

# General terms and conditions of business

## braintec

As of 01.09.2023

### 1. scope of application

1.1 These General Terms and Conditions apply to all services provided by

- of braintec AG,
- of brain-tec Germany GmbH,
- of brain-tec Austria GmbH
- and brain-tec Spain SL

*(hereinafter referred to jointly as braintec)*

be provided.

1.2 The commercial conditions applicable to the individual transaction, such as BT products, BT app, services, prices, etc., are regulated in the respective written offer.

1.3 The general terms and conditions that were published on the braintec website at the time or that were sent to the customer as an attachment to the offer at the customer's request are decisive for every contract conclusion, whether it was agreed verbally or in writing, tacitly or formally. Braintec contracts and therefore provides its services exclusively on the basis of its general terms and conditions. The customer's general terms and conditions or changes to braintec's general terms and conditions require the express written consent of braintec to be valid. This also applies if braintec does not object to the customer's terms and conditions after receipt or notification of them.

1.4 When reference is made to braintec below, this refers to the business division or business unit that has concluded the contract with the customer.

### 2. Conclusion of contract

2.1 Contracts between braintec and its customers are concluded by the respective written offer signed by the customer.

### 3. Contract term

3.1 If a contract is concluded by means of acceptance of the offer by the customer, the contract shall come into force on the date of the customer's signature, unless otherwise provided in the offer.

### 4. Service provision

4.1 braintec provides IT services in the information technology sector. braintec processes personal data only in accordance with the customer's instructions.

4.2 All services provided by braintec are of a contractual nature (Art. 394 et seq. Swiss Code of Obligations). The customer is responsible for the successful implementation of the project. All provisions typical of a work contract regarding warranty (in particular conversion) and liability for success therefore do not apply and are hereby excluded to the greatest extent possible by law.

4.3 braintec can either provide the contractually owed services itself or have them provided in whole or in part by third parties. In this case, braintec contractually ensures that the third parties comply with at least the same

level of data protection as braintec. The third parties or categories of third parties will be disclosed to the customer.

4.4 The contractual services will be provided, at braintec's discretion, either at braintec's business address, in the home office of braintec's employees or at the customer's premises.

4.5 braintec ensures data security when providing the contractually agreed services in the company as well as in the home offices of braintec employees.

## **5. Deadlines**

5.1 Dates specified for the provision of services are not considered to be due dates or fixed dates within the meaning of Articles 102, paragraph 2 and 108 of the Swiss Code of Obligations. They are to be understood as guidelines only and are not binding for braintec.

## **6. Handover and acceptance**

6.1 With regard to the services provided by braintec, no (formal) handovers or acceptances take place.

## **7. Billing of services based on time and material costs ("time and material"); prices**

7.1 Braintec's services are billed exclusively according to the time and materials used.

7.2 All prices are exclusive of VAT and any other taxes.

7.3 braintec is entitled to change its prices at any time with 60 days' notice. Reasons for such a price change include, in particular, technical progress, possible price increases and the further development of the software.

7.4 If braintec provides information on prices for services or complete systems, these are intended solely as a guide for the customer and do not represent a fixed price, a binding cost ceiling or an approximate cost estimate. The indication of an expected service expenditure does not take travel time and travel expenses into account.

7.5 If the project is terminated prematurely by the customer or braintec, the work already performed will be remunerated according to the effort involved.

## **8. Payment terms**

8.1 braintec invoices are to be paid within 30 days (due date). After this period has expired, the customer is in default without further notice.

## **9. Travel time and travel expenses**

9.1 Travel time is considered working time and will be billed according to the time spent, as well as the actual travel expenses incurred.

## **10. Customer's default in payment**

10.1 If the customer defaults on payment of a braintec invoice, braintec may suspend the provision of services and withdraw from the contract without notice.

## **11. Obligation to cooperate**

11.1 The customer must create all conditions within his area of responsibility so that braintec can provide the services owed.

## **12. Rights to the work result**

12.1 All rights to the work results created by braintec or its subcontractors remain with braintec. The customer receives a non-exclusive, non-transferable and temporally unlimited right of use.

