

## FOR SAP CLOUD SERVICES ("Cloud GTC")

**APPLICABILITY**

Except as otherwise agreed, in any contractual relations in which GRAMONT GMBH (hereinafter referred to as "GRAMONT") provides Cloud Services including support, as well as related Consulting Services, to another company or public-law entity, these General Terms and Conditions for Cloud Services (or "Cloud GTC") apply. They apply to precontractual relations accordingly.

**1. DEFINITIONS**

- 1.1 **"Customer Data"** means any content, materials, data, personal data and information that Authorized Users enter into the production system of a Cloud Service or derive from its use of and store in the Cloud Service (e. g. Customer-specific reports). Customer Data and its derivatives will not include Gramont/SAP cloud platforms Confidential Information.
- 1.2 **"Authorized User"** (or **"Named User"**) means a person at Customer or its Affiliates or Customer's or its Affiliates' Business Partners to whom Customer grants access authorization to use the Cloud Service.
- 1.3 **"Cloud Materials"** mean any materials provided by Gramont/SAP to Customer before or in the course of performance under the Agreement, including the materials produced delivering support or Consulting Services for Customer. Cloud Materials include materials created in cooperation with Customer, but do not include the Customer Data, Customer Confidential Information or the Cloud Service.
- 1.4 **"Cloud Service"** means any distinct on demand solution provided and supported by Gramont under an Order Form.
- 1.5 **"Consulting Services"** means related professional services, such as implementation, configuration, or training services, agreed as applicable in the Order Form.
- 1.6 **"Documentation"** means Gramont/SAP's then-current technical and functional documentation as well as any roles and responsibilities descriptions, if applicable, for the Cloud partner application or cloud platform which is made available to Customer with the Cloud Service.
- 1.7 **"Supplement"** means the product specific supplemental terms and conditions that apply to the Cloud Service and that are incorporated in an Order Form.
- 1.8 **"Business Partner"** means a legal entity that requires use of a Cloud Service in connection with Customer's and its Affiliates' internal business operations. These may include customers, distributors, service providers and/or suppliers of Customer or its Affiliates.
- 1.9 **"Subscription Term"** means the term of a Cloud Service subscription identified in the applicable Order Form, including the Initial (Subscription) Term and all Renewal Terms.
- 1.10 **"Usage Metric"** means the standard of measurement for determining the permitted use volume and calculating the applicable fees due for a Cloud Service as set forth in the Order Form.
- 1.11 **"Order Form"** or **"Agreement"** means an agreement between Gramont and Customer on Cloud Services and (where applicable) related Consulting Services referencing the present Cloud GTC (and other documents), including agreements entered into by means of agreed electronic contract conclusion procedures provided by or on behalf of Gramont.
- 1.12 **"Policies"** means the operational guidelines and policies applied by Gramont to provide and support the Cloud Service as incorporated in an Order Form.
- 1.13 **"Confidential Information"** means all information which Gramont or Customer protect against unrestricted disclosure to others or that are deemed confidential according to the circumstances of their disclosure or their content, including the Agreement. In any case, the following information is considered to be Confidential Information of Customer: the Customer Data, Customer marketing and business requirements, Customer implementation plans, and/ or Customer financial information; and Confidential Information of Gramont: the Cloud Service, Documentation, Cloud Materials and analyses under Section 3.5, and information regarding Gramont innovation topics, product offerings, pricing and availability, as well as all Gramont software, programs, tools, data or other materials that Gramont makes available to Customer precontractually or on the basis of the Order Form.

**2. USAGE RIGHTS**

- 2.1 During the Subscription Term, Gramont grants to Customer a non-exclusive, non-transferable and world-wide right to use the Cloud Service (including its implementation and configuration), Cloud Materials and Documentation solely for running Customer's and its Affiliates' internal business operations and in accordance with the Agreement, in particular the terms of the product-specific Supplement, the Gramont Policies and the Documentation. Permitted uses and restrictions of the Cloud Service also apply to Cloud Materials and Documentation.
- 2.2 Customer may permit Authorized Users to use the Cloud Service within the contractually agreed scope. In particular, usage is limited to the Usage Metrics and volumes stated in the Order Form. Access credentials for the Cloud Service may not be shared or used by more than one individual at a time, but may be transferred from one individual to another if the original user is no longer permitted to use the Cloud Service. Customer is responsible for the acts and omissions of its Authorized Users, Affiliates, and Business Partners as for its own acts and omissions and shall oblige them to adhere to the contractual provisions for the use of the Cloud Service, Documentation and the Cloud Materials. Customer is otherwise not allowed to sublicense, license, sell, lease rent or otherwise make any Cloud

