

# General Terms and Conditions (GTCs) of Netcloud AG, September 1, 2023



## 1 Subject matter

- 1.1 These General Terms and Conditions (hereinafter referred to as 'GTCs') contain the framework conditions for all services which Netcloud AG (hereinafter referred to as 'Netcloud') provides to its customers (hereinafter referred to as 'Customer') (jointly referred to as 'Parties') and form an integral part of every contractual relationship.
- 1.2 Individual agreements (hereinafter referred to as 'Contract' or 'Contracts') are concluded for the desired services.  
The scope and duration of the services owed are defined in the respective Contract.

## 2 Order of precedence

- 2.1 In the event of contradictions between these provisions and the individual Contracts or other annexes referenced therein, the provisions shall apply in accordance with the following order of precedence:
  - 1<sup>st</sup> Contract
  - 2<sup>nd</sup> Annexes, offers
  - 3<sup>rd</sup> GTCs
  - 4<sup>th</sup> Data processing agreement
  - 5<sup>th</sup> Privacy policy

## 3 General rules of cooperation

### 3.1 Communication

The Parties shall comply with their contractual obligations in a timely manner, work diligently, support each other in the performance of their contractual obligations, communicate openly and clearly and address discrepancies and ambiguities at an early stage.

The Parties shall inform each other of any developments, incidents and findings which may be of significance for the other Party in connection with the performance of the Contracts or for the contractual relationship as a whole, insofar as this does not conflict with any statutory or contractual non-disclosure obligations.

### 3.2 Information obligations of the Customer

The services provided by Netcloud require the Customer's cooperation. The Customer must make all the necessary preparations and cooperate in all ways necessary. The Customer shall, in particular, provide Netcloud with full access to all information and details necessary for the proper performance of the Contract and to do so in good time.

The Customer shall inform Netcloud in good time of special technical or legal requirements and of the statutory, official and other regulations at the destination insofar as these are relevant to the costs, the performance or the use of the products.

The Customer shall monitor the services and immediately report any problems and changed circumstances which could affect the services to Netcloud.

If the Customer does not fulfil its obligations to provide information and cooperate, does not do so in good time or does not do so properly, it shall be held responsible for the direct consequences.

### 3.3 Information obligation of Netcloud

Netcloud shall inform the Customer at an early stage of any possible hazards and special technical requirements for the provision of services.

Netcloud shall inform the Customer at an early stage of planned downtimes, such as maintenance or emergency exercises.

### 3.4 Solicitation of employees

The Parties mutually undertake not to solicit and/or hire, commission or otherwise employ any employees of the other Party for the duration of the Contract and for six months thereafter.

This restriction may be waived with the express written consent of the other Party.

### 3.5 Conflict management and escalation procedures

In the event of conflicts or problems between the Parties, the rules of conflict management and escalation procedures shall be observed by both Parties.

In the absence of any provisions in the Contract, the Parties shall first seek in good faith a mutually agreeable solution at the appropriate operational level before initiating legal proceedings. At the request of one Party, a mediation and conflict management procedure shall be initiated. The other Party shall be obliged to participate in good faith.

## 4 Non-disclosure

- 4.1 Both Parties are obliged to treat data and information which is not public knowledge and which falls within the sphere of business confidentiality, or awareness thereof, of which they gain knowledge in connection with the Contract and its fulfilment, as strictly confidential. If there is any doubt as

to whether an item of information, a document or awareness falls within the sphere of business confidentiality, it shall be deemed to be confidential and the other Party shall be consulted.

- 4.2 The obligation of non-disclosure shall also extend to all employees, auxiliary persons and suppliers of the Parties for an indefinite period of time.

## 5 Data protection

- 5.1 Netcloud undertakes to comply with the applicable data protection laws and in particular data security when handling personal data.
- 5.2 Further information on data protection can be found in the Privacy Policy (<https://www.netcloud.ch/datenschutz>). The Customer confirms that it has read and understood this Privacy Policy and has taken into account the corresponding data protection risks.

