General Terms and Conditions

Fabasoft Cloud

Valid from 2018-05-25
Confidential

Introduction

Fabasoft Austria GmbH, Commercial register number: FN 199728v, Honauerstrasse 4, 4020 Linz, Austria, (referred to hereinafter also as "Fabasoft") sells a range of different Service Packages over the internet.

These General Terms and Conditions (referred to hereinafter also as "GTC") govern the contractual relationship between the Customer and Fabasoft regarding the use of Service Packages selected by the Customer. The Customer can open, read, save and print the current version of this GTC.

As a founding member, Fabasoft has undertaken to comply with the EU Cloud Code of Conduct.

Key information on the scope of the EU Cloud Code of Conduct is available online at https://www.fabasoft.com/cloudservices/eucloudcoc.

1. Subject of Contract

1.1. Upon concluding the Contract, Fabasoft shall grant the Customer a non-exclusive and non-transferable license to use the Service Package (hereinafter also referred to as "Contract") for the duration of the Contract concluded with the Customer

  (i) To save and manage data on the IT infrastructure operated by Fabasoft and hosted at the Fabasoft Cloud data centers and
  (ii) To use software products hosted at this location and
  (iii) To use Cloud Apps and/or Mobile Apps, which are operated on the basis of the Service Package selected by the Customer.

  The license granted to the Customer according to this Contract as well as the services rendered by Fabasoft under this Contract are referred to as "Service Packages".

1.2. Features, characteristics and structure of the Service Package are defined as follows:

  (i) By online registration as Customer in the Fabasoft Cloud.
  (ii) By the Service Package selected by the Customer.
  (iii) By the Service Agreement concluded by the Customer, which also contains the technical specifications of the software made available for use with the Service Package, as well as details about IT specific resources (e.g. available storage space, number of available objects).
  (iv) By the performance characteristics of data center operation (https://www.fabasoft.com/cloudservices/data-center).
  (v) By the performance characteristics of data security (https://www.fabasoft.com/cloudservices/data-security)

1.3. Changes to the herein described GTC and/or Performance Parameters regarding the Service Package selected by the Customer shall be reserved exclusively to Fabasoft. The version of the GTC published in the Fabasoft Cloud Shop at the time of the conclusion of the Contract or at the time of the beginning of a new payment period is applicable to the contractual relationship with the Customer. The same applies to the Performance Parameters of the Service Package selected by the Customer.

1.4. For the contractual relationship with the Customer regarding a free-of-charge Service Package, changes to the GTC and Performance Parameters are possible and applicable

during an existing contract term at any time. After publishing in the Fabasoft Cloud Shop, the most recent version is applicable to the contractual relationship.

2. Registration

2.1. Fabasoft requests information (contact data)that is necessary and useful in order to form a basis of information from which business transactions with interested parties can be negotiated as Customers and from which the Customer can be activated as a user. The description of these contact data can be found in the Annex "Performance Characteristics Data Security" (https://www.fabasoft.com/cloudservices/data-security)

3. Conclusion of the Contract

3.1. The proper completion of the purchase of a Service Package concludes the Contract between the Customer and Fabasoft. These GTC are applicable to this contractual relationship. Upon conclusion of the Contract for a Service Package, the Customer is sent the Service Agreement (including instructions for Consumers for revocation of this Contract) as confirmation of the conclusion of the Contract as well as an invoice for fee-requiring Service Packages by email.

3.2. Fabasoft does not have the technical means necessary to determine with certainty whether a Customer is in fact the person he claims to be. Fabasoft therefore accepts no responsibility for the actual identity of the Customer. Each Customer is solely responsible for confirming the identity of another Customer or a natural person assigned to the Customer.

4. Duration and Termination of the Contract

4.1. The Contract for a free-of-charge Service Package is entered into indefinitely and can be terminated by either contracting party without any reason for doing so with a notice period of one week.

4.2. The Contract for a fee-requiring Service Package is also entered into indefinitely. When concluding the Contract, the Customer selects a payment period (e.g. one year). The contractual relationship can be terminated by either contracting party without any reason for doing so with a notice period of one month to the end of a payment period, for which the Customer has to effect a payment as agreed.

