



## LEAPNODE GENERAL TERMS AND CONDITIONS

### PREAMBLE

These General Terms and Conditions ("GTC") shall govern the contractual relationship between us, LeapNode GmbH, Langfurenstrasse 59, 8143 Stallikon, UID: CHE-321.983.463 ("**LeapNode**" or "**Us**") and customers ("**Customers**" or "**You**") (each or both together also referred to as "**Party**" resp. "**Parties**") for the provision of various software-related services ("**Services**") such as software-licensing, maintenance and support, development project works, project management or consulting or training, whatever the case may be, in particular in the areas of software architecture design, workflow-/data management or AI modelling.

### 1. CONTRACT DOCUMENTS AND HIERARCHY

- 1.1 These GTC form an integral part of any individual order form (or similar contract) entered into between LeapNode and Customer and shall always define the legal basis of their relationship. When referring to these GTCs or an individual order form, we may also refer to the "**Agreement**".
- 1.2 Individual order forms govern the specific Services to be provided by LeapNode as well as detailed service-features, pricing, timetables (if agreed) etc. In the event of contradictions between an individual order form and the GTC, specific provisions in individual order forms shall generally prevail, unless this has been explicitly excluded in the GTCs.
- 1.3 The waiver of these GTC or the inclusion of other contractual conditions to which Customer refers in his own declarations, shall have no legal effect unless LeapNode has explicitly accepted this in writing for the relevant Services agreed in an order form. Reference of Customer to his own general terms and conditions shall be disregarded and will not construe any hierarchy to the benefit of Customer's own terms and conditions. For the avoidance of doubt, the continued provision of Services by LeapNode does not constitute in any way an acceptance of Customer's general terms and conditions.
- 1.4 Individual order forms may be concluded in writing only. If no written order form is signed, the contract may be concluded upon confirmation of an order in writing by LeapNode. The order confirmation may then be deemed a binding contractual acceptance. For the avoidance of doubt, LeapNode has no general duty to accept orders/order forms from Customer.

### 2. SCOPE OF SERVICES

- 2.1 LeapNode will provide its Services in accordance with the provisions of these GTC and the specific details established in individual order forms. LeapNode will provide its Services in a professional and diligent manner in accordance with common industry standards of other, comparable market players.
- 2.2 LeapNode generally provides the following types of Services: software licensing, software development, maintenance and support as well as project management, consulting services and training in software architecture, design, workflow- and data management and AI modelling.



- 2.3 The specific scope of Services, deliverables (if software development is requested as a Service), timelines, and fees for the Services shall be set out in the individual order form.

### **3. SOFTWARE LICENSE**

- 3.1 Where and if LeapNode grants a software-license to Customer in the individual order form, LeapNode grants to Customer a non-exclusive, non-sublicensable and non-transferable license, limited to the territory in which Customer and/or its affiliate group companies has domicile (henceforth the "**License**") and is entitled to use LeapNode's software (henceforth the "**Software**") as follows:

- 3.1.1 if offered on premise, install the Software within its own premises and Customer may only use the Software for an amount of users specified in the order form. Unless specified differently in an order form, Customer may operate the Software only on one single productive system and additional environments required to support that productive system, such as test, development or backup-environments;
- 3.1.2 if offered via ASP/Cloud ("Software as a Service"; "Saas"), access and use of the Software for the amount of users and only from computers of Customer approved by LeapNode and as further specified in the order form.
- 3.1.3 use the Software (i) in accordance with the documentation and these GTC and (ii) for internal business purposes only. For the avoidance of doubt, re-selling/sub-licensing as well as offering the use of the Software as an outsourcing bureau or via ASP/Cloud to third parties is not permitted. Affiliate group companies may use the Software if they are agreed as third party beneficiaries under the respective order form; and
- 3.1.4 make one (1) copy of the Software for back-up and archiving purposes only, in particular with a view to operating redundant systems or for test and development purposes. Other than that, Customer shall not copy or otherwise reproduce the documentation and/or the Software without the prior written consent of LeapNode.

The License granted under this Section 3 is conditioned upon Customer complying with the terms and conditions set forth in this Agreement, in particular the payment of charges agreed in the individual order form.

