

# General Terms and Conditions (GTC)

Fabasoft Private Cloud

Effective from October 18<sup>th</sup>, 2015

[www.fabasoft.com](http://www.fabasoft.com)

## Preamble

The customer has received an offer from Fabasoft Cloud GmbH (hereinafter Fabasoft) to conclude a contract for use of a Service Package and has accepted this offer. The actual contract concluded is set out in an order confirmation. The license granted to the customer according to this contract as well as the services to be rendered by the contracting parties under this contract are referred to as the 'Service Package'. Together with the order confirmation and the appendices specified, these General Terms and Conditions govern the contractual relationship between the customer and Fabasoft regarding the use of the Service Package chosen by the customer and the mutual rights and obligations of the contracting parties.

## 1. Subject of Agreement

1.1. Upon signing a contract, Fabasoft shall grant the customer a non-exclusive and non-transferable license for the duration of the contract

- (i) to set up, commission and use the hardware belonging to the Service Package,
- (ii) to use the software product installed on this hardware,
- (iii) to use any mobile apps sold with the Service Package chosen by the customer,

always in accordance with the specifications in the order confirmation and the quantity structure included therein.

1.2. The properties, features and configuration of the Service Package chosen by the customer are specified in the order confirmation and are generally described as follows:

- (i) By the number of people, roles and storage volume selected by the customer for use of the Service Package.

Only customers and natural persons specified by these customers (assigned natural persons and their role) are authorized to use the Service Package. A customer is understood to be a legal entity (natural person, legal person, body of persons) who concludes the contract, has the rights and obligations arising from the contract, and pays the fees associated with the contract. Therefore, the identity of the customer must be specified in connection with the conclusion of the contract (such as name, company, address, company registration number, VAT ID no.).

Upon concluding the contract, the customer specifies how many individuals to be assigned to the customer are intended for fee-based roles for use of the Service Package forming the basis of the contract, and what storage volume underlies the contract.

The software product records all use of the Service Package by the customer and the natural persons named by the customer and shows this number in the user interface visible to the customer. This counting process is alone decisive for determining the number of people who work with the software product.

The software product is provided to the customer pre-installed in the hardware belonging to the Service Package. Licensed material also includes the application documentation and new editions, supplements or corrected versions of the licensed material that the customer receives from Fabasoft during the agreed contract duration. The software product is protected by an electronic license key, which is also part of the licensed material.

Fabasoft has product information available for the software product in accordance with 1.1 (ii) (iii). This product information sets out the intended use, program operating conditions and the properties and features of the software product. The product information associated with the specific product version applies. The contracting parties agree that it is not possible to develop software products to make them free of errors for

all application conditions. The requirements of observable and/or content-specific performance and contractual fulfillment and the determination of guaranteed properties of the software product are determined solely in accordance with the specifications in the product information. The product information forms an integral part of the contract.

Use includes any full or partial use of functions of the software product, regardless of whether this process takes place or can take place as part of a visualized or non-visualized interface, simultaneously or asynchronously. Use does not include decompiling, reverse engineering of the software product into its source code or other modifications to the software product and/or the licensed material.

Use of each piece of software pre-installed on contractual hardware is only permitted on and with this hardware. All information regarding the pre-installed software must be treated as confidential vis-à-vis third parties.

Customers acknowledge that they alone are responsible for safeguarding their business, operational and trade secrets.

Fabasoft is entitled to check how the licensed software is being used by the customer, in particular with regard to compliance with the provisions of the licensing model.

- (ii) By the further and continued development of the software product provided to the customer from the Service Package:

Within this Service Package, the customer is provided with the latest approved further and continued development of the software product in accordance with the latest version of the General Terms and Conditions and product information associated with the product version, even if this further and continued development includes additional functions. The quantity structure agreed with the customer in the order confirmation is not changed as a result.

The new edition and associated electronic license key is made available electronically for download or using comparable technologies. The conditions of the applicable license agreement (General Terms and Conditions) can be accessed by the customer electronically at any time and are available to the customer online (see: <https://www.fabasoft.com/private-cloud/contract>). Based on the agreement for updating the software product, Fabasoft has no obligation to carry out any service beyond licensing, in particular installation, training, troubleshooting, data recovery, and so, unless the customer also obtains the service feature under 1.2 (vii) pursuant to the specifications in the order confirmation. The customer will use the further and continued development of the software product soon after it has been provided.

- (iii) By the software support agreed with the customer from the Service Package:

From the agreed Service Package, the customer receives the following technical support:

From this Service Package, the customer has the opportunity to obtain electronic support by way of an electronic portal set up by Fabasoft (see: <https://www.fabasoft.com/support>) (depending on the performance requirements of the customer); customers carry out first-level support themselves.