## **13. Liability and warranty**

13.1 For each service, braintec takes into account its knowledge and experience as well as the generally accepted technical and scientific principles of information technology and applies the appropriate level of care. All services provided by braintec are purely contractual in nature (Art. 394 ff OR). Unless otherwise provided in

these General Terms and Conditions, any warranty is excluded except in the case of defects caused intentionally or through gross negligence. The warranty is excluded in any case in the following cases:

- improper operation or subsequent changes to the conditions of use and operation without the consent of braintec;
- if there are reasons for which the customer is responsible, such as modifications to the software or individual parts thereof, whether by the customer himself or by third parties not authorized by braintec;
- in the event of external causes beyond braintec's control (which include, in particular, cases of force majeure)
- when using a software solution that has been classified as end-of-life by the manufacturer

13.2 For the elimination of faults, malfunctions, etc. for which braintec is not liable for the warranty, the corresponding services of braintec are subject to compensation and can be invoiced to the customer at the applicable conditions.

13.3 braintec is liable to the customer for damages that can be traced back to the present contractual relationship regardless of the legal basis – only in the case of intentional or grossly negligent causation and for personal injuries caused. In any case, liability is limited to compensation for direct damage and to a maximum of 1% of the agreed price of the defective BT product or BT app or the faulty service. In the case of recurring services (maintenance, etc.), 1% of the annual fee is the price of the service. Any liability is excluded to the greatest extent permitted by law for indirect damages, consequential damages, purely financial losses such as lost profits, unrealized savings, the customer's own expenses, recourse claims of third parties, damages due to delay, damages from data loss and data corruption, damages from the commercial use of BT products, BT apps, for auxiliary persons and for costs resulting from the involvement of third parties, as well as for damages whose occurrence the customer could have prevented by taking reasonable measures – such as in particular by backing up data. Braintec excludes liability for employees and assistants in accordance with Art. 101 para. 2 of the Swiss Code of Obligations.

#### **14. Offsetting exclusion**

14.1 The customer may only offset claims made by braintec against counterclaims that have been acknowledged in writing by braintec or have been legally established by a court judgment.

#### **15. Third-party software**

15.1 The customer must obtain the licenses required to operate the software from third-party suppliers (Odoo, frePPLe, etc.) to use the third-party software directly from the manufacturer. The customer must conclude the corresponding license agreement directly with the manufacturer. braintec only provides the customer with an offer to conclude the contract, which must be made exclusively by the customer via braintec.

15.2 Only the license terms of the third-party provider apply. The correct licensing of the software and all associated documentation is the sole responsibility of the customer and braintec is not liable for legal claims of the manufacturer if the customer knowingly or inadvertently licenses incorrectly.

15.3 braintec assumes no liability or warranty for the third-party software. Any defects and resulting disadvantages and damages are subject exclusively to the provisions of the third-party manufacturer.

#### **16. Software from braintec (BT products or BT apps)**

16.1 braintec grants the customer the non-exclusive, non-transferable right to use the BT products or BT apps, including any documentation, on the customer's system intended for use for an indefinite period of time.

16.2 All other rights to services created within the scope of the contract shall remain with braintec.

16.3 braintec provides the customer with the BT products or BT apps in electronic form. Documentation will only be provided if it is provided by braintec as standard. The installation of the BT products or BT apps is to be agreed separately between braintec and the customer as an additional service.

- 16.4 Any violation of the provisions governing the use of the software will result in a contractual penalty of ten times the license fee for any unauthorized intervention. Payment of the contractual penalty does not release the customer from his or her contractual obligations. The contractual penalty will be offset against any damage. However, compensation for any additional damage remains reserved.
- 16.5 The customer acknowledges the intellectual property rights of BT products or BT apps and documentation and will leave the corresponding intellectual property notices unchanged. The customer undertakes not to make BT products or BT apps and documentation accessible to third parties or to publish them, either in whole or in part.
- 16.6 The granting of a license is subject to full payment of the license fees. If the customer fails to pay the license fees, he will lose all rights to use the unpaid software after a single written reminder and is obliged to delete all copies of the software and return documentation to braintec.
- 16.7 License fees are merely compensation for the granting of the right of use and do not entitle the customer to use additional services such as maintenance and support.
- 16.8 Unless otherwise agreed in writing with the customer, braintec may invoice one-off license fees after conclusion of the contract; recurring license fees are due for payment in advance for each calendar year and the usage-based fees are invoiced to the customer monthly at the end of each month.
- 16.9 With regard to the two BT products (braintec Swiss Payroll and braintec Time Management, hereinafter referred to as BT products), braintec provides the customer with a warranty in accordance with the following conditions: In order to protect his rights in the event of defects, the customer must inspect the BT products delivered to him immediately after delivery and report any defects immediately in writing, in any case no later than 5 days after delivery and in a comprehensible form. The warranty period is one month and begins with the delivery of the BT products. During this time, reproducible program errors will be corrected within a reasonable period of time or workarounds will be offered if the BT products do not conform to the contractual specifications. Any other warranty or guarantee claims are expressly excluded to the extent possible under applicable law.
- 16.10 braintec declares that it or another braintec company owns all rights to BT products or BT apps and provides a guarantee for this. However, the customer is obliged to inform braintec of alleged third-party claims at an early stage and before legal proceedings are initiated and to follow all instructions subsequently issued by braintec. If the customer fails to do so, braintec is released from its warranty obligation. In order to avoid legal proceedings, braintec is also free to take back the BT products or BT apps in question against reimbursement of the purchase price.
- 16.11 Contracts in which recurring license fees have been agreed can be terminated with three months' notice at the end of each year. In addition, braintec can terminate such contracts without notice for good cause if the customer violates the terms of use or does not pay the license fees despite a written warning. After the contract ends, the customer will cease all use of the software and destroy any copies of the software and documentation provided to him. Contracts in which only one-off license fees have been agreed have no contract term and therefore do not require termination.