4.3. The conclusion of Service Agreements for certain Service Packages requires the adaptation of the payment period of already purchased Service Packages. During the purchase process in the Fabasoft Cloud Shop, the Customer is alerted to which specific payment period adjustments are implicated with the conclusion of such a Service Agreement.

4.4. Furthermore, the contracting parties shall be entitled to terminate the Contract for good cause without observing notice periods and termination dates with immediate effect.

Any breach of material obligations assumed by the Customer under this Contract, in particular, if the customer is in default with his payments for more than 30 days, any violation of legal regulations by the Customer (i.e. the Customer advertises on behalf of or promotes associations or organizations – or their methods and activities – that are being monitored by security or child protection agencies), submission of incorrect contact data by the Customer to Fabasoft, submission of incorrect payment information by the Customer to Fabasoft or the Customer causes damage or harm to one or more other Customers, shall

constitute good cause which entitles Fabasoft to terminate this Contract with immediate effect. In general, good cause shall also be deemed to exist if one contracting party no longer has trust in the other contracting party within the continuing obligation due to the actions of this party.

4.5. Notice of termination and notice of termination for good cause must be made in writing in due time and sent by the Customer by email to cancel@fabasoft.com or by submitting the properly completed cancellation form, available online under https://www.fabasoft.com/cancel, and by Fabasoft to the email address specified by the Customer at registration. Should the Customer terminate the Contract, they must specify their identification (i.e. name, company, address, company identification number, VAT id) and the email address used for registration in order for the termination to become legally valid. In the event that notice of termination is given, the date on which the notice of termination is received by the other contracting party shall be authoritative in determining whether the deadline has been met.

4.6. At the latest 14 days after cancellation of the Contract, Fabasoft shall inform the Customer via an automatically generated email of the imminent termination of the Contract and of Fabasoft's authorization to delete the Customer's data (customer data) stored in the Fabasoft Cloud data centers. Subject to a term of at least four months and no more than six months after contract termination, Fabasoft shall be explicitly authorized to permanently delete data stored by the Customer in the Fabasoft Cloud data centers (i.e. the data cannot be restored). This deletion shall be carried out by Fabasoft irrespective of the quality, nature and importance of this data for the Customer. If requested by the Customer, who must declare to Fabasoft in writing by email within a period of four month after contract termination, within a period of at least four months and no more than six months after the termination of this Contract, Fabasoft is prepared to hand over data specifically designated by the Customer that the Customer had stored on the infrastructure operated by Fabasoft in accordance with this Contract on machine-readable data carriers in exchange for a fee to be assessed on an individual basis. Documents in the customer data will be handed over in the technical format set by the customer and metadata of the customer data in the Fabasoft XML format.

Fabasoft therefore recommends that the Customer retrieves and removes their data from the system prior to the termination date of this Contract. On the express wish of the Customer Fabasoft will confirm the deletion of the data in written form via email.

4.7. If the Customer downgrades from one Service Package to another Service Package that offers lower Performance Parameters at the end of a payment period, they shall adjust the storage volume they use to the lower Performance Parameters of the newly selected Service Package. Failing this, Fabasoft is entitled to delete customer data as set out in these GTC.

4.8. In the appendix 'Performance Characteristics Data Center Operations', Fabasoft discloses the data center operators that are contracted as subcontractors for each Fabasoft Cloud location. If Fabasoft intends to switch to another subcontractor instead of a subcontractor identified in this way, the proposed switch shall be announced at least one month in advance. The Customer may only object to the use of a subcontractor within a period of 14 days after publication/disclosure of this information on submission of an objectively justified reason. An objectively justified reason is deemed given in particular if there are indications that - provision of the contractual services is endangered or impaired by such engagement, - the collaboration with the subcontractor endangers fulfilment of statutory or contractual obligations of one party to the contract, in particular regulations of supervisory authorities. If no amicable solution can be found between the parties to the contract, both the Customer

and Fabasoft each have the special right to terminate this contractual relationship taking into consideration the formalities according to item 4.5 above. If the Customer selected a period of payment that is longer than the duration of the contractual relationship until such time as the special right of termination was exercised, the Customer shall be reimbursed for the amount overpaid aliquoted on a monthly basis.