If the customer takes the opportunity granted to obtain electronic support by way of this electronic portal, the following applies:

A support query is defined as follows: The support query relates to a problem that cannot be broken down into subdivisions (smallest unit). If a problem described in a support query consists of various components/areas, each of these components/areas is considered a single support query.

Before Fabasoft provides support in the event of a support query, the contact persons of the customer and the responsible Fabasoft support expert will agree on how to classify the problem, set the parameters for an acceptable solution and define when this solution will be provided. A support query can require several instances of contact and investigations until the solution is found. Fabasoft guarantees that the information provided is suitably in accordance with state-of-the-art technology.

The customer has an obligation to cooperate. The customer must provide information for the specific system configuration and supply additional information, as requested by Fabasoft.

If a support query relates to a technology topic that is not supported in accordance with the respective product information for Fabasoft software products covered by this agreement (other technology), the following applies:

Fabasoft will endeavor also to provide support in response to such support queries, but it is agreed that Fabasoft will make no assurances and/or guarantees whatsoever for such requests. The particular reason for this is that Fabasoft has no support infrastructure for this other technology, and it is impossible to provide support for all technologies on the market.

Customers undertake to keep strictly confidential all information that they become aware of under this agreement concerning Fabasoft support services and support material, especially all access addresses, access numbers and access codes.

(iv) By the hardware provided to the customer from the Service Package:

Fabasoft makes hardware product information available for hardware that it provides to the customer. This product information sets out the intended use, operating conditions and the properties and features of the hardware product. The product information associated with the product version applies. This product information in its latest version also forms an integral part of the contract for the Service Package. The requirements of observable and/or content-specific performance and contractual fulfillment and the determination of guaranteed properties and/or agreed features of the hardware are determined solely in accordance with the specifications in the hardware product information.

(v) By the hardware support agreed with the customer from the Service Package:

Fabasoft has a support description for hardware support from the Service Package available for the hardware support that it provides. This support description also identifies the service levels, setting them out in more detail. This support description in its latest version also forms an integral part of the contract for the Service Package. The requirements of observable and/or content-specific performance and contractual fulfillment and the determination of guaranteed properties and/or agreed features of the support are determined solely in accordance with the specifications in the support description.

(vi) By service features regarding the convenience agreed with the customer concerning the provision of hardware:

Fabasoft provides the customer with the hardware specified in the order confirmation for use in accordance with the conditions agreed herein for the agreed contract duration.

The hardware is owned by Fabasoft; the customer is therefore obliged to handle the hardware properly and with due care in accordance with the operating instructions (see product information).

The customer bears the risk of loss or damage to the hardware from delivery of the hardware until it is collected by Fabasoft. The customer is therefore also obliged to adequately insure the hardware against damage or loss. Should a third party assert rights to hardware by seizure, attachment or similar measure, the customer is obliged to immediately give Fabasoft written notification and inform the third party in particular of the property rights of Fabasoft. Notices attached to the hardware by Fabasoft referring to the property right of Fabasoft must remain unchanged on the hardware for the duration of the contract.

After the contract duration, all the hardware must be stored in its original packaging without defects and in order, ready to be collected by Fabasoft. Customers are obliged to permanently delete data stored on the hardware by them before returning the hardware. If the customer does not return the hardware to Fabasoft after the agreed contract duration, Fabasoft is entitled at its discretion to demand payment of the list purchase price for the hardware in effect at the start of the contract concurrently with transfer of ownership of the hardware, instead of asserting a claim to recover the goods. The customer will inform Fabasoft in writing about the respective installation location (with precise postal address) of the hardware. Export control regulations must be observed by customers under their sole responsibility.

- (vii) By service features for supporting the customer in the 'fully managed' performance parameter of the Service Package, provided this is included in the order confirmation.

Customers initially have the opportunity to take it upon themselves to deal with operational issues without support from Fabasoft. If however the customer decides to seek operational support from Fabasoft, Fabasoft is deemed to have also offered these services to the customer.

In accordance with the support description 'fully managed' in the order confirmation, Fabasoft will carry out the support services listed in the corresponding full specification catalog.

### 1.3. Duration and Termination of the Contract

- (i) The duration of the contract for the Service Package is three years from delivery of the hardware and software to the customer. This point in time is displayed as a date in the invoice. The contract duration will be extended by three years unless the contract is terminated in good time by the customer or Fabasoft subject to notice of termination of six months before the end of the fixed contract duration.

The hardware made available to the customer within 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.

If the customer terminates the contract, the new hardware will not be delivered; the contractual relationship will end upon expiry of the fixed contract duration running at that time.