## **17. Hosting and maintenance**

- 17.1 Hosting/maintenance always covers 12 consecutive months. Hosting/maintenance is automatically extended for a further year unless it is terminated in writing by one of the contracting parties with three months' notice to the end of the current year. If the contract is terminated before the end of the agreed minimum period or on a date not agreed, the amount cannot be reimbursed pro rata temporis.
- 17.2 braintec is entitled to change its prices for hosting/maintenance at any time with 60 days' notice. Reasons for such a price change include, in particular, technical progress, possible inflation, etc.
- 17.3 If the customer terminates the contract before the service is put into operation, the customer shall owe braintec all costs incurred in this connection.
- 17.4 If braintec terminates the contract because the customer has acted illegally or in breach of contract or has

otherwise misused the services offered – even if the contract is terminated without notice by braintec – the customer shall owe braintec all costs incurred in this connection.

- 17.5 braintec does not guarantee uninterrupted, trouble-free operation of its services, nor does it guarantee trouble-free operation at a specific time. Liability for interruptions to operations for troubleshooting, maintenance or the introduction of new technologies is hereby excluded.
- 17.6 braintec does not guarantee the integrity of data stored or transmitted via its system or the Internet. Any guarantee for the accidental disclosure, damage or deletion of data sent and received via its system or stored there is excluded.
- 17.7 braintec assumes no responsibility for damage caused to customers by third parties through misuse of the connection (including viruses).
- 17.8 Any further liability of braintec and its vicarious agents for a specific technical or economic success, for indirect damage such as loss of profit, claims of third parties as well as for consequential damage resulting from production downtime, loss of data and liability for slight negligence are expressly excluded, subject to further mandatory statutory liability provisions.
- 17.9 In all cases, braintec expressly reserves the right to claim damages from users (in particular due to data crime, data misuse and so-called hacking attacks on the network or the infrastructure of braintec).
- 17.10 The user must ensure that his use of the Internet complies with applicable law. He undertakes to respect and comply with international legal provisions and agreements, in particular those relating to data protection (in particular the Federal Data Protection Act, the General Data Protection Regulation, Regulation (EU) 2016/679), copyright, trade secrets, trademark rights, fair competition and related areas, and not to distribute any content or services that violate good taste, morals and customs or otherwise contain dubious content. This applies in particular to the distribution, reference to or provision of links to the distribution of pornography, instructions to violence or crime, discrimination of any kind or other offensive content.
- 17.11 Subletting of services purchased from braintec to third parties is only permitted after a corresponding written agreement with braintec. In the event of a violation, braintec reserves the right to terminate the relevant contract without notice or to assert corresponding claims for damages.
- 17.12 The customer is responsible for taking the necessary security precautions to ensure a secure flow of data. He is responsible to braintec for the use of his account. Passwords and identification may not be disclosed to third parties. If this happens by or at the request of the user, the account holder is responsible for any consequences.
- 17.13 The use of the Odoo service must be within the usual and basic framework for the use of web applications, ie for example a current and securely configured browser and operating system for the use of access- restricted (only possible with user login) areas of the Odoo system or the restriction of automatic/scripted RPC/API access to 1 request per IP and second (exceptions and special purposes must be agreed with braintec in advance). Causing overloads (Denial of Service/DoS) that slow down the system or make it unusable or impair the quality of the service is prohibited. Also prohibited is the intentional impairment of the performance and availability of the system or other braintec systems or services, for example through abnormal content, such as very large amounts of data, a very large number of elements to be processed.

Any attempt to gain access to braintec network areas or systems that have not been expressly communicated to the customer is prohibited. In order to guarantee service availability as far as possible, we reserve the right to temporarily block individual clients or IPs from the service.