5. Customer

5.1. Only Customers and natural persons designated by these Customers (natural persons and their assigned the roles) are authorized to use the Service Package. A Customer is a legal unit (natural person, legal person, plurality of persons) concluding the Contract. The Customer carries the rights and obligations stipulated in the Contract and is therefore obligated to pay in particular the fees related to the Contract. Therefore, the identity of the Customer (e.g. name, company, address, company registration number, and VAT) shall be specified in connection with the Contract. At the signing of the Contract, the Customer determines how many natural persons are attributable to the Customer for paid roles for the use of the Service Package that is the subject of the Contract, as well as which storage volume the Contract stipulates.

6. Performance Parameters

6.1. The various Service Package configurations offer contractually defined Performance Parameters. If these Performance Parameters specified with the Customer at the conclusion of the respective Contract (e.g. the storage volume) are exhausted, further use of the Service Package (for instance, data storage) may not be possible.

The Customer has the option to enter into a new contractual relationship with Fabasoft, whereby the Customer selects a Service Package that offers higher Performance Parameters.

6.2. The data stored for the Customer is all data for which the Customer is registered as the owner (customer data).

6.3. If the Customer upgrades to a Service Package that offers enhanced Performance Parameters during the payment period, and/or if the Customer purchases additional Service Packages during a payment period, the payments for theses Service Packages shall be applied pro rata for the remaining payment period of the original Service Package.

6.4. During a payment period for a fee-requiring Service Package, it is not possible to downgrade to a fee-requiring Service Package with lower Performance Parameters.

7. Payment, Due Dates, Default Penalties

7.1. Subscription oriented payment

7.1.1. The Service Package agreed with the Customer and the current price at the time of completion of the Contract are decisive for determining the fee due to Fabasoft. The price to pay (including the relevant currency) can be seen in the Fabasoft Cloud Shop. Payments can only be accepted in currencies specified in the Fabasoft Cloud Shop. The stated prices do not include sales tax.

7.1.2. The agreed fee is unchangeable at the conclusion of the Contract and remains unchangeable for the duration of the payment period. For any subsequent payment periods, Fabasoft withholds the right (for the first and all subsequent new payment periods) to set a new fee for the use of the Service Package, which then applies from the start of the new payment period. If the price of a new payment period is increased by more than 5% in comparison with the last fee charged, the Customer may terminate the contractual relationship within 14 days of the start of the new payment period with the increased price conditions (of more than 5%) in writing to become effective at the end of the month following the charge of the new price. In the case of termination of the contractual relationship by the Customer due to price increase, Fabasoft will charge the Customer the price applicable prior to the price increase for the duration of the notice period.

7.1.3. Payment of the charges is due in advance when the Contract is entered into and at the beginning of each new payment period.

7.2. Activity oriented payment

7.2.1. These payments concern the use of Service Packages, where their use involves fee-requiring activities. The price to pay per activity (including the relevant currency) is stipulated in the Fabasoft Cloud Shop. Payments can only be accepted in currencies specified in the Fabasoft Cloud Shop. The stated prices do not include sales tax. These payments shall be due in advance (before the first execution of the activity). If the Customer has purchased a package for multiple activities, a time limit exists for these activities to be carried out. The respective time period is stipulated in the Fabasoft Cloud Shop.

7.3. General conditions

7.3.1. Payment of the agreed fee is to be made by automatic bank transfer, direct debit or other similar computer-based payment methods.

7.3.2. The Customer shall not be permitted to offset any receivables to which they are entitled from Fabasoft against payment of the fee. The payment obligation remains effective regardless of whether the requested user accounts are actually used.

7.3.3. Fabasoft expressly reserves the right to terminate or suspend the services being provided, without prejudice to any other rights, in the event of late payment by the Customer. As agreed by both contracting parties, a default interest of 8% above the Base Rate according to BGBl. I Nr. 125/1998, published by the Austrian National Bank applies. In addition, the Customer shall reimburse Fabasoft for any collection costs. Furthermore, Fabasoft shall be authorized to permanently delete data stored by the Customer in the Fabasoft Cloud data centers (see Point 4.6).