- (ii) Furthermore, the contracting parties shall be entitled to terminate the contract for good cause, without observing notice periods and termination dates, with immediate effect.

Good cause entitling Fabasoft to cancel the contract with immediate effect particularly exists if customers breach the material obligations undertaken by them under this contract, especially payment obligations. 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.

- (iii) Notice of termination and notice of termination with good cause must be given in good time in writing and also by written e-mail to [cancel@fabasoft.com](mailto:cancel@fabasoft.com).

In the event that notice of termination is given, the date on which the notice of termination is received by the other contracting party (at least with a signed e-mail as a PDF document) shall be authoritative in determining whether the deadline has been met.

- (iv) Not later than 14 days before the end of the notice period, Fabasoft will inform customers by giving notification of the impending end to the contract and their obligation to fully (that is, permanently) delete the data stored on the software and hardware provided for their use.

The customer must complete this process of deleting data by the end of the contract duration.

- (v) At the end of the contract duration, Fabasoft will inform the customer about the intended collection date for the hardware made available for use and the software found on it. For the purpose of collection, Fabasoft is entitled to access the customer's premises where the hardware and software are located.

## 2. Fee

- 2.1. The fee for the first contract year payable by the customer from the Service Package as agreed between the contracting parties is defined in the order confirmation, which sets out the contract concluded. Value-added tax is charged separately. This fee is due for payment annually in advance upon billing.
- 2.2. The annual fee is index adjusted. The CPI 2010 or the closest index replacing it is agreed as the benchmark for calculating the index adjustment. The index value announced for the month the contract comes into effect is considered the starting point for calculating the adjustment. The annual fee changes to the same extent that this starting point for the index value changes with respect to the index figure for the beginning of each subsequent contract year.
- 2.3. Customers are not allowed to set off their claims against claims of Fabasoft unless the customer's claim is judicially established or expressly recognized by Fabasoft in writing. In case of delayed payment, the customer will owe statutory interest.

## 3. Warranty

- 3.1. For the licensed material in the version provided to the customer and the hardware made available for use, Fabasoft guarantees contractual use in accordance with the respective associated product information. In the case of serious deviations, Fabasoft is entitled and, unless this involves unreasonable effort, also obliged to perform subsequent improvements. If, within a reasonable time, Fabasoft does not correct the deviation through subsequent improvement or work around it in such a way that the customer can still make contractual use of the goods, or if Fabasoft refuses to carry out subsequent improvement on the grounds of unreasonable effort, the customer can demand a reduction in the annual fee or the withdrawal of the contract. The obligation of Fabasoft to act in accordance with this contract section ends at the end of six months from delivery to the customer. Claims for damages are governed by provisions under section 4. Liability Guarantees.
- 3.2. When determining, isolating and reporting faults or defects, the customer must observe the product information, application documentation and any instructions from Fabasoft. The customer must also immediately report any faults or defects to avoid forfeiting the right to

make a claim. Within reason, the customer must take the measures necessary to detect, isolate and document faults or other defects. This primarily includes compiling a defect report, system logs and memory dumps, providing input and output data, intermediate and test results and other documents suitable for illustrating the fault. In any event, Fabasoft only offers a warranty for such errors and/or other defects that can be reproduced at Fabasoft.

- 3.3. At the request of Fabasoft, the customer will grant it or persons authorized by it access to the location where the Service Package is run. In this case, the Fabasoft personnel will be given the technical equipment needed to carry out the work on site, in operational condition and free of charge, such as power supply, telephone connections and data transmission services.
- 3.4. The warranty does not extend to defects caused by deviations from the operating conditions intended for the software product and set out in the production information or by deviations from the operating conditions intended for the hardware and specified in the product information. The customer is obliged to obtain any approvals from respective authorities that may be needed for the possession and use of the Service Package. If the licensed material or hardware is used without complying with the operating conditions, the warranty obligation ceases to apply. Fabasoft does not offer a warranty for cases other than those expressly set out above.

