

## TERMS OF USE STACKIT CLOUD

### 1. General

- 1.1 These terms of use ("**Terms of Use**") govern the use of the STACKIT cloud portal ("**Portal**") as well as the procurement and use of STACKIT cloud services ("**STACKIT Cloud Services**").
- 1.2 The STACKIT Cloud Services offered via the Portal are intended solely for Customers who are at least 18 years of age and are entrepreneurs within the meaning of Section 14 of the German Civil Code (BGB), i.e. natural or legal persons or partnerships with legal capacity who, when concluding a legal transaction, are acting in the exercise of their commercial or independent professional activity or legal entities under public law or special funds under public law.
- 1.3 The currently applicable Terms of Use can be accessed online, saved and printed out at any time.

### 2. Registration for the portal; STACKIT customer account

- 2.1 To use the Portal, customers must register with STACKIT GmbH & Co. KG, Stiftsbergstraße 1, 74172 Neckarsulm, Germany, Registry Court Stuttgart, HRA 741347 ("**STACKIT**"). However, customers have no right to registration.
- 2.2 The Customer can register via the Portal directly or via an invitation link sent by STACKIT. Registration requires, in particular, the provision of address and billing information as well as the customer's VAT identification number. When registering, the customer also assigns their own password which, in combination with the e-mail address provided, enables the customer to log into the Portal and access their customer account. The Customer is obliged to handle the login data with care. In particular, the Customer is prohibited from disclosing the login data to third parties and/or enabling third parties to access the profile by circumventing the login data. When registering, the Customer is obliged to provide all necessary information truthfully and completely. The Customer is responsible for keeping the data provided up to date and ensuring that the Customer can be contacted at the address provided and that the e-mail address is not transferred to another person. If the data provided changes, this data must be adjusted and corrected by the Customer without delay. If the Customer provides incomplete or incorrect information, STACKIT has the right to temporarily or permanently block the Customer Account and access to the portal and to delete the customer account if the Customer does not cease the behavior in breach of contract within a reasonable period of time even after being requested to do so.
- 2.3 Once the customer's application for registration is received, the Customer will receive confirmation that the application has been received, which will be sent to the e-mail address provided ("**Confirmation of Receipt**").
- 2.4 Upon successful registration, a personal customer account accessible via the Portal will be created for the Customer ("**Customer Account**") and the customer will be notified accordingly. Activation of the Customer Account constitutes acceptance of the Customer's registration offer.
- 2.5 The transfer of the Customer Account to another (legal or natural) person requires STACKIT's prior consent.
- 2.6 The use of the Customer Account is granted for an indefinite period. The Customer has the option of terminating his Customer Account with STACKIT via the Portal itself with immediate effect (closure of the Customer Account). Ordinary termination by the Customer requires that there are no ongoing Subscriptions for STACKIT Cloud Services between the Customer and STACKIT. Subscribed STACKIT Cloud Services must therefore be terminated by the Customer before the Customer account is terminated. STACKIT may also terminate the Customer Account in text form without notice (including the closure of the Customer Account), provided that no Subscriptions exist between STACKIT and the Customer. Before terminating the Customer Account, however, STACKIT shall inform the Customer of the fact of an imminent intended ordinary termination. The parties' right to terminate the Customer Account for good cause remains unaffected. STACKIT may also terminate the customer account for good cause in particular if the Customer breaches his obligations under this section 2 with regard to the Customer Account. An effective termination for good cause of the Customer Account shall always result in the

simultaneous termination of all current Subscriptions as of the effective date of the termination for good cause.

- 2.7 The Customer is expressly informed that termination of the Customer Account means that the Customer Account can no longer be accessed irreversibly. The Customer shall be expressly informed of this circumstance before the Customer Account is terminated. Upon receipt of an effective termination of the Customer Account, STACKIT shall delete all data assigned to the Customer Account within the legally prescribed deletion periods.

