

# General Terms and Conditions (GTC) for Mindbreeze InSpire

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For reasons of legibility gender specific differentiation is omitted. Relevant terms in the name of equal treatment apply in principle to both genders.

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# Preamble

The customer has received an offer from Mindbreeze GmbH (hereinafter Mindbreeze) concerning the acquisition for the use of a service package for a hardware-appliance or a Virtual Cloud Appliance Mindbreeze InSpire (hereinafter "service package") and has accepted this offer. The actual agreement is recorded within an order confirmation. The approval of the customer, granted under this agreement, and the rendering of the services are called a service package. These terms and conditions and the order confirmation govern the contractual relationship between the customer and Mindbreeze in regards to the use of the service package selected by the customer, as well as the mutual rights and obligations of the parties.

## 1. Object of agreement

1.1 With the concluded agreement, Mindbreeze grants the customer a non-exclusive and non-transferable license for the fixed duration of the agreement

- (i) for the set-up, operation and use of the hardware associated with the service package (if applicable),
- (ii) for the use of the software product Mindbreeze InSpire on this hardware or Virtual Cloud Appliance, each based on the agreed upon service package. The permitted use and the counting mechanism determining the license fee are conclusively settled in the product information.

1.2 Mindbreeze makes the product information for the Mindbreeze InSpire software product available. This product information regulates the intended use, application conditions of the program, as well as the features and properties of the software product. In each case, the associated product information of a specific product version is applicable. The contracting parties agree that it is not possible to develop software products in such a way that they are bug free for all application conditions. Issues of fact and/or content-related services and contract performance, and the determination of warranted features of the software product apply solely to the specifications described in the product information. The product information is an integral part of the agreement.

The software product is delivered to the customer as a machine-readable copy in which the software product is recorded as a program in an executable state. The application documentation is also a part of the licensed material. The licensed material is protected from duplication. The licensed material includes new editions or supplements, which the customer receives from Mindbreeze during the agreed upon contract period. The same applies to debugged versions. The software product is protected by an electronic license key, which is also a part of the licensed material.

The use includes any full or partial utilization of functions of the software product, undifferentiated, whether this process takes place or may take place in form of a visualized or not visualized interface, simultaneously or asynchronously. The use does not include the decompilation, reverse engineering of the software product into its source code or any other alteration of the software product.

The customer derives its right to use the software product from the licensor.

The order confirmation sets the right to use of the software product for whichever identified organizational unit. This organizational unit is recorded in the license key.

The customer acknowledges that the preservation of his trade secret, propriety data and professional secrecy is solely up to him and his own customers.

The customer is not authorized to make modifications, translations, or other adaptations and transformations to the software product.

Mindbreeze is entitled to review the customer's use of the licensed software, in particular the compliance with the provisions of the license model.

Feature, quality and configuration of parts of the service package selected by the customer are specified in the order confirmation and described as followed:

- (i) Through the advancement and further development of the software product from the customer's service package:

With this service package, the customer is provided, based on the most recent version of the GTC and product information of the product version, with the latest advancement and further development of the software product, even if advances and further development of additional features are included. As a result, the number of documents and calls, agreed upon by the customer, will not increase, rather remains the same.

For each advancement and further development, Mindbreeze provides an updated product information. The correspondent product information of the product version is applicable. This product information regulates the intended use, the application conditions, as well as features and properties of the software product. The delivery of the new version and the correspondent electronic license key may be electronically downloaded or transferred via comparable transfer technologies. The customer is entitled to the receipt of this advancement and further development from the service package, as soon as Mindbreeze includes this advancement and further development into its distribution program. In case of doubt, the customer is entitled to the receipt of the latest rendition of the program from the moment of absorption of the advancement and further development in the price list, but at the latest within two months of this, and once the customer has fulfilled his current payment obligations for the agreed upon service package to Mindbreeze and the customer electronically accepted and confirmed the receipt for the correspondent GTC of the advancement and further development. The conditions of the applicable license agreement (GTC) may be reviewed by the customer at all times and are available online. The agreement does not require Mindbreeze to provide exceeding services in regards to the updating of the software product, in particular no installation, training, troubleshooting, recovery of data files, etc. If the customer is entitled to use the provided new edition of the licensed material, the customer has to return the used version of the licensed material and all copies thereof or to fully erase it from its data carriers, data storage devices or processing equipment three months after beginning the productive utilization of the new edition. Mindbreeze may request proof of this action.

- (ii) From the agreed upon service package the customer will receive the following technical support:

The customer receives the available information through announced updates on the internet (see: <https://inspire.mindbreeze.com>).