## 4. Liability Guarantees

- 4.1. If third-party copyrights are breached by the software, Fabasoft will assume any court-imposed costs and damages in relation to the customer, provided that the customer informs Fabasoft of such claims immediately in writing and Fabasoft is reserved the right to execute all defense measures and settlement negotiations.
- 4.2. If claims are asserted or expected against the customer pursuant to section 4. clause 4.1, Fabasoft can amend or replace the licensed material at its own expense to the extent deemed reasonable for the customer. If it is not possible to do this or obtain a right of use using reasonable effort, each contracting party can terminate the license for the software product concerned without notice. In this case, Fabasoft is liable to the customer for the damage incurred through termination pursuant to section 4. clause 4.4.
- 4.3. Fabasoft has no obligations if the claims under section 4. clause 4.1 are based on data or programs provided by the customer or are due to the Service Package not being used in a valid, unaltered original version or being used in accordance with operating conditions other than those specified in the product information.
- 4.4. Fabasoft is liable to the customer exclusively for direct damage caused by negligence (personal and property damage, excluding damage resulting from loss of data or programs) up to the amount of the annual fee for this Service Package. The annual fee without the value-added tax applicable when the claim arose applies.
- 4.5. Further claims by the customer against Fabasoft as well as its vicarious agents, such as claims for compensation due to delayed delivery, impossibility of delivery, fault in the formation of contract, claim for compensation for indirect damage, consequential damage, operating malfunction damage, lost profit, missed savings, data and program loss or due to tort are excluded, unless they are based on intent or willful gross negligence. The same liability disclaimer also applies to such material damage as is caused by a defective software product or the hardware from the Service Package.

If Fabasoft is nevertheless liable under mandatory law in the cases listed here, it will be assumed, with respect to these claims for damages, that

- (i) features assured in writing are lacking, or

- (ii) Fabasoft promised a service that was not at all possible from the outset (initial inability to perform within the meaning of the law).
- 4.6. In any event, such claims for compensation against Fabasoft and its vicarious agents will expire within twelve months after the damage event occurred.

## 5. General Information

- 5.1. Changes or additions to this agreement must be made in writing before its new edition and publication on the official web page of Fabasoft and cannot be made electronically until such time. The same applies to any waiver of this clause for the written form requirement. From the date from which the new edition and publication are available on the official web page of Fabasoft, the written form requirement agreed above applies to this then-latest version.
- 5.2. This agreement – including the appendices forming part thereof – and the question of its validity, as well as its effects before and after conclusion shall be subject to Austrian law exclusively, and international private law and the United Nations Convention on Contracts for the International Sale of Goods are hereby explicitly excluded.
- 5.3. This document, together with the order confirmation underlying the specific business transaction, and the documents deemed part of the contract in this document represent all contractual agreements between the contracting parties regarding the Service Package. These other contract components and the product information are regarded an integral part of this contract. Customers acknowledge and confirm that they were given access to these documents before signing this agreement, have read them and agree with their contents.
- 5.4. All disputes arising out of this agreement, including appendices and supplements forming part of this agreement, and the question of their validity as well as their effects before and after conclusion are decided exclusively by the competent court for the Fabasoft headquarters and, at the discretion of Fabasoft, by the competent court in whose district customers have their registered seat, a branch or an asset. The place of performance is Linz, Austria.
- 5.5. If the Fabasoft website is used, the customer accepts in full the terms of usage of the website and services of Fabasoft, especially regarding participation in discussion forums.
- 5.6. If one or more contract provisions is (are) or become(s) completely or partially ineffective or unenforceable, this will not affect the validity and enforceability of the remaining provisions herein. The invalid or unenforceable provision will be deemed replaced by a provision that best reflects the economic and technical purpose of the invalid or unenforceable provision. The same applies in the event that the contract is found to contain a loophole. In this case, the suitable provision will apply that the contracting parties would have wanted if they had considered the section in question when concluding this contract. This paragraph will not apply to consumers.
- 5.7. Fabasoft is entitled to send out regular newsletters to Service Package customers. In this newsletter, Fabasoft provides information about new features and product information about the Service Package and about other products of Fabasoft, for example. With the conclusion of the contract for a Service Package, the customer expressly agrees to receive electronic mail, particularly newsletters. If a customer no longer wishes to receive information and/or newsletters electronically, the customer can send an e-mail to the e-mail address [unsubscribe@fabasoft.com](mailto:unsubscribe@fabasoft.com).
- 5.8. The contracting parties expressly guarantee that they are legally authorized to enter into the contract for the use of a Service Package. Customers furthermore expressly assure that the information on their identity is accurate and that no false information is or will be provided in the future in order to gain access to the contracted Service Package. In addition, customers



give their assurances that the payment details (account details, credit card numbers, and so on), where provided, are accurate.

- 5.9. Fabasoft reserves the express right to amend or to add to these General Terms and Conditions at any time. The customer shall regularly review the most recent version of the General Terms and Conditions (see link <https://www.fabasoft.com/private-cloud/contract>).

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.

Appendices:

- Software Product Information Fabasoft Private Cloud
- Hardware Product Information Fabasoft Private Cloud
- Software Support Description Fabasoft Private Cloud
- Hardware Support Description Fabasoft Private Cloud
- 'Fully managed' Support Description Fabasoft Private Cloud