## 6 Prices

- 6.1 The prices for the agreed services result from the individual Contracts and the annexes thereto.
- 6.2 Unless indicated otherwise, all prices are quoted in Swiss francs, exclusive of value added tax.
- 6.3 Incidental costs, such as costs for packaging, freight, insurance, fees, customs duties, taxes, levies, (re-)export, transit and other permits and certifications are not included in the prices and shall be borne by the Customer.
- 6.4 A price adjustment is only permissible in the event of a service adjustment or other adjustment of the service to be provided (same service, same price). Changes at suppliers remain reserved. In addition, changes in exchange rates entitle Netcloud to make corresponding price adjustments.
- 6.5 The costs for hardware and software, maintenance and subscription will be charged on delivery.
- 6.6 Appointments which are cancelled by the Customer less than one working day in advance will be charged for.
- 6.7 The way to and from work counts as working time and will be charged for.

## 7 Payment terms

- 7.1 Trade-in discounts will be credited to the customer after the complete return of the material.
- 7.2 Default in payment shall trigger interest on arrears in accordance with OR Art. 104 without a special reminder. Expenses for dunning procedures will be charged.
- 7.3. The offsetting of claims against counterclaims is expressly excluded.

## 8 Technical documents

- 8.1 Netcloud retains the rights of ownership and copyrights to all documents. Both Parties may only disclose documents to suppliers involved in the performance of the service.
- 8.2 Further use for purposes other than the operation, maintenance and expansion of the agreed service, especially the use for the creation of identical or similar solutions which are not in the direct possession of the Customer, is prohibited.
- 8.3 Upon request, any documents for offers which do not culminate in an order shall be returned and/or be deleted electronically.

## 9 Delivery scope

- 9.1 The concluded contract shall be authoritative as to scope and delivery.
- 9.2 During the performance, both Parties may at any time request changes to the agreed service scope in writing, which may in some circumstances lead to a price adjustment.
- 9.3 Additional expenses due to hardware and software errors, as well as unforeseeable integration problems, are not included.
- 9.4 The delivery deadline shall be duly extended:
  - in the event of retroactive change of the order;
  - in the event of unforeseen obstacles, such as force majeure, official orders, epidemics, mobilisation, war, unrest, major operational disruption, labour disputes, natural disasters, fire and theft;
  - in the event of delivery delays on the part of suppliers as well as transport delays and the like;
  - in the event of non-compliance with the contractual obligations, especially of the agreed payment terms, by the Customer.

## 10 Acceptance

- 10.1 Unless otherwise agreed in the Contract, the Customer shall inspect the hardware within five working days and notify Netcloud immediately in writing of any defects. If the Customer fails to do this, the delivery will be deemed as approved.
- 10.2 The productive use of the delivery and service provided by Netcloud shall be deemed acceptance in any case.

# General Terms and Conditions (GTCs) of Netcloud AG, September 1, 2023



## 11 Transfer of risks and rewards

- 11.1 The risks and rewards shall be transferred upon surrender to the Customer.
- 11.2 If the shipment is delayed or becomes impossible for reasons for which Netcloud is not responsible, the goods to be delivered will be stored for the account and at the risk of the Customer.

## 12 Transport

- 12.1 The Customer shall without delay make any complaints in connection with the transport to the responsible transport company upon receipt of the delivery. Netcloud shall be informed in writing without delay.

## 13 Guarantee

- 13.1 Netcloud does not provide any guarantee/warranty for services provided by suppliers. The Customer expressly accepts its provisions and periods.
- 13.2 Defective parts must be returned within ten calendar days after replacement delivery. The return and arrival of the goods at the destination must be documented in writing.
- 13.3 The duration of the guarantee and maintenance of hardware, software and subscriptions begins with the delivery to the Customer.
- 13.4 Damage claims due to deficient maintenance, failure to observe operating instructions, improper or excessive strain, unsuitable utilities, chemical or electrolytic influences, deficient construction and assembly work not performed by Netcloud and other reasons for which Netcloud is not responsible are excluded. Moreover, events which must be covered by the Customer's property insurance, such as fire, natural disasters and water, are also excluded.
- 13.5 The warranty on the hardware and software will expire if the Customer or third parties perform modifications or repairs to the delivery without the written consent of Netcloud. Moreover, it will expire if the Customer does not promptly take suitable measures to prevent the damage from increasing.
- 13.6 The warranty will not expire if Netcloud is unable to eliminate the damage within a reasonable period and the Customer engages third parties to eliminate the damage, even without the written consent of Netcloud.

## 14 Maintenance and subscription

- 14.1 The provision of hardware maintenance, software and subscription by Netcloud, if any, is defined in the Contract.
- 14.2 In the absence of a Contract, the rectification of faults shall be performed on behalf of the Customer on the basis of the applicable rates.