### **3. Content of STACKIT Cloud Services**

- 3.1 The service contents of the STACKIT Cloud Services that the Customer can obtain are regularly defined conclusively from a combination of the generally applicable Service Description together with the Service Certificates issued for the respective STACKIT Cloud Services:

- The generally applicable Service Description of the STACKIT Cloud Services contains a summary of the service levels and other parameters that apply to all STACKIT Cloud Services offered, available in the respective current version at <https://www.stackit.de/en/general-terms-and-conditions/service-description/> ("**Service Description**").
- In addition, Service Certificates specify the exact scope of the specific STACKIT Cloud Service; each available in the current version at <https://www.stackit.de/en/general-terms-and-conditions/service-certificates/> ("**Service Certificates**").

A STACKIT Cloud Service therefore regularly consists of the combination of the Service Description and an additional Service Certificate selected by the Customer.

- 3.2 If and to the extent that the content of these Terms of Use, the Service Description and the Service Certificate contradict each other, the content of the Service Certificate shall take precedence over the content of the Service Description and these Terms of Use; the Service Description shall take precedence over these Terms of Use.

### **4. Procurement of STACKIT Cloud Services by the Customer**

- 4.1 The procurement of STACKIT Cloud Services requires the prior successful registration of the Customer via the Portal in accordance with section 2 of these Terms of Use.
- 4.2 The Customer can also use the Portal to view the Service Description and the STACKIT Cloud Services Service Certificates. The presentations within the Portal, the Service Description and the STACKIT Cloud Services Service Certificates shown do not constitute a legally binding offer, but a non-binding catalog of services. Only the Customer submits a binding offer to conclude a contract for the STACKIT Cloud Services selected by the Customer as soon as the Customer completes the online ordering process via the respective available technical interface ("**STACKIT API**") or the Portal ("**Order**").
- 4.3 The parties to a contract for the purchase of a STACKIT Cloud Service ("**Subscription**") are the Customer and STACKIT.
- 4.4 The Subscription between the Customer and STACKIT shall only come into effect through a declaration of acceptance by STACKIT, which usually takes place in the form of making the ordered STACKIT Cloud Services available to the Customer.
- 4.5 Upon acceptance of the Order by STACKIT, a paid Subscription is concluded between the parties for the agreed term for the provision of the possibility to use the respective STACKIT Cloud Service with the content of these Terms of Use, the Service Description and the associated Service Certificate.
- 4.6 Unless otherwise provided in the Service Description or the Service Certificate, from the date a Subscription is entered into, the resources required for the use of STACKIT Cloud Services will be made available in one or more data centers used by STACKIT and the Customer will be granted access to the extent agreed upon in the Service Description and the Service Certificate. Where the specifications contained in the Service Description and the Service Certificates include the storing of own data, this will always entail both the saving and retrieving of data.
- 4.7 Suitable subcontractors may also be used to provide STACKIT Cloud Services.

## 5. Term and termination of Subscriptions

- 5.1 STACKIT Cloud Services are provided for an indefinite term in the "Pay-As-You-Go" billing format and billed according to the consumption units listed in the Service Certificate.
- 5.2 Subscribed STACKIT Cloud Services can be terminated by the Customer at any time on an hourly basis. Subscribed STACKIT Cloud Services must be terminated via the self-service area of the Portal or the STACKIT API.
- 5.3 Unless otherwise stipulated in the Service Description or the underlying Service Certificate, STACKIT also has the right to ordinary termination in the form that STACKIT can terminate the respective Subscription with a notice period of four (4) weeks via the Portal or in text form to the Customer.
- 5.4 A Subscription may be terminated by either party for good cause, without complying with any notice period. Good cause shall be deemed to exist where facts exist in view of which the terminating party cannot be reasonably expected to continue the contractual relationship, taking into consideration all the circumstances of the individual case and weighing up the respective interests of the parties ("**good cause**"). If the good cause consists in the breach of a contractual obligation, the termination shall only be permissible after the unsuccessful expiry of a deadline set for remedial action or after an unsuccessful warning, unless the setting of a deadline is dispensable pursuant to Section 323 (2) BGB. Good cause entitling STACKIT to terminate a Subscription shall be deemed to exist in particular if:
- the Customer is in default of payment with regard to a significant portion ( $\geq 20\%$ ) of the monthly bill and fails to pay the outstanding amount even after receiving notice of default;
  - the Customer has committed numerous or serious breaches of contract;
  - the Customer has caused harm to the Portal through actions for which the Customer is responsible;
  - the Customer has committed a serious breach of these Terms of Use;
  - the Customer uses the STACKIT Cloud Services in particular in connection with extremist content or content that violates the law or good morals or makes reference to information that serves to incite hatred, or encourages criminal acts or glorifies or downplays violence, or is fit to seriously compromise the morals of children or young people or to jeopardize their welfare, or could damage the reputation of STACKIT; or
  - The Customer breached the provisions under clause 9.4 of these Terms of Use.
- 5.5 STACKIT is entitled to temporarily or permanently block the Customer's access to the subscribed STACKIT Cloud Services if there are concrete indications that the Customer is violating or has violated these Terms of Use and/or applicable law, or if STACKIT has another legitimate interest in blocking (e.g. default of payment by the Customer). When deciding whether to block one or more subscribed STACKIT Cloud Services, STACKIT shall take the Customer's legitimate interests into account appropriately and, if possible, threaten to block access in advance in text form with a reasonable period of notice. The above provisions on blocking access to the subscribed STACKIT Cloud Services also apply to the blocking of the Customer Account by STACKIT.