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- Service or Cloud Materials available to third parties.
- 2.3 Acceptable Use Policy: When using the Cloud Service, Customer shall not: (a) copy, translate, disassemble, decompile, reverse engineer, or otherwise modify, in full or in part, or make any derivative works of the Cloud Service, the Documentation or Cloud Materials (except to the extent permitted by mandatory law); however, the Documentation may be copied to the extent necessary for internal purposes; (b) use the Cloud Service in breach of applicable law, in particular Customer will not transmit any content or data that is unlawful or infringes any intellectual property rights of third parties; (c) circumvent or endanger the operation or security of the Cloud Service.
  - 2.4 Customer will monitor its use of the Cloud Service and report to Gramont any use that goes beyond what is contractually agreed, in particular any use in excess of the Usage Metrics and volume. In this case, Customer must sign an Extension Agreement that documents the additional use and additional fee. Such fees shall accrue from the date the excess use began. Gramont may verify compliance with Usage Metrics, volume and the Agreement.
  - 2.5 Gramont can temporarily limit or suspend Customer's access (in particular user names and passwords) to the Cloud Service to prevent damages, if it is sufficiently probable that the continued use of the Cloud Service in breach of contract by Customer, the Authorized Users, or a third party using Customer's access data may result in harm to the Cloud Service, other SAP customers, or the rights of third parties in such a way that immediate action is required to avoid damages. Gramont will notify Customer of the limitation or suspension without undue delay. If circumstances allow, Customer shall be informed in advance in writing or by email. Gramont will limit the suspension or limitation in time and scope as reasonably possible under the circumstances.
  - 2.6 The Cloud Service may include integrations with web services made available by Gramont or third party providers on external websites that are accessed through the Cloud Service and subject to terms and conditions with those third parties. Gramont shall provide only technical access to the content of such integrated service. The content of such websites is the sole responsibility of these third parties.
  - 2.7 Authorized Users may access certain Cloud Services through mobile applications obtained from third-party websites such as Android or Apple app store. The use of mobile applications as such is subject to the terms and conditions agreed upon download/access to the mobile application and is not subject to the terms of the Agreement.
  - 2.8 The Cloud Service may include on-premise components that can be downloaded and installed (including updates) by Customer. The SLA referenced in section 3.2 of these Cloud GTC does not apply to these components. In addition to the Support Policy referenced in the Order Form.

**3. Gramont RESPONSIBILITIES AND OBLIGATIONS**

- 3.1 Gramont provides the Cloud Service agreed in the Order Form in accordance with Section 2. Gramont provides support as agreed in the Order Form and (if agreed) the Consulting Services. The quality and functionality of the agreed performance that Gramont is obliged to provide is conclusively agreed in the Order Form and the documents referred to therein. Gramont is not obliged to perform additional services or provide additional service features. If Customer is provided with a free-of-charge Cloud Service, Gramont is not obliged to provide support for this Cloud Service and has no obligation to provide any particular service level.
- 3.2 Unless otherwise stipulated in the Supplement, Gramont will maintain an average monthly system availability for the production system of the Cloud Service as defined in the Service Level Agreement referenced in the Order Form ("SLA"). Customer will follow credit claim procedure as per contract. When the validity of the service credit is confirmed by Gramont in writing or by email, Customer may apply the credit to a future invoice for the Cloud Services or request a refund for the amount of the credit if no future invoice is due. Contractual penalties paid shall be offset against any Customer claims for damages. In the event Gramont fails to meet the SLA (i) for four consecutive calendar months, or (ii) for five or more calendar months during any twelve months period, or (iii) at a system availability level of least 90% for one calendar month, Customer may terminate its subscriptions for the affected Cloud Service by providing Gramont with written notice within thirty days after the failure. Termination will become effective at the end of the calendar month in which Gramont has received the termination notice.
- 3.3 Gramont will implement and maintain appropriate technical and organizational measures to protect the personal data processed by Gramont as part of the Cloud Service as described in the Data Processing Agreement for Gramont Cloud Services referenced in the Order Form in compliance with applicable data protection law.
  - 3.4 Gramont, SAP, or Gramont Affiliates may create analyses utilizing, in part, Customer Data and information derived from Customer's use of the Cloud Service and Consulting Services, as set forth below ("Analyses"). Analyses will anonymize and aggregate information and will be treated as Cloud Materials. Unless otherwise agreed, personal data contained in Customer Data is only used to provide the Cloud Service and Consulting Services. Analyses may be used for the following purposes:
    - (a) product improvement (in particular, product features and functionality, workflows and user interfaces) and development of new SAP products and services,
    - (b) improving resource allocation and support,
    - (c) internal demand planning,
    - (d) training and developing machine learning algorithms,

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- (e) improving product performance,
- (f) verification of security and data integrity
- (g) identification of industry trends and developments, creation of indices and anonymous benchmarking.