8. Warranty

8.1. The requirements of observable and/or content-specific performance and contractual fulfillment and the determination of guaranteed properties and/or the agreed characteristics of the Service Package agreed with Customer (including, for instance, the hardware and software environment required by the Customer, availability, response times, data storage method, as well as the manner in which the Performance Parameters are measured, recorded and documented) are solely determined under the terms of the documents specified in clause 1 of this Contract.

Fabasoft guarantees that the nature, properties and characteristics of the Service Package agreed in each individual transaction with the Customer will essentially meet the Performance Parameters assigned to the specific Service Package in their most recent version.

8.2. If the service is not performed in accordance with the Contract or with errors, and if Fabasoft is able to recreate the situation and this situation falls within Fabasoft's control, Fabasoft shall undertake to perform the service for the Customer at no additional cost in accordance with the Contract and within a reasonable time. This shall be conditional upon the Customer having lodged an immediate complaint, at the latest two weeks after identifying the problem. If the performance of the service in accordance with the Contract fails in large measure for reasons that fall within Fabasoft's control, even after the Customer has expressly set a reasonable grace period, the Customer is entitled to terminate the Contract without notice. In this event, Fabasoft shall be entitled to payment for services performed under the Contract until the point at which termination took place. Payment shall be waived only for those services that the Customer can demonstrate within four weeks of termination to be not of use or interest to them.

Any further claims on the part of the Customer arising from disruption of service, in terms of quality or quantity, are excluded. This exclusion shall not apply in the event of damage caused intentionally or by gross negligence or of death, bodily injury or damage to health.

8.3. Warranty claims are fully excluded in cases where Fabasoft performs its services under the terms of the Contract regarding the use of a free-of-charge Service Package.

8.4. Fabasoft guarantees the high availability of data center operations described in item 2.1 of the appendix 'Performance Parameters for Data Center Hosting.' Should data center operations be actually unavailable for more than 48 hours without interruption outside of the allocated maintenance windows and Fabasoft is responsible for this lack of availability, Fabasoft shall provide remuneration to the Customer instead of other receivables and claims for each calendar month in which such an event occurs. This remuneration is a monthly amount, calculated using the fee for the payment period selected by the Customer, divided on a monthly basis. Fabasoft shall not be responsible for the actual lack of high availability, if the failure is caused by the availability/lack of availability of the Internet or other long-distance transmission technologies and/or if the failure is caused by war, strike, natural disasters or other cases of Force Majeure.

9. Compensation

9.1. Fabasoft's liability for warranty claims, and/or for any losses/damage, shall be limited to actual positive damage caused intentionally or as a result of gross negligence. Fabasoft shall not be liable for consequential or indirect damages. The Customer confirms and expressly agrees that Fabasoft is in no way liable for damages of any sort that the Customer incurs either directly or indirectly following the use of third party content, websites (also hyperlinks), products or resources (hardware and software environment) in connection with Service Packages. Since Fabasoft has no control over the websites, resources and/or materials of third parties, the Customer hereby confirms and expressly agrees that Fabasoft is not liable for direct or indirect damages or for data loss incurred by the Customer resulting from the use of such websites or resources in connection with the Service Packages detailed under clause 1 of these GTC. **Furthermore, Fabasoft shall accept no liability for any loss of data stored by the Customer, in particular due to force majeure or acts that lie within the sphere of influence of the**

Customer. For each individual case covered by the warranty or claim for damages, the maximum amount guaranteed for all possible claims will be limited to the total amount of the fees paid in the past two years.

9.2. In providing its services under this Contract for the use of the Service Package, Fabasoft is reliant on remote data transmission media being available and usable, and on there being an adequate power supply. If Fabasoft is hindered in or prevented from providing services because these essential requirements are not available or not available to the necessary degree, Fabasoft shall not be held responsible for this.

9.3. Fabasoft assures the Customer that it will not access the data and data content (customer data) stored by it within the scope of the operation of the Fabasoft Cloud data centers without first obtaining the Customer's written consent in each individual case, and will instead merely store such data and content in the data centers. Fabasoft shall therefore assume no responsibility – towards either the Customer or third parties – for the content of the stored data.