## 15 On-call

- 15.1 The Customer shall grant the service personnel access to the devices should this be necessary for the fulfilment of the Contracts.
- 15.2 During the visit of the service personnel, a qualified employee of the Customer who is familiar with the site shall be made available at the site of the device. If this is not possible, a suitable access/emergency concept must be elaborated.
- 15.3 On-call missions without an on-call contract or outside the agreed on-call times will be performed as far as possible, subject to payment of a mission fee of CHF 3,850.00. The mission fee does not include the working time and surcharges.

## 16 Recurring services and adjustments

- 16.1 Recurring services (maintenance, subscription, on-call service etc.) are automatically renewed and adjusted to current conditions (see section 6).
- 16.2 Before the expiry of the recurring service, Netcloud will send a renewal with the current prices. If the Customer no longer requires the service, it may terminate this by the date listed therein.

## 17 Contract term and termination

- 17.1 Unless otherwise agreed, Contracts shall remain in force until complete fulfilment or termination in accordance with the agreed date or until they are terminated in accordance with the relevant provisions.
- 17.2 In addition, the service may be terminated at any time by giving three months' notice to the end of the Contract term.
- 17.3 Either Party is entitled to terminate the Contract without notice for good cause, such as a breach of material contractual provisions.
- 17.4 In the event of termination without notice by Netcloud, no refund of fees shall be made. Netcloud reserves the right to claim damages.

## 18 Liability

- 18.1 The Customer shall be responsible for any damage caused through breaches of obligation on their part, especially due to failure to fulfil, or to properly or punctually fulfil, their obligations to cooperate and/or supply information.

- 18.2 Netcloud excludes any liability for damage caused by hardware or software which has reached 'end-of-life' or 'end-of-support' status. This also includes the discontinuation of the supplier's technical support.

- 18.3 Netcloud shall be liable for a sum equivalent to the value of the contract, up to a maximum limit of one million Swiss francs, for direct damage which the Customer incurs in connection with the performance of a contractually agreed service, provided that the Customer proves that Netcloud is at fault due to intent or gross negligence.

- 18.4 Any further liability, especially for slight and medium negligence, for indirect damage or consequential damage such as lost profits, additional expenses or personnel costs of the Customer, unrealised savings, third-party claims or loss of data as well as liability for agents and damage due to late performance and liability for products from suppliers, is expressly excluded to the extent that this is permitted by law.

## 19 Place of jurisdiction and applicable law

- 19.1 The place of jurisdiction for all disputes arising in connection with any Contracts with Netcloud which could not be resolved within the framework of the conflict management and escalation procedures shall be Netcloud's registered domicile.

- 19.2 The legal relationship shall be governed exclusively by Swiss law, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG, also referred to as Vienna Sales Convention).

## 20 Final provisions

- 20.1 These GTCs shall apply to all points which are not regulated by mutual agreement between the Parties in an additional Contract or annex. Special provisions of the Customer which conflict with these GTCs shall only apply if Netcloud has agreed to them in writing.

- 20.2 If individual provisions of these contractual terms and conditions or of another Contract between the Parties are wholly or partially void, legally ineffective or unenforceable, the remaining parts and provisions shall continue to apply. The same shall apply in the event of loopholes. In this case, the void/legally ineffective/unenforceable or incomplete parts shall be interpreted or supplemented in such a way that the overall meaning is retained.

- 20.3 Amendments or supplements to the Contracts must be made in writing.

- 20.4 Netcloud reserves the right to adapt the GTCs to changed circumstances in future Contracts.

- 20.5 These GTCs may be unilaterally amended by Netcloud. Netcloud shall inform the Customer in an appropriate manner. The new GTCs shall be deemed approved unless the Customer objects to them in writing within one month. An objection shall be understood as notice to terminate the contract. The latest version of Netcloud's GTCs can be viewed at any time at <https://www.netcloud.ch/gtc>.

Netcloud AG, September 1, 2023

Netcloud AG Winterthur, Schlachthofstrasse 19, 8406 Winterthur, Switzerland  
Netcloud AG Basel, Schützengraben 21, 4051 Basel, Switzerland  
Netcloud AG Bern, Waldeggstrasse 37, 3097 Liebefeld, Switzerland

+41 58 344 12 12  
[info@netcloud.ch](mailto:info@netcloud.ch)  
[www.netcloud.ch](http://www.netcloud.ch)