- 3.2 Save and to the extent expressly permitted by these GTC or if required by mandatory applicable law, the License granted under this Section 3 is subject to the following restrictions:

- 3.2.1 Customer may not assign, lease, market, publish, distribute, transfer or sublicense any copy of or rights to the Software or documentation, or otherwise grant any rights of access or use to any third party, neither in original nor in any other form, without the prior written consent of LeapNode, unless such use is permitted under this Agreement.



- 3.2.2 Customer may not alter, edit or adapt or modify in full or in part the Software.
- 3.2.3 Customer may not reverse engineer, disassemble, decompile or otherwise seek to devise or discover the source code of the Software, to the extent permitted under applicable law. Customer shall however be entitled, upon its written request, to obtain the necessary information for the interoperability of the Software with other software created independently from LeapNode.

#### **4. SOFTWARE DEVELOPMENT WORKS**

Where and if LeapNode undertakes to perform software development works for Customer in an individual order form, LeapNode will carry out the work and submit the requested software items (henceforth the "**Deliverables**") in accordance with the specifications, timetables, charges/fees and/or project management provisions agreed in the individual order form and with the following provisions:

- 4.1 LeapNode shall perform its works diligently and in a professional and workmanlike manner.
- 4.2 LeapNode may use subcontractors for the performance of its works. LeapNode shall ensure that its employees and subcontractors are well trained and have the necessary expertise and qualifications for the provision of the works. LeapNode shall be liable for acts and omissions of its subcontractors as if they were its own.
- 4.3 LeapNode shall inform Customer in writing of all facts and circumstances that affect or may affect the timely performance of the works and submission of Deliverables.
- 4.4 The Deliverables shall be ready for testing by Customer on the date agreed in the individual order form. The purpose of the testing and acceptance procedure is the assessment and verification of whether Deliverables (or parts thereof) meet the agreed specifications. Qualified personnel of LeapNode shall attend the acceptance test and support Customer in conducting the acceptance test at no additional cost. LeapNode may also attend the testing and acceptance procedure via remote support.
- 4.5 The acceptance test shall be completed within ten (10) business days after its initiation and the results shall be documented in a suitable protocol to be signed by both Parties. The acceptance protocol shall identify all faults that have been detected during the acceptance test. The Deliverable shall be deemed accepted if on the last day of the acceptance test no material fault remains. For the purposes of these GTC, material fault shall mean a fault that significantly impairs or a series of faults that in the aggregate significantly impairs the use of the Deliverables. Customer is only entitled to refuse acceptance if on the last day of the acceptance test at least one material fault remains. Non-material faults shall be disregarded and shall not hinder acceptance, but will be remediated by LeapNode at no cost within reasonable time. For the avoidance of doubt, non-material faults do not render Deliverable not usable for envisaged functions and are for example: Cosmetic errors like spelling mistakes and small layout discrepancies or a feature that is not functional in one module, but the same task is easily doable from another module.



- 4.6 In case acceptance is refused due to material fault(s), which refusal may be declared by Customer at any time during the acceptance test, LeapNode shall cure such material fault(s) within thirty (30) days. The date for a second acceptance test shall be agreed mutually and should not be later than within ten (10) days. In case of failure of the second acceptance test, Customer may (i) either continue to ask for rectification and re-performance, or (ii) claim reduction of the charges/fees, or (iii) terminate this Agreement (*ex nunc*). These provisions set out Customer's sole rights and remedies in case of non-conformities of Deliverables and replaces and is in lieu of the statutory rules regarding acceptance and remedies.

## 5. MAINTENANCE AND SUPPORT, TRAINING

- 5.1 Where and if LeapNode provides maintenance and support services to Customer in the individual order form, in the absence of deviating provisions, maintenance shall be either corrective (error correction), adaptive (adaptation to changed circumstances) or perfective (functional enhancements and updates). It therefore includes, in particular, the delivery of new releases and patches as well as the possible establishment of temporary workarounds.
- 5.2 Support as a component of maintenance and care includes also support for Customer with regard to the use of the Software or Deliverables. Such support is offered either by phone or electronically as specified and under the availabilities specified in the respective order form. Support includes, in particular, clarification of the cause of reported incidents, assistance with the installation of patches or the introduction of new releases and support with their installation. Support generally occurs remotely. In special circumstances, LeapNode can, at its own discretion, provide support/advice on site of Customer if this proves necessary. If LeapNode provides maintenance and support via remote access, it must protect data traffic from unauthorized access by third parties and will apply appropriate technical measures.
- 5.3 LeapNode may, from time to time, provide training to Customer (and its staff) under terms and conditions defined in the respective individual order form.

