system, disruptions to operations as a result of fault remedy, maintenance, infrastructure modifications, introduction of new technologies.
- subsequent to a faulty service pack from another manufacturer;
- as a result of data losses.

b) indirect or subsequent damages such as profits foregone, savings not realized or third-party claims.

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. Term and termination

9.1 Term

The User Plan is concluded for a particular term (monthly or yearly) depending on the Customer's order ("Basic Period") and shall thereafter extend automatically by the same period ("Extension Period") if the contractual relationship is not ordinarily or extraordinarily terminated pursuant to Section 9.2 below by one of the contractual parties.

The provisions of Section 9.2 shall apply as aforesaid with respect to a reduction in usage units during the term.

9.2 Termination

a) Ordinary termination The contractual relationship may be terminated by any of the contractual parties at the end of the Basic Period or an Extension Period.

b) Extraordinary termination Frontify may extraordinarily terminate the contractual relationship for good cause at any time and with immediate effect. Good cause entitling Frontify to extraordinary termination shall include, in particular:

- 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
- if the Customer defaults on the payment of fees;
- if insolvency proceedings are instituted against the Customer.

9.3 Customer's data after termination

At the end of the contractual relationship 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 contractual relationship 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 contractual relationship 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.

10. Confidentiality

The contractual partners 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 this contractual relationship.

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

11. Final Provisions

11.1 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.

11.2 Offsetting and assignment 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.

11.3 Place of performance

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

11.4 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.

11.5 Date of contract conclusion

The contract is deemed concluded by the receipt of a confirmation e-mail after subscribing.

12. Applicable law and place of jurisdiction

The contractual relationship between Frontify and the Customer, including the User Plan 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 contractual relationship, 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 User Plan 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.