## 6. Switch

- 6.1 In addition to the right of termination in accordance with section 5.2, the Customer has the right to announce the following measures to STACKIT at any time ("**Switching Announcement**"):
- (1) the transfer of Exportable Data and Digital Assets held by STACKIT to another provider of data processing services; and/or
  - (2) the transfer of Exportable Data and Digital Assets held by STACKIT to an ICT infrastructure on the Customer's own premises.
- Clauses (1) and (2) together hereinafter referred to as "**Switch**".
- 6.2 "**Exportable Data**" in the context of a Switch means all input and output data of the Customer that is generated directly or indirectly through the use of the STACKIT Cloud Services by the Customer or jointly with STACKIT; this excludes assets or data of STACKIT or third parties that are protected by

intellectual property rights or constitute a trade secret. "**Digital Assets**" refer to elements in digital form, including applications, for which the Customer has a right of use independently of the contractual relationship with STACKIT.

- 6.3 The Customer has to provide two months' notice ("**Switching Period**") of its intention to Switch. With his notice of Switch, the Customer declares whether the Subscription is to be terminated after expiry of the Switching Period at the times specified in section 6.18. If the Customer terminates a Subscription affected by a Switching Announcement (during the Switching Period or the transitional period according to clause 6.11) in accordance with clause 5.2, the Subscription ends immediately and STACKIT is released from its Switch obligations ("**Overtaking Termination**").
- 6.4 The Customer may limit a Switching Announcement to individual Subscriptions of STACKIT Cloud Services. In this case, the procedure according to section 6 shall only apply to those Subscriptions for which the Customer provides the Switching Announcement.
- 6.5 The Customer shall inform STACKIT after a Switching Announcement at the latest by the end of the Switching Period whether he wishes to Switch to another provider of data processing services or to an ICT infrastructure on the Customer's own premises. In the event of a Switch to another provider, the Customer shall provide the name and contact information of this new provider in order to carry out the Switch. If the Customer does not inform STACKIT of the measures it requires by the end of the Switching Period, no Switch will be made and STACKIT is not obliged to take further measures in accordance with this section 6; in this case, a possible termination of the Subscription and a possible deletion of the Customer's data shall be governed by the provisions of sections 5 and 7.
- 6.6 A Switch takes place through the following steps:
  - (1) Extraction of the Exportable Data and Digital Assets from STACKIT by means of a download by the Customer;
  - (2) Upload of the Exportable Data and Digital Assets available to STACKIT to another provider of data processing services or to an ICT infrastructure on the Customer's own premises. Upon completion of the uploading of the data, the Switch is complete.
- 6.7 The Customer must send notification of the Switching Announcement by e-mail to support@stackit.cloud.
- 6.8 STACKIT is responsible for making Exportable Data and Digital Assets available for download by the Customer. STACKIT is entitled to refuse the provision or disclosure of such Digital Assets that are protected by intellectual property rights or constitute a trade secret of STACKIT or compromise the security and integrity of the Customer's or STACKIT's services. The Customer, and not STACKIT, is solely responsible for uploading the data to the new provider of data processing services or to its own ICT infrastructure. This also applies if the Customer uses the services of a third party to upload the data.
- 6.9 After a Switching Announcement, STACKIT is obliged, until the Switch is completed
  - (1) to provide the Customer and third parties authorized by the Customer with reasonable support in implementing the Switch;
  - (2) act with due diligence to maintain business continuity and continue the provision of the contractual functions or services;
  - (3) clearly communicate any known risks to the uninterrupted provision of the functions or services attributable to STACKIT;
  - (4) ensure a high level of data security during the execution of the Switch;
  - (5) to support the Customer's exit strategy relevant to the STACKIT Cloud Services, in particular to provide the necessary information.
- 6.10 STACKIT lists the Exportable Data and Digital Assets that can be exported in the event of a Switch in the Service Certificate for the respective STACKIT Cloud Service. Excluded from the Exportable Data and Digital Assets are the non-exportable data listed in the Service Certificate for the respective STACKIT Cloud Service, which are specific to the internal functioning of STACKIT's data processing service and where there is a risk of a breach of STACKIT's business secrets.