**4. CUSTOMER DATA AND PERSONAL DATA; CUSTOMER RESPONSIBILITIES AND OBLIGATIONS**

- 4.1 Customer is responsible for the content of the Customer Data and entering it into the Cloud Service. Subject to Section 11, Customer grants to Gramont (including SAP SE, its Affiliates and subcontractors) a nonexclusive right to process Customer Data for the sole purpose of and only to the extent necessary for Gramont & SAP to provide and support the Cloud Service (including without limitation preparing backup copies or performing penetration tests); (ii) to verify Customer's compliance with the provisions set forth in Section 2.
- 4.2 Customer will collect and maintain all personal data contained in the Customer Data in compliance with applicable data protection law.
- 4.3 Customer shall maintain appropriate security standards for use of the Cloud Service by the Authorized Users. Customer will not conduct or authorize penetration tests of the Cloud Service without advance approval from Gramont. Customer is solely responsible for determining the suitability of the Cloud Service for Customer's business processes and for complying with all applicable legal provisions regarding Customer Data and its use of the Cloud Service. Free of charge, Customer must provide the collaboration required in connection with the provision of the Cloud Service and the support and Consulting services by Gramont, including, for example, infrastructure and telecommunications equipment for Cloud Service access. Customer bears all consequences and costs resulting from breach of its duties. Section 8 also applies.
- 4.4 During the Subscription Term, Customer can access its Customer Data at any time. Customer may export and retrieve its Customer Data in a standard format. Export and retrieval may be subject to technical limitations and prerequisites (e. g. as described in the Documentation), in which case Gramont and Customer will agree on a reasonable method to allow Customer access to Customer Data. Before the Subscription Term expires, Customer may use SAP's self-service export tools (as available) to perform a final export of Customer Data from the Cloud Service. Following the end of the Subscription Term, Gramont will delete or overwrite the Customer Data remaining on servers hosting the Cloud Service unless applicable mandatory law requires retention. Retained data is subject to the confidentiality provisions of the Agreement.

**5. REMUNERATION, PAYMENT, TAXES**

- 5.1 Customer will pay Gramont the fees agreed in the Order Form. No cash discounts shall be granted. Payments are due 30 calendar days from the date of the invoice. Any fees not paid when due shall accrue interest at the applicable statutory interest rate. If Customer is still in default of payment after a reasonable extension period set by Gramont has passed, Gramont can deny full or partial access to the Cloud Service temporarily until payment has been received. Customer may offset only claims or claim rights of retention that are uncontested or have been finally determined by the court.
- 5.2 All agreed fees are subject to statutory value-added tax.
- 5.3 During the Subscription Term of the Order Form, Customer may agree on an increase of units of an agreed Usage Metric by executing an addendum to the relevant Order Form ("Extension Agreement"). The term of each Extension Agreement shall be co-terminous with the then-current term of the Order Form irrespective of the effective date of Extension Agreement and all fees shall be prorated accordingly. Upon renewal of the Order Form, the renewal term for all increases in Usage Metric added to the Order Form prior to renewal shall be the same as specified in the Order Form.
- 5.4 The recurring fee agreed in the Order Form applies for the Initial Subscription Term agreed therein. The fee applicable for a Renewal Term corresponds to the fees for the preceding Initial or Renewal Term, unless Gramont increases the fees as follows:
  - (a) Gramont may at its discretion adjust the recurring fees with effect from the start of a renewal term by giving two months' written notice of the fee adjustment to Customer,
  - (b) The fee change is deemed to be agreed by the parties if the Cloud Service is renewed automatically for the renewal period unless Customer, by giving written notice at least one month prior to the expiration date of the preceding contractual term, terminates the Order Form with effect from the expiration of the relevant contractual term (extraordinary termination right).