## 6. CUSTOMER'S OBLIGATIONS

- 6.1 Customer is obliged to support LeapNode with all necessary materials, documentation, information, data, decisions and/or access to its premises, systems and resources for LeapNode to perform the Services or Deliverables adequately. In particular, Customer shall provide all necessary information to LeapNode upon request and reasonably cooperate so that LeapNode can provide its Services satisfactorily.
- 6.2 If Customer fails to comply with its cooperation obligations, LeapNode shall endeavour to provide its Services or Deliverables but shall to that extent no longer be obligated to do so, i.e. not be considered delayed or at fault. Customer shall reimburse LeapNode for any additional expenses caused by its lack of cooperation.
- 6.3 Customer is obliged to pay LeapNode the Charges agreed in the individual order form.



## **7. AUDIT RIGHT**

Upon reasonable advance written notice, LeapNode shall have the right to conduct a yearly audit of Customer's use of the Software to verify Customer's compliance with this Agreement. Customer shall make its relevant systems and all applicable books, records and transaction logs available for such inspection during normal business hours at Customer's principal place of business. Any such audit shall be at LeapNode's expenses, unless it shows non-compliance or excessive use/underpayment by Customer for the audited period in excess of five percent (5%), in which case Customer shall reimburse LeapNode for such expenses.

## **8. CHARGES AND PAYMENT TERMS**

- 8.1 Customer undertakes to pay the charges to LeapNode as specified in the respective order form. Charges are either defined as fixed prices or on a time and material basis.
- 8.2 Prices (e.g. fees for licencing, maintenance, training, consulting etc.) are based on the best estimates available at the time of the individual order form and are derived from the information provided by Customer.
- 8.3 Unless specified differently in the individual order form, if LeapNode undertakes to perform software development works (i.e. Deliverables), payments shall generally be made as follows:
- Thirty percent (30%) of the total price payable upon order confirmation;
  - Forty percent (40%) of the total price payable upon delivery of the Deliverables to Customer;
  - Thirty percent (30%) of the total price payable upon the acceptance of the Deliverables, in accordance with the acceptance procedures defined in Section 4.
- 8.4 Invoices of LeapNode shall generally be payable within fourteen (14) business days upon receipt of the invoices, unless specified differently in the individual order form.
- 8.5 All charges are considered net and do not include Value Added Taxes (VAT) and are in CHF. All payments due shall be made plus VAT, if applicable. Other than that, each Party shall bear its own taxes and duties.
- 8.6 LeapNode reserves the right to charge additional costs for any changes or Services that exceed the defined scope of work as outlined in the individual order form, or that arise after technical and commercial clarification.
- 8.7 In the event of non-compliance with the payment terms set out in this Section 8, LeapNode reserves the right to suspend ongoing Services or works for Deliverables until full payment is received.



## **9. WARRANTY**

- 9.1 LeapNode warrants that it has all the necessary rights to provide the license of the Software or the Deliverables and that the use of the Software or the Deliverables does to the best knowledge of LeapNode not infringe third party intellectual property rights in Europe, in particular copyrights.
- 9.2 LeapNode warrants that Deliverables submitted under this Agreement meet and comply with the contractual specifications and have the characteristics which Customer may reasonably expect in light of the intended purpose. The warranty period for the work objects shall be six (6) months, starting with the date on which all faults that were discovered during the acceptance test are cured. If no acceptance test is made for a Deliverable, the warranty period shall start on the date of its productive use. Customer shall notify faults of Deliverables to LeapNode promptly upon notice.
- 9.3 The above warranty shall not apply if the faults are mainly caused by Customer (e.g. due to non-conform use of the Deliverable or against the instructions of LeapNode or because Customer has not notified LeapNode promptly of such faults).
- 9.4 Aside from the above, any and all warranties (implied or express) are hereby excluded. LeapNode does not warrant that the functions contained in the Software will meet Customer's individual requirements or that the operation of the Software or Services will be uninterrupted or error-free. Customer acknowledges that complex software is never wholly free from software defects and security vulnerabilities. To the maximum extent permitted by applicable law, LeapNode disclaims warranties of merchantability, of satisfactory quality, of fitness for a particular purpose, of accuracy, or quiet enjoyment of the licensed Software.