- 6.11 The transitional period is the period of time between the end of the Switching Period in accordance with section 6.3 and the start of the Retrieval Period (see section 6.16 ). The transitional period begins with the end of the Switching Period.
- 6.12 The transitional period ends
- (1) upon completion of the Switch,
  - (2) prior to completion of the Switch, (i) upon expiry of 30 days if and to the extent that neither the Customer nor STACKIT have effectively claimed an extension of the transitional period in accordance with sections 6.14 or 6.15 or (ii) upon expiry of the transitional period extended by STACKIT and/or the Customer in accordance with sections 6.14 or 6.15.
- 6.13 STACKIT will make the Customer's Exportable Data and Digital Assets available for download during the transitional period.
- 6.14 If it is not technically feasible for STACKIT to complete the Switch during the transitional period, STACKIT shall inform the Customer within 14 working days after receipt of the Switching Announcement. STACKIT shall explain why the Switch is not technically feasible during the transitional period. In this case, STACKIT shall specify an alternative transitional period, which may not exceed seven months; the start of the transitional period shall also be determined in this case in accordance with section 6.11.
- 6.15 Notwithstanding clause 6.14, the Customer is entitled to extend the transitional period once by a period it deems more appropriate for its own purposes.
- 6.16 STACKIT shall continue to make all Exportable Data and Digital Assets available to Customer for retrieval for at least 30 calendar days after the end of the transitional period ("**Retrieval Period**").
- 6.17 If the Customer does not inform STACKIT of the upload of the data to the new provider of data processing services or in its own ICT infrastructure by the end of the transitional period, STACKIT may ask the Customer to confirm whether the Switch has been completed. If the Customer does not confirm the completion of the Switch within 30 days of this request by STACKIT, it shall be assumed that the Switch has not been completed. In this case, the respective Subscription is not terminated, but will be continued under the existing conditions. Any termination rights of the parties shall not be affected by this.
- 6.18 A Subscription is therefore terminated in the event of a Switching Announcement by the Customer at the earliest in accordance with the times listed below under (1) to (3) and STACKIT will notify the Customer of the termination,
- (1) upon expiry of the Switching Period if the Customer requests to delete its Exportable Data and Digital Assets in accordance with section 7.4 ;
  - (2) upon completion of the Switch in accordance with section 6.6; or
  - (3) in the event of an Overtaking Termination by the Customer in accordance with section 6.3 when the Overtaking Termination takes effect.
- 6.19 Remuneration obligations for STACKIT Cloud Services affected by the Switch shall continue until the end of the respective Subscription.

## **7. Deletion of Customer data**

- 7.1 Unless otherwise agreed in the Service Description or Service Certificate, the Customer shall no longer have access to the subscribed STACKIT Cloud Service at the end of a subscription. With regard to Exportable Data and Digital Assets that may be exported with the STACKIT Cloud Service, the Customer is responsible for backing them up outside STACKIT's systems before the Subscription ends.
- 7.2 Notwithstanding the Customer's statutory deletion rights, in the event of termination of a Subscription in accordance with Section 5 and an Overtaking Termination in accordance with Section 6.3, any Exportable Data and Digital Assets that may still exist in the STACKIT Cloud Service shall be irrevocably deleted regularly after termination of the Subscription, unless the parties agree otherwise. The

deletion includes in particular Exportable Data and Digital Assets in the Customer's environment, metadata and backups (if available) on STACKIT's systems.