**6. TERM, TERMINATION**

- 6.1 The Subscription Term is as stated in the Order Form. Each Order Form initially runs for the Initial Subscription Term defined therein ("Initial Subscription Term"). At the end of the Initial Subscription Term, it automatically renews by the renewals defined therein (each a "Renewal Term"), unless the Order Form is terminated by one of the parties in accordance with Section 6.2.
- 6.2 Ordinary (partial) termination of the Order Form is excluded during the Initial Subscription Term or any Renewal Term. Customer may terminate any Order Form by written notice at least one month in advance of the expiration of the Initial Subscription Term or current Renewal Term. Gramont may terminate any Order Form by written notice at least six months prior to the expiration of the Initial

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Subscription Term or current Renewal Term. Extraordinary termination rights and the right to termination for just cause remain unaffected. Notice of termination must be given in written form. The provisions in Section 12.1 concerning notices setting limited extra time also apply. Gramont reserves the right to terminate for just cause in particular where Customer is repeatedly or seriously in breach of major contractual obligations (in particular in Sections 2, 4 and 11).

- 6.3 In the event of termination by Customer, Customer shall be entitled to a pro-rata refund of prepaid fees for the period of time of termination to the end of the original term for the relevant Cloud Service.
- 6.4 At the end of the contract, (i) Customer's access to the Cloud Service shall cease, (ii) Customer's right to use the Cloud Service and (iii) Confidential Information of the disclosing party will be returned or destroyed as required by the Agreement. Termination of individual Order Forms shall leave other Order Forms and agreements unaffected.

**7. WARRANTIES BY Gramont**

- 7.1 Gramont warrants, for the Subscription Term, that the Cloud Service meets the specifications agreed in the Supplement and the Documentation and that the Cloud Service where used by Customer as contractually agreed does not infringe any third- party right. SAP will remedy any defects as to quality and defects in title in the Service in accordance with Section 7.4. If SAP has failed to remedy the defect at the end of an additional time period of a reasonable length set in writing by Customer, and the suitability of the Cloud Service for use in accordance with the contract is consequently reduced to a significant degree, Customer has the right of termination, which must be communicated in writing. If the suitability of the Cloud Service for use in accordance with the contract is reduced to a more than just insignificant (but not significant) degree, Customer is (as the exclusive remedy) entitled to reduce the remuneration by an appropriate amount.
- 7.2 For Consulting Services provided as works ("Werkleistung"), Gramont warrants that the Consulting Service corresponds to the agreed service description by remedying defects in accordance with Section 7.4. If defects have not been remedied at the end of an additional time period of a reasonable length set by Customer in writing, Customer is entitled to reduce the payable remuneration in the Order Form for the Consulting Service concerned by an appropriate amount or to withdraw from the Order Form with respect to the Consulting Service. Section 9 applies for damage compensation due to defects.
- 7.3 If Gramont fails to properly provide Consulting Services which are not subject to acceptance, or if – with regard to Consulting Services or the Cloud Service – Gramont is otherwise in breach in an area other than liability for defects as to quality and defects in title, Customer must give notice of this failure or breach to Gramont in writing and set an additional time period of a reasonable length, during which Gramont has the opportunity to properly perform its duty or otherwise remedy the situation. Section 9 applies with regard to compensation for damages.
- 7.4 Gramont shall remedy defects in Consulting Services that are subject to acceptance and in the Cloud Service by providing Customer with either a new Consulting Service or Cloud Service, that is free of defects or, at its election, by eliminating the defects. One of the ways Gramont may eliminate a defect is to indicate to Customer a reasonable way to avoid the effect of the defect.
- 7.5 Customer must give notice of every breach to Gramont in writing without delay and with a detailed description of the reason.
- 7.6 Warranty rights resulting from defects as to quality and defects in title in Consulting Services subject to acceptance expire sixty calendar days after acceptance. Warranties for the Cloud Service apply accordingly to the support services.

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If a third party claims that Customer's use of the Cloud Service or Cloud Materials in accordance with the terms and conditions of the Agreement infringes its intellectual property rights, Customer must fully inform Gramont in writing without delay. If Customer ceases to use the contractual Cloud Service or Cloud Materials to mitigate loss or for other just reason, Customer must notify the third party that such cessation does not imply any recognition of the claimed infringement. Customer shall conduct court proceedings with the third party only with Gramont's agreement or shall authorize Gramont to assume sole conduct of the dispute..

**9. LIMITATION OF LIABILITY**

9.1 Gramont is liable in contract, tort, or otherwise for loss or wasted expenditure in case of proven fault subject always as follows:

(a) In cases of liability for personal injury or liability under the Product Liability Act, and for any type of damages caused by intent or gross negligence.

(b) In all other cases, SAP's liability shall be limited according to Section 9.2 below.

9.2 Liability in cases under Section 9.1 (b) is limited to CHF 10.000,00 per incident, and to a total per contract year of the fee that was paid in the contract year for the Cloud Service (or Consulting Service respectively) concerned.