## **10. INTELLECTUAL PROPERTY RIGHTS**

- 10.1 Customer acknowledges and agrees that it does not have and will not in any way acquire, any intellectual property rights in and to the Software, including and without limitation to any copyrights, trademarks, trade secrets or patents. LeapNode remains the holder of all rights relating to the Software. Any discoveries or improvement, process or device relating to data processing licensed pursuant to these GTC shall be the sole property of LeapNode.
- 10.2 Should Customer become aware of any infringement or of a serious risk of infringement by a third party of any intellectual property rights pertaining to the Software of LeapNode, Customer shall promptly inform LeapNode and provide all useful information regarding such infringement or risk of infringement to LeapNode. LeapNode shall have the exclusive power to decide on the initiation of any claims or proceedings at LeapNode's expenses for the purpose of protecting such intellectual property rights against third party infringers. Customer shall, at its own costs, provide LeapNode with all reasonable assistance which would be required in the course of legal proceedings for the purpose of protecting the said intellectual property rights according to the instructions that shall be given by LeapNode.



- 10.3 LeapNode undertakes to assign and hereby assigns any intellectual property rights contained in the Deliverables to Customer, provided that LeapNode shall automatically be granted a royalty-free, perpetual, unlimited in terms of territory or scope of use, license to use such intellectual property rights for the development of other products for other clients or for research and development purposes.
- 10.4 For the avoidance of doubt, each Party has the right to freely re-use any intellectual property rights which it already had prior to entering this Agreement.

## **11. LIMITATION OF LIABILITY**

- 11.1 LeapNode shall only be liable to Customer for damages caused intentionally or through gross negligence and in the event of a culpable personal injury or death.
- 11.2 Any further liability of LeapNode, including that for indirect damages, for consequential damages, for loss of data, for additional expenses or claims of third parties, for loss of profit or unrealized savings, for operational disruptions as well as for damages from delayed delivery or service is excluded, regardless of the legal nature and to the extent permitted by law.
- 11.3 In all instances, the aggregate liability of LeapNode shall be limited to the total fees paid agreed under the individual order form during the twelve (12) month period preceding the event giving rise to the claim. However, liability per loss event shall not exceed CHF 20'000
- 11.4 For the avoidance of doubt, this limitation of liability does not in any way limit Customer's obligation to pay outstanding charges as specified in the individual order form.

## **12. FORCE MAJEURE**

- 12.1 The Parties understand force majeure in the context of this Agreement particularly, but not exclusively, to refer to the following: Natural phenomena of particular intensity (landslides, avalanches, flooding etc.), earthquakes, volcanic eruptions, sabotage, DDOs attacks, hacking, malware, ransomware, epidemics, power failures at the energy providers' facilities, war and acts of war, revolutions, rebellions, terrorism, riots and the measures taken against them, as well as unforeseeable official restrictions.
- 12.2 If the Party is unable to fully perform its contractual obligations due to force majeure, it shall be temporarily released from its obligations to that extent, provided that it has taken any reasonable measures against specified events.

## **13. DATA PROTECTION AND DATA SECURITY**

- 13.1 Each Party undertakes to comply with the provisions of the Swiss data protection legislation when processing the personal data.
- 13.2 If and to the extent that LeapNode acts as a "data processor" for Customer, the Parties shall also sign a data processing agreement in accordance with Swiss and/or European legislative requirements.