- 7.3 In the event of a Switching Announcement made by the Customer in accordance with Section 6, STACKIT shall only completely delete all Exportable Data and Digital Assets generated directly by the Customer or relating directly to the Customer after expiry of the Retrieval Period in accordance with Section 6.16, provided that the Switch (if announced by the Customer) has been successfully completed.
- 7.4 If the Customer requests the deletion of all Exportable Data and Digital Assets with its Switching Announcement from STACKIT instead of measures for a Switch, STACKIT shall delete all Exportable Data and Digital Assets that are generated directly by the Customer or relate directly to the Customer upon termination of the respective Subscription.
- 7.5 Data for which STACKIT is obliged to retain further due to mandatory statutory provisions shall remain unaffected by the deletion in accordance with this section 7.
- 7.6 At the Customer's request, STACKIT shall confirm the deletion of data in accordance with this section 7.

## **8. Adjustment of subscribed STACKIT Cloud Services by the Customer**

- 8.1 Unless otherwise stipulated in the Service Description or Service Certificate, the Customer may adjust subscribed STACKIT Cloud Services at any time via the Portal within the scope of the configuration options provided, e.g. increase or reduce capacities or make other offered changes to the underlying technical specifications of the subscribed STACKIT Cloud Services ("**Adjustment of the Subscription**"). The Adjustment of the Subscription shall be effected by the procedure in accordance with section 4.2, which shall apply accordingly.
- 8.2 As a matter of precaution, STACKIT points out that an Adjustment of the Subscription may also lead to an increase in remuneration. The Customer shall be notified via the Portal of any change in the remuneration payable for a Subscription that may be associated with the intended adjustment.

## **9. Requirements for the Customer's use**

- 9.1 The use of STACKIT Cloud Services is subject to the other usage obligations listed below as well as any obligations that are explicitly listed in the respective Service Certificate or Service Description on which the Subscription is based.
- 9.2 The Customer is responsible for all data transmitted by him, in particular for its legality and integrity. STACKIT does not monitor or check the content of any such data.
- 9.3 The Customer must ensure that the STACKIT Cloud Services are used exclusively by authorized persons. Authorized persons are the Customer's authorized employees, if any. The Customer is responsible for administering the authorizations and monitoring the usage rights of individual users (e.g. with regard to the right to order or terminate STACKIT Cloud Services). If there are indications that the Customer Account is being used by unauthorized third parties, the Customer shall inform STACKIT of this immediately. The Customer is responsible for all activities carried out via his Customer Account.
- 9.4 In particular, the Customer must comply with the following:
- access data made available to the Customer must be protected against third-party access and may not be disclosed to unauthorized third parties;
  - intellectual property rights and copyrights of third parties must be observed (e.g., when using third-party texts or data); Section 10.4 shall apply accordingly;
  - Services of STACKIT and its vicarious agents may not be misused or made available for misuse; in particular, the transmission of, or reference to, information that violates the law or good morals or serves to incite hatred, or encourages criminal acts or glorifies or downplays violence, or is fit to seriously compromise the morals of children or young people or to jeopardize their welfare, or could damage the reputation of STACKIT is prohibited;
  - any attempt to access information or data without authority, also via unauthorized third parties, or to interfere, or to permit the interference, with programs operated by STACKIT or its

vicarious agents, or to infiltrate the data networks of STACKIT or their customers without authority, is prohibited;

- the use of subscribed STACKIT Cloud Services in connection with gambling and pornographic content is prohibited;
- the STACKIT Cloud Services may only be used for deployment in high-risk environments (this includes, in particular, weapons systems, nuclear power plants, life support systems, aviation communications and navigation systems, and other critical areas of operation where the failure of STACKIT Cloud Services could directly or indirectly result in injury or death of people) subject to prior request and the execution of an addendum to the contract with STACKIT;
- the exchange of electronic messages may not be misused for the unsolicited transmission of messages or information to third parties for marketing purposes (spamming);
- before sending data and information, these must be checked for viruses and state-of-the-art virus protection programs must be used. Systems and STACKIT Cloud Services used by the Customer as well as other Customer-owned applications and data must be protected against misuse and kept free of malware (e.g. through appropriate firewall settings, the installation of current security updates and software or the use of malware scanners);
- STACKIT Cloud Services may not be used to train artificial intelligence ("AI") applications if this violates legal requirements, in particular data protection and copyright law;
- AI applications based on STACKIT Cloud Services or AI applications contained in STACKIT Cloud Services may not be used for prohibited practices in accordance with Art. 5 of Regulation (EU) 2024/1689 laying down harmonized rules on artificial intelligence ("AI Act");
- AI applications based on STACKIT Cloud Services or AI applications contained in STACKIT Cloud Services may not be used in a way that violates legal regulations.

## **10. Customer's duties of cooperation**

10.1 The Customer shall support STACKIT to a reasonable extent in the provision and execution of the STACKIT Cloud Services. In particular, the Customer shall:

- meet – under the customer's own responsibility – any and all technical and organizational requirements to enable proper performance;
- report problems with the use of STACKIT Cloud Services and security incidents that occur in connection with the STACKIT Cloud Services to STACKIT (via [support.stackit.cloud](mailto:support.stackit.cloud)) without undue delay after discovery;
- in the event of error messages, carefully monitor any symptoms, the program functionality as well as the system and hardware environment and report any problems occurring to STACKIT via the available ticketing-system, including any information relevant to troubleshooting, such as the number of users affected, description of the system and hardware environment, any third-party software simultaneously loaded, as well as any relevant documentation;
- to provide an administrative contact person on the platform who, as such, has all decision-making powers and authorizations required for the purpose of performing the services; the Customer shall immediately enter any changes to the Customer's designated administrative contact persons in the Portal;
- assist STACKIT in its troubleshooting efforts and instruct the customer's staff to collaborate with any staff instructed by STACKIT;
- independently perform any extensions or reductions of subscribed STACKIT Cloud Services via the Portal or STACKIT API that may be required for the Customer's application scenarios;
- read the release notes published in the Portal and, if applicable, fulfill any reasonable obligations to cooperate described therein; and
- where STACKIT's access to a Customer system is necessary or expedient to limit or remedy a problem, the Customer will, if applicable at the Customer's own costs (including connection costs), make remote access (VPN connection or remote desktop sharing) or another type of

administrative access available to STACKIT. For this purpose, the Customer will take appropriate state-of-the-art measures to prevent virus infections and other interferences.

- 10.2 The Customer shall take all reasonable measures to enable effective execution of the Switch and shall implement all instructions from STACKIT in connection with the Switch in good faith. In particular, the Customer is obliged to provide STACKIT with the information required for the execution of the Switch in accordance with the provisions of section 6 after a Switching Announcement. The Customer shall inform STACKIT in text form without undue delay when the upload of the Exportable Data and Digital Assets available to STACKIT to another provider of data processing services or to an ICT infrastructure on the Customer's own premises has been completed.
- 10.3 The Customer will ensure the proper installation and connection of any and all systems under the Customer's responsibility and will test and document such systems to the customary extent.
- 10.4 The Customer will ensure that the Customer has any and all rights required to use the STACKIT Cloud Services for its data-processing purposes; this applies in particular to the use of software, applications and other third-party services which the Customer uses in connection with the STACKIT Cloud Services subscribed. In particular, the customer must observe and comply with any and all license terms, copyright laws and/or other ancillary copyrights of STACKIT or third parties.
- 10.5 As long as the Customer's cooperative assistance or any items required to be provided by the Customer have not been rendered or provided as contractually agreed, STACKIT will be released from its own respective duty to perform, in whole or in part, to the extent that STACKIT is dependent on such assistance or items in order to perform the services owed under these Terms of Use or the Subscription purchased. STACKIT will not be liable for any failure of performance brought about by the non-contractual performance of cooperative assistance or provision of requisite items on the part of the Customer.

## **11. Prices and billing**

- 11.1 The prices applicable to STACKIT Cloud Services are set out in the currently valid price list. The fee to be paid by the Customer as part of a Subscription will be displayed to the Customer before the Order is placed in accordance with Section 4.2 and bindingly agreed upon conclusion of the Subscription. The use of the Portal itself is free of charge.
- 11.2 After a Switching Announcement, STACKIT Cloud Services shall continue to be remunerated according