The customer receives updates (remedy shortcomings in the form of software updates or service packages) as they become available. Delivery will be made by providing downloads on the internet or via comparable transfer technologies.

In this service package, the customer has the option for electronic support, by means of an electronic portal set up by Mindbreeze (see <https://support.mindbreeze.com>). An additional payment (depending on the performance requirements of the customer) becomes due.

If the customer makes use of the option to receive electronic support by means of this electronic portal, the following applies:

The licensor provides support based on a separate order placed by the customer. The customer has the right to direct an agreed upon number of support enquiries to the licensor, which the licensor will process under these conditions.

A support request is defined as follows: The support request is a problem that cannot be broken down into sub-areas (the smallest unit). If a problem (support request) consists of different parts/areas, each of these parts/areas is considered a single support request. The correction of deficiencies in the software products does not constitute a use of a support request.

Prior to Mindbreeze providing support to a support request, the customer's contact person and the responsible expert at Mindbreeze will agree upon the qualification of the problem, define the parameters for an acceptable solution, and define when this solution is to be provided. A support request may require multiple contacts and investigations until a solution is found. Mindbreeze ensures that the provided information is adequate with state-of-the-art technology.

The customer has the duty to collaborate. The customer shall provide information in regards to the precise system configuration and to convey additional information, as requested by Mindbreeze.

If a support request relates to a technological issue, in accordance with the product information of the relevant Mindbreeze software products that is a part of this support agreement, which is not supported (other technology), the following applies:

Mindbreeze will endeavor to provide support to such a support request. It is clear, by mutual agreement, that Mindbreeze cannot assume guarantees and/or warranties of any kind for such requests. The reason for this lies specifically in the fact that Mindbreeze does not dispose of support infrastructures of such technologies. Additionally, it is impossible to provide technological support for each technology available on the market.

The customer agrees to keep all information strictly confidential, especially all access addresses, access numbers and access codes, which were revealed through Mindbreeze's support services and support materials under this agreement. Mindbreeze will maintain strict secrecy of information concerning source code parts of software products that the customer provides.

- (iii) Through the performance characteristics of the hardware support from the service package, as agreed upon by the customer (does not apply to Virtual Cloud Appliance):

A product information for the provided hardware support is made available by Mindbreeze. This product information regulates the intended use, the application conditions and the features and properties of the hardware product. The product information associated with a product version is applicable. This product information also identifies and specifies the service levels. This product information also forms in its respective current version an integral part of the agreement of the service package. Issues of fact and/or content services, contract performance and the determination of assured properties and/or stipulated features of the support comply solely with the specifications of the product information.

- (iv) Through the features in regards to the hardware transfer, as agreed upon by the customer (does not apply to Virtual Cloud Appliance):

Mindbreeze provides the customer with the specific hardware for the agreed upon contract period specified in the order confirmation. Conditions are described herein.

The customer does not acquire any property rights in the hardware. The customer must handle the hardware in accordance with the operating instructions (see product information), properly and with care.

The Customer bears the risk of loss or damage of the hardware upon delivery for the duration of the agreement. The Customer is therefore obliged to adequately insure the hardware against damage or loss. If a third party claims rights to the hardware by confiscation, seizures or other measures, the Customer is obliged to report to Mindbreeze, and in particular to inform the third party of Mindbreeze's rights. References of ownership attached to the hardware shall remain unchanged for the contract time. The Customer must not transfer, assign or otherwise deal with or grant a security interest in the service package or the Customer's rights under this agreement.

After the termination of the agreement, the Customer is obliged to put the hardware out of service conformable to applicable law and to immediately provide statement in writing to Mindbreeze in proof of legally compliant abandonment / shut down of the hardware. Upon (by Mindbreeze confirmed) receipt of abandonment statement, customer is entitled to destroy and depollute the hardware and hard-disk. Export control regulations and restrictions are under the independent responsibility of the Customer.

### 1.3 Contractual period, termination of contract

- (i) The contractual period for the service package lasts at least three years from the service package delivery at the customer's end. This point in time is displayed as a date on the invoice. The contractual period shall be extended for three years at a time if the contract is not terminated early in a timely manner, six months prior to the end of each fixed term of the contract by either the customer or by Mindbreeze.

The following does not apply to the Virtual Cloud Appliance service package:

The hardware that has been made available to the client in terms of the service package will be renewed every time a contractual period of three years expires, as this is foreseeably conditional for the further and continued development of the software and the availability of hardware support.

Should the client cancel the contract, the new hardware will not be delivered and the contractual relationship will be terminated with the expiry of the fixed, current contractual period.