## **14. CONFIDENTIALITY**

- 14.1 All confidential or proprietary information exchanged between the Parties before or during the term of this Agreement and for a period of five (5) years following termination or expiration thereof shall be treated as "**Confidential Information**" of the disclosing Party, and the receiving Party shall never use such information for any purpose other than performance of this agreement or disclose such Confidential Information to any third party (except employees, subcontractors and affiliates of the Parties) without the prior written approval of the other Party unless such Confidential Information:
- 14.1.1 has become public knowledge through no fault of the Party receiving such Confidential Information;
  - 14.1.2 lawfully comes to such Party from a third party under no obligation of confidentiality with respect to such Confidential Information;
  - 14.1.3 was in the possession of such Party as evidenced by its written records prior to the date of disclosure;
  - 14.1.4 was independently developed by receiving Party as evidenced by its written records; or
  - 14.1.5 is required by law or regulation to be disclosed, provided that the Party so required to disclose Confidential Information shall give the disclosing Party sufficient notice (in no case less than four (4) days) of the proposed disclosure to oppose or limit disclosure or to seek a protective order for such Confidential Information.
- 14.2 The Parties shall impose the confidentiality obligation on their staff members, subcontractors, sub-suppliers or other individuals and entities engaged in the performance of this Agreement.
- 14.3 The Parties undertake to disclose Confidential Information to its staff members, subcontractors, sub-suppliers only to the extent such disclosure is necessary for the purposes contemplated under this Agreement ("as needed"-principle) and assure that such staff members, subcontractors, sub-suppliers are made aware of and agree in writing to observe the confidentiality obligations contained in this Section.

## **15. TERM AND TERMINATION**

- 15.1 The effective date, term and the options for ordinary termination shall be specified in the individual order form.
- 15.2 In case of an indefinite agreement with no further specifications in the individual order form, each Party may terminate this Agreement at the end of any calendar year, subject to a prior notice period of six (6) months.



15.3 Either Party can terminate the Agreement in the event of a material breach with immediate effect:

- In the event of a material breach of provisions in the GTC and the respective individual order form and if the breach is not remedied within a grace period of thirty (30) days after receipt of the relevant notification; or
- If either Party is dissolved, ceases to conduct all (or substantially all) of its business, is or becomes unable to pay its debts as they fall due, is or becomes insolvent or is declared insolvent or convenes a meeting or makes or proposes to make any arrangement or composition with its creditors; and
- If an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other Party or an order is made for the winding up of the Party, or passing a resolution for winding up.

For the avoidance of doubt, LeapNode may terminate this Agreement with immediate effect if Customer is in delay of payments of more than thirty (30) days and, upon setting a grace period of additional thirty (30) days, has failed to pay the outstanding amount(s).

## **16. EFFECTS OF TERMINATION**

16.1 Upon termination of this Agreement, the License of the Software in this Agreement shall terminate and, accordingly, Customer must immediately cease to use the Software. Customer must irrevocably delete and uninstall from all computer systems in its possession or control all copies of the Software.

16.2 Except to the extent that this Agreement expressly provides otherwise, the termination shall not affect the accrued rights of either Party. In particular, termination of this Agreement for any reason shall not release either Party from liabilities which at said time have already incurred to the other Party, irrespective of the legal ground for termination.

16.3 Upon termination, all of the provisions of this Agreement shall cease to have effect, save that the following provisions of these GTC shall survive and continue to have effect (in accordance with their express terms or otherwise indefinitely): Sections 10, 11, 13, 0, 17 and 18.

## **17. MISCELLANEOUS**

17.1 The Parties agree that they are not forming any association or simple partnership (Art. 530 et seqq. Swiss Code of Obligations) through their contractual relationship.

17.2 In the event that one of the provisions of the Agreement is deemed null and void or unenforceable as a result of any law or of an interpretation given by any jurisdiction, the Agreement shall be construed as if it did not contain such provision and the invalidity of such provision shall not affect the validity of the other provisions of the Agreement which shall remain valid and have full force and effect for the Parties.



17.3 LeapNode reserves the right to amend these GTC at any time. Customer will first be informed of such amendments in writing with a period of thirty (30) days to object. Continued use of LeapNode's Services or if Customer does not object within thirty (30) days of notification, the amended terms shall be deemed accepted. For the avoidance of doubt, LeapNode is free at any time to improve technical aspects/features of its Services, which shall not be considered a change of contractual terms and need not be notified or approved by Customer.

**18. GOVERNING LAW AND JURISDICTION**

18.1 The Parties' contractual relationship, including these GTC and all agreements based thereon, are exclusively governed by and construed in accordance with the laws of Switzerland, excluding its conflict of laws rules and the UN-Convention on Contracts for the International Sale of Goods dated April 11. 1980.

18.2 Any dispute, controversy or claim arising out of or in connection with this Agreement, including the validity, invalidity, breach or termination thereof, shall be submitted to the exclusive jurisdiction of the courts in the city of Zurich, Switzerland.

**LeapNode**, Stallikon, Switzerland  
20. December, 2024