- 17.14 If the customer decides to continue using Linux Debian OS (Operation System) versions that are no longer officially supported as the operating system on the server due to the operation of an Odoo EOL, even though he would have the option of migrating from an old to a new Odoo version, braintec is entitled to invoice the customer for the (additional) effort associated with maintaining the hosting at the currently valid hourly rates.
- 17.15 The specific services to be provided by braintec within the framework of a maintenance contract, the exact term and the prices are regulated in separate documents (braintec Essentials and braintec order document).

17.16 By concluding a braintec maintenance contract, the customer is explicitly not granted any warranty or guarantee rights, nor is bug fixing part of a maintenance contract.

## **18. Re-export**

18.1 The customer undertakes to observe existing re-export restrictions.

## **19. Confidentiality & References**

19.1 braintec and the customer mutually undertake to keep all information and documents that are part of the business secrets confidential. This obligation does not apply to information that is demonstrably public knowledge or that becomes public knowledge without the involvement of the recipient of the information.

19.2 The obligation to maintain confidentiality continues after termination of the contractual relationship. However, braintec is entitled to disclose the fact of cooperation with the customer in the form of references, unless the customer expressly requests that this matter also be subject to braintec's obligation of confidentiality.

19.3 The customer gives his express consent to be named as a reference customer of braintec.

## **20. Non-solicitation clause**

20.1 The parties will not poach employees or contractors from each other. This obligation applies for the duration of the contractual obligations between the customer and braintec and for two years thereafter. braintec reserves the right to claim compensation for any resulting damage.

## **21. Data protection**

21.1 braintec processes personal data exclusively for the contractually agreed purposes and in accordance with the applicable data protection law, in particular the Federal Data Protection Act (DSG) and the EU General Data Protection Regulation (GDPR). braintec applies suitable measures to protect privacy during processing and ensures appropriate data security.

21.2 Both parties are independently obliged to comply with the applicable data protection law and in particular to comply with the statutory obligation to provide information.

21.3 braintec works with third parties to provide its services. These third parties are Odoo SA, Chaussée de Namur 40, 1367 Grand Rosière in Belgium, as well as hosting providers selected by the customer and other providers of administration solutions for the internal processing of data at braintec. If braintec works with third parties to process data, braintec concludes a privacy and data protection agreement with these third parties.

21.4 The companies named under section 1.1 are not considered third parties. All braintec companies are obliged to adhere to the same level of data protection when processing personal data.

21.5 braintec will only disclose personal data abroad if the Federal Council has determined that the legislation of the state or international body in question guarantees adequate data protection. If no such decision has been made, braintec may nevertheless disclose personal data abroad if, for example:

- i. EU standard contractual clauses have been agreed by the parties;
- ii. binding internal corporate rules have been introduced by the parties, which have been previously approved by the Federal Data Protection and Information Commissioner (FDPIC), the competent data protection authority in the EU or by a competent data protection authority of a state that can ensure adequate protection;
- iii. another mechanism for the transfer of personal data abroad has been implemented, which has been approved by the FDPIC, the competent data protection authority in the EU or by a competent data protection authority of a state that can ensure an adequate level of protection.

21.6 The identity and contact details of braintec are provided on the website under the heading Legal Notice. For data protection-related questions, customers can contact braintec via [dpo@braintec.com](mailto:dpo@braintec.com) ; for all other enquiries, customers should contact their usual contact person at braintec.

21.7 Any change in the responsible person at the customer's premises must be reported to braintec immediately.

## **22. Transfer of Contract**

- 22.1 braintec may transfer concluded contracts or parts thereof with all rights and obligations to another company at any time without the consent of the customer and with complete discharge of braintec.

## **23. Final provisions; choice of law and jurisdiction**

- 23.1 In case of doubt, these General Terms and Conditions remain binding in their remaining parts even if one or more provisions are legally invalid. If provisions are or become invalid in whole or in part, they shall be replaced by a provision that comes as close as possible to the economic purpose of the invalid provision in accordance with the will of the contracting parties.
- 23.2 All contracts concluded with braintec are subject exclusively to Swiss law, excluding the conflict of laws rules. This also applies to questions regarding the formation of the contract and the legal consequences of its after-effects. The application of the UN Convention on Contracts for the International Sale of Goods (CISG) and other bilateral and multilateral agreements that serve to harmonize international business is expressly excluded.
- 23.3 The exclusive place of jurisdiction shall be the court having subject-matter jurisdiction at the registered office of braintec AG (Switzerland).

*These terms and conditions have been translated for convenience. In the event of differences of interpretation, the German version shall prevail.*