- (ii) The contracting parties are also entitled to terminate the agreement with immediate effect for significant cause without compliance of notice periods and termination dates.

An important reason entitling Mindbreeze to terminate the contract with immediate effect, is present in particular if the customer violates the assumed obligations of this contract, in particular the assumed payment obligations. Generally, an important reason exists, if through the conduct of a party, the continuing obligation of confidence in the other party no longer applies.

- (iii) The termination notice and the declaration for termination due to significant cause require a written form, and an additional written email to [cancel@mindbreeze.com](mailto:cancel@mindbreeze.com) in a timely manner.

In case the notice shall be relevant to the compliance deadline, the notice of termination of the other party shall be submitted before the period of notice (at least with the signed email as a pdf document).

- (iv) Mindbreeze informs the customer by means of an automated notification about the impending termination of the agreement and the obligations of the client to delete all stored data, free of residue (that is non-recoverable), from the software and/or hardware that has been provided to him for use no later than 14 days prior to the expiration of the notice period for termination. This deletion takes place on the part of the customer by the end of the contract period.

- (v) The following does not apply to the Virtual Cloud Appliance service package:

Upon the expiration of the contract period Mindbreeze informs the customer about the intended collection date for the hardware and the software that has been made available for use. For the purpose of collection Mindbreeze has the right of access to the customer's premises on which the hardware and software are located.

## 2. Fee

- 2.1 The fee for the first year of the service package agreed upon by the contract parties is to be paid by the customer and defined in the order confirmation stipulating the contract. The VAT is charged separately. This fee is due annually and payable beforehand with receipt for payment.
- 2.2 The annual fee will be adjusted. The CPI 2010, or a substitutionary index closest to it, will be the agreed measure for the calculation of the guarantee value. The index figure published in the month the contract comes into effect is the starting basis for the calculation of the guaranteed value. The annual fee varies to the same extent as the basis changes to the index figure for the beginning of each subsequent contract year.
- 2.3 The customer is not permitted to set off its claims against claims of Mindbreeze, unless the customer's claim is legally established in court or explicitly acknowledged in writing by Mindbreeze. In the event of default of payment, the customer owes statutory interest.

## 3. Warranty

- 3.1 Mindbreeze ensures the contractual use in accordance with the associated product information of the particular software for the licensed material in the version handed out to the customer and for the use of the provided hardware (if applicable). In case of significant deviations, Mindbreeze is entitled to and also required to rectify, if not bound by unreasonable effort. If Mindbreeze does not succeed within a reasonable time to eliminate or avoid the significant deviation, so that the customer is granted the contractual use, or if Mindbreeze rejects the subsequent improvement

due to unreasonable effort, the customer may demand a reduction of the annual fee or the cancellation of the agreement.

Mindbreeze's obligation to act in accordance with this contractual duty article ends with the expiration of six months after the delivery at the customer's end. For damage claims, the regulations under section 4. Liability warranty are applicable.

- 3.2 The customer has to consider the product information, the application documentation and possible notes by Mindbreeze, when determining limitations and reports of errors or defects. The customer shall, within reason, take necessary measurements to determine the localization, limitation and documentation of errors and other defects. This includes especially the creation of a defect report, system logs and dumps, the provision of the relevant input and output data, intermediate and test results, and other appropriate documentation to illustrate the error. In any event, Mindbreeze safeguards only for such errors and/or other defects that can be reproduced at Mindbreeze.
- 3.3 At the request Mindbreeze, the customer permits Mindbreeze or its authorized personnel access to the location where the service package is installed. In this case, technical equipment such as electricity, telephone connection and data transmissions required for the performance of local work shall be made available to Mindbreeze's staff at no cost.
- 3.4 The warranty does not cover defects caused by deviation from the intended application conditions specified in the product information or by deviations from the application conditions for the hardware (if applicable) as specified in the product information. It is in the customer's own responsibility to obtain the required permissions from the competent authorities. In case the licensed material or the hardware (if applicable) is used without complying with the application conditions, the obligation for warranty is cancelled. Mindbreeze excludes warranty for other cases, excluding those mentioned above.