Any liability for deletions, corrections, modifications, corruption, loss of or failure to save data by the Customer is hereby excluded. This express exclusion of liability shall also extend to software viruses and any other harmful computer codes, files, scripts or programs that may be contained in the stored data.

9.4. The sole responsibility for the content of the data stored by Fabasoft for the Customer under the Contract governing use of the Service Package as well as general responsibility for usage behavior shall rest with the Customer, as if the data were stored internally by the Customer on its own hardware and software. The Customer may therefore only use the services provided by Fabasoft under this Contract in accordance with the national, international, interstate and supranational laws that respectively apply. In particular, but not exclusively, the Customer shall therefore

(i) not send any email spam or other unsolicited bulk email;
(ii) not store or send any offensive or obscene content, or any content harmful to young people or which violates the personal rights of third parties, or any other illegal or impermissible content;
(iii) not create or introduce any software viruses, worms, Trojan horses or other harmful computer codes, files, scripts, spyware or programs and/or send or store any software viruses known to the Customer (or which ought to have been known to the Customer);
(iv) not take any measures capable of compromising Fabasoft's integrity or performance, or which could harm data stored by Fabasoft;
(v) not attempt to gain unauthorized access to Fabasoft's data center operations or the systems and networks associated with these, in particular by assuming the identity of other users or by using false or incorrect information on his identity.

In addition, the Customer undertakes to notify Fabasoft without delay of any unauthorized use of his/her/a user's account as well as to inform Fabasoft of any other violation of data security regulations which becomes known to or is suspected by the Customer via email (support@fabasoft.com) or via phone (+43 732 606162). In such cases, the Customer shall take immediately all reasonable measures to promptly prevent these types of data security violations.

The Customer undertakes to indemnify Fabasoft against any claims or legal action brought against Fabasoft in connection with all such procedures by any person whomsoever, and against any claims, costs, compensation payments, direct and indirect damages, and consequences.

10. Intellectual Property

10.1.   Fabasoft alone, as well as its licensors, shall be entitled to all rights and legal claims, including all associated intellectual property rights, to the software products made available for use, and to suggestions for improvements, ideas, upgrade enquiries, feedback, recommendations or other information provided by the Customer in connection with the software products made available for use. This Contract shall not constitute a sale, nor assign any rights of ownership to or concerning the use of software products provided for use by Fabasoft. As a result, the Customer is not permitted to assign or amend these rights. The product names of the software products available for use are trademarks of Fabasoft or its affiliated companies, to which no ownership rights or rights of use shall be granted to the Customer.

11. Newsletter

11.1.   Fabasoft is entitled to send its regular newsletters to Customers of a Service Package. In these newsletters, Fabasoft provides information on new features and product information for the Service Package.

11.2.   Furthermore, Fabasoft is entitled to send the Customer direct advertising for its own products or services of a similar nature by email. If the Customer no longer wishes to receive information or newsletters electronically, a respective email must be sent to the following email address: unsubscribe@fabasoft.com.

12. General Provisions

12.1.   The contracting parties expressly guarantee that they are legally authorized to enter into the Contract on the use of a Service Package. The Customer shall furthermore expressly assure that the information concerning their identity is accurate and that no false information is or shall be provided in the future in order to gain access to the contracted Service Package. In addition, the Customer gives their assurances that the payment details (account details, credit card numbers, etc.), where provided, are accurate.

12.2.   Fabasoft expressly reserves the right to amend or add to these GTC at any time. The Customer shall regularly review the most recent version of the GTC (refer to https://www.fabasoft.com/cloudservices/gtc). Furthermore, Fabasoft shall notify the Customer at least 14 days about contractual changes before they take effect.

In accordance with the above provisions, reference is made to the most recent descriptions in each case in the sense of a dynamic reference. The referenced documents and links are integral parts of this Contract.

12.3.   The place of fulfillment for all duties of the contracting parties arising under this Contract shall be 4020 Linz/Austria.

12.4.   These GTC, the Contract governing the use of a Service Package, and the question of its effective entry into force, as well as its anticipatory and after effects, shall be subject exclusively to Austrian law, to the express exclusion of the application of international private law, as well as to the express exclusion of the United Nations Convention on Contracts for the International Sale of Goods. The definitive language for this Contract is German. Texts available in other languages represent a non-binding service.

12.5.   The place of jurisdiction shall be the competent court in Fabasoft's place of business.

12.6. In the event that one or more provisions of these GTC are or become ineffective, the effectiveness of these GTC as a whole shall not be affected by this. In this case, the contracting parties shall be bound to replace the ineffective provision with an effective provision which most closely reflects the commercial purpose of the ineffective provision. The same shall apply to any omissions from this Contract.

12.7. Headings used in these GTC are used solely for reasons of structure and to aid the readability of the document. All provisions are to be drawn on when interpreting the GTC, regardless of their position in the document itself.

12.8. The Customer confirms that they have read these GTC and all sources listed as well as links and appendices referred to herein in full, have understood them, and agree to their content.

13. Data Protection Issues and Information on Data Processing

13.1. In accordance with the provisions of this Contract, Fabasoft shall be obliged to prevent data, information or materials transferred by the Customer within the scope of its use of the Service Package provided by Fabasoft under this Contract from being accessed by any person other than Fabasoft itself, and shall be prohibited from using or publishing such data. Insofar as this data includes 'personal data' as defined by the applicable national data protection laws, Fabasoft shall observe data secrecy in accordance with the national material data protection regulations. More detailed information on data protection is available at https://www.fabasoft.com/datenschutz. Fabasoft has a data security team entrusted with legal data protection issues. The Fabasoft Privacy Team can be contacted at privacy@fabasoft.com.

13.2. In the event that Fabasoft is bound, due to legal obligation or during the course of legal proceedings in court or other state authority, to make saved customer data available, Fabasoft will proceed as follows:

(i) Fabasoft will inform the Customer as quickly as possible (electronically) in order to give the Customer the opportunity to attempt to contest the making available of their data by means of legal protection measures at their own cost.

(ii) Fabasoft will – within reasonable means and extent – cooperate with the Customer, in order to protect their data protection interests.

13.3. For the means of handling support requests and other services concerning a Cloud App purchased by the Customer, the further development of this Cloud App as well as the development of new Cloud Apps, the Customer hereby grants their prior and explicit consent that the Customer's personal data (contact data) may be passed on to the relevant developer of the Cloud App purchased by the Customer and that the Customer may be contacted by the developer in the form of electronic mail.

Contact by the developer in this case is governed by general legal terms.

13.4. The Customer also concludes a Data Processing Agreement in compliance with Art. 28 GDPR at the same time as it concludes the Service Agreement (see Annex Data Processing Agreement Fabasoft Cloud, https://www.fabasoft.com/cloudservices/data-processing-agreement)

14. Confidentiality

14.1. The contracting parties will also exchange confidential information under the Contract concluded if necessary. Confidential information is information labeled as 'confidential,' or information whose confidential nature can be derived according to reasonable, commercial prudence.

14.2. The contracting parties will handle each other's confidential information in strict confidence and only use it for the purposes of executing the Contract in question. The confidentiality obligation does not relate to confidential information

   (i)   that is or becomes publicly known or is publicly accessible or
   (ii) that one contracting party receives from a third party, without such party breaching an obligation of confidentiality or
   (iii) that contains information, facts, experience, and know-how that the receiving contracting party already had before the confidential information was disclosed or
   (iv) that one contracting party must disclose due to a statutory obligation or a judicial/regulatory decision.

14.3. Each contracting party will handle the confidential information of the other contracting party at least with the amount of due care with which it protects its own confidential information.

14.4. In the event that a contracting party negligently breaches the obligations derived from this guarantee of confidentiality, the contracting party in breach is obligated to compensate the other contracting party and is also subject to an injunction to cease and desist.

14.5. In the absence of any mandatory statutory provisions that require a longer period of time, the guarantee of confidentiality is in effect for the duration of the term of the Contract and expires two years after the Contract is terminated.

14.6. The contracting parties also mutually undertake not to share actively the personal data obtained through the conclusion and execution of the Contract with any third party for commercial purposes, that is, for the purposes of promoting external competition, without the express consent of the other contracting party. A third party is defined as a legal entity other than the contracting parties and the companies affiliated with them.