9.3 To the extent permitted by law, Gramont excludes liability for indirect and consequential loss such as loss of profit, unachieved savings, customer interruptions to business or third-party claims. Customer is responsible for the usage of application, content within the application, business validations by customers within the application. Gramont does not warranty the content delivery as part of reference content for customer and leaves it to sole discretion of customers to ensure correctness of such contents.

**10. IP RIGHTS**

10.1 Customer may only use the Cloud Service, Cloud Materials, Documentation and Consulting Services to the extent contractually agreed. As between Customer and Gramont, all rights therein, that are not expressly granted to Customer, are reserved to Gramont, including without limitation if those were created to address a requirement of or in collaboration with Customer.

10.2 Except as stated otherwise in the Agreement, Customer retains all rights in and related to the Customer Data as between Customer and Gramont. Gramont may use Customer-provided trademarks solely to provide the Cloud Service and the support.

**11. CONFIDENTIALITY**

11.1 Both parties undertake forever to protect the other party's Confidential Information acquired before and in connection with contract performance, as confidential to the same extent they protect their own Confidential Information, and not less than a reasonable standard of care. Confidential Information of the other party may only be shared with or disclosed to third parties who are under obligations of confidentiality substantially similar to those in Section 11 and only to the extent this is necessary to enable the receiving party to exercise its rights or perform its obligations under the Agreement. Any reproduction of any Confidential Information of the other party shall contain any and all confidential or proprietary notices or legends which appear on the original, as far as this is technically feasible.

11.2 Section 11.1, above shall not apply to any Confidential Information that: (a) is independently developed by the receiving party without reference to the disclosing party's Confidential Information; (b) is generally available to the public without a breach of the Agreement by the receiving party or is lawfully received free of restriction from a third party having the right to furnish such Confidential Information; (c) at the time of disclosure, was known to the receiving party free of confidentiality restrictions; or (d) the disclosing party agrees in writing is free of confidentiality restrictions

11.3 Neither party shall use the name of the other party in publicity activities without the prior written consent of the other. However Gramont may use Customer's name in customer listings (reference listings) or quarterly calls with its stakeholders or, at times mutually agreeable to the parties, as part of Gramont's marketing efforts (including reference calls and stories, press testimonials). Gramont may share information on Customer for marketing and other business purposes.

**12. MISCELLANEOUS**

12.1 Except in emergencies, a limited time fixed by Customer pursuant to the law or contract must not be less than ten working days. Where a failure to comply with a fixed time limit entitles Customer to be released from the contract (e. g. by termination or claim for damages in lieu of performance) Customer shall first threat in writing the consequence of failure to comply with that time limit when setting the limited time.

12.2 The Cloud Service, Cloud Materials, and Documentation are subject to the export control laws of various countries, in particularly the laws of the US, the Federal Republic of Germany and Switzerland. Customer shall not hand over the Cloud Service, Documentation, or Cloud Materials to governmental authorities for licensing considerations or other official approval without Gramont's prior written consent, and shall not export the Cloud Service, Documentation, or Cloud Materials to countries or to natural or legal persons for which export bans apply according to the relevant export laws.

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- Furthermore, Customer is responsible for complying with all applicable legal provisions of the country in which it is headquartered, and of other countries in respect of the use of the Cloud Service, Documentation, and Cloud Materials by Customer and its Authorized Users.
- 12.3 System notifications and information from Gramont relating to the operation, hosting or support of the Cloud Service can also be provided within the Cloud Service, electronically to the contact person named in the Order Form or can be made available via the Gramont product page.
- 12.4 These Cloud GTC can be changed with regard to the provision and support of the Cloud Service, in accordance with the sentences below provided that the change does not have any impact on the contractual content that is material for the equivalency of Cloud Services and support and their remuneration between the parties and provided that such change is reasonably acceptable for Customer. Gramont will inform Customer about the change of the Cloud GTC in writing. If, in this case, Customer does not expressly disagree in writing within four weeks after receipt of the change notice, the change will be deemed to be effected and from this point in time, the changed version of the Cloud GTC is binding for the existing agreements between Gramont and Customer.
- 12.5 Without Gramont's prior written consent, Customer may not assign or transfer the Agreement or any of its rights or obligations to a third party.
- 12.6 Swiss law applies exclusively to all claims in contract, in tort, or otherwise, and the UN sales laws convention is excluded. The conflict-of-law rules shall not apply. **The sole place of jurisdiction for all differences arising out of or in connection with the Agreement shall be Zuerich-1, Switzerland.**