## 4. Liability warranty

- 4.1 Mindbreeze assumes judicially imposed costs and compensation payments in case of infringement of third party rights toward the customer, if the customer promptly notifies Mindbreeze in writing, so that all protective measures and settlement negotiations may remain for Mindbreeze.
- 4.2 If claims have been asserted or are expected against the customer in accordance with clause 4.1, Mindbreeze may, at its own expense, replace or modify the licensed material in a reasonable scope for the customer. If this or the obtaining of a right of use is not possible within reasonable effort, each party may terminate the license without notice for the software product in question. In this case Mindbreeze is liable to the customer for the damage caused by the dismissal of section 4 clause 4.4.
- 4.3 Mindbreeze is exempted of obligations if the claims according to section 4 clause 4.1. rely on the fact that the customer-supplied software product has not been used in a relevant, unaltered original version or under application conditions not specified in the product information.
- 4.4 Mindbreeze is exclusively liable to the customer for culpably caused direct damage (personal injury and property damage, other than damage arising from data or program loss) up to the amount of the annual fee for this service package. The annual fee without VAT is applicable at the accrual of the claim.
- 4.5 Further claims of the customer against Mindbreeze, and its performing and vicarious agents, for example, claims for late delivery, impossibility of delivery, fault in the conclusion of the contract, claim for compensation of indirect damage, consequential damage, damage of malfunction, loss of profits, failure to realize savings, data and program loss or prohibited action, are excluded, unless they are based on intent or gross negligence by Mindbreeze. The same disclaimer applies to such property claims caused by a defective software product or hardware (if applicable) from the service package.

If in the cases enumerated here, liability of Mindbreeze is assumed by mandatory law, these claims presume that

- (i) features guaranteed in writing are missing or



- (ii) Mindbreeze agrees to provide a service that in advance was not at all possible (initial incapacity under the law).
- 4.6 In any case, such claims against Mindbreeze and its performing and vicarious agents shall expire within twelve months after the occurring of the damage.

## 5. Miscellaneous

- 5.1 Modifications or additions to this agreement, made before its newest edition and publication on the official webpage of Mindbreeze, require a written form and cannot be made electronically. The same applies to any waiver of this clause of the written form itself. From the date on which the new edition and publication on the official Mindbreeze website is present, the previously agreed upon written form requirement for the latest updated version applies.

If the amendments to these General Terms and Conditions are necessary due to changes in the legal basis, e.g. changes in the legal/regulatory situation, new supreme court rulings, etc., the respective amendment to these General Terms and Conditions shall take effect on the specified date of entry into force.

The respective new editions are available at <https://inspire.mindbreeze.com/contracts-and-information>.

- 5.2 This agreement – including the attachments and supplements as a part of this agreement – and the question of the valid realization thereof, as well as their advance effect and aftereffects are subject to Austrian law under explicit exclusion of the application of the rules of private international law and under exclusion of the UN-Sales Convention.
- 5.3 This certificate provides together with the underlying order confirmation for the concrete agreement conclusion and stated documents of this certificate present all contractual agreements between the parties in regards to the service package. The other elements of the agreement, the product information is considered an integral part of this contract. The customer acknowledges and confirms that before signing this agreement these documents were at his disposal and that he has read and agreed to their content.
- 5.4 All disputes arising out of this agreement, including the attachments and supplements as a part of this agreement, as well as the question concerning their validity, likewise their advance effects and aftereffects are exclusively to be ruled upon by the court locally responsible for Mindbreeze, also at the discretion of Mindbreeze by the jurisdiction of the law of court in the district in which the customer has its registered office, a branch or assets. Jurisdiction is for A-4020 Linz.
- 5.5 In the case of use of the Mindbreeze website, the customer fully accepts the terms and conditions of the site and services of Mindbreeze, in particular in terms of participation in discussion forums.
- 5.6 Should one or more provisions of the agreement wholly or partially become invalid or unenforceable, the validity and enforceability of the remaining provisions of this agreement shall not be affected. The invalid or unenforceable provision shall be replaced by that provision which comes closest to the economic and technical purpose. The same applies in the event that the agreement has a regulatory gap. In this case, an appropriate provision, as the parties would have wanted, applies, provided they had considered the corresponding article in this agreement. This paragraph shall not apply to consumers.
- 5.7 For notifications and communications regarding security and data protection incidents, for any complaints or ambiguities and when requesting support with regard to the customer's data protection-related obligations (as a controller), the customer can reach Mindbreeze through the following channels:
- by e-mail: [privacy@mindbreeze.com](mailto:privacy@mindbreeze.com)
  - by post: Mindbreeze GmbH, c/o data protection, Honauerstrasse 2, 4020 Linz, Austria

All requests and enquiries are to be made in writing and sent to Mindbreeze.

In order to prevent misuse of the relevant rights by unauthorised persons, evidence of the identity of the enquiring party or the data subject must be provided to Mindbreeze in a suitable form.

As a Fabasoft company, Mindbreeze has a data security team at its disposal that is dedicated to data protection issues (“Privacy Team”), which can be reached through the aforementioned channels.

The contact details of the data protection officer are currently available at <https://inspire.mindbreeze.com/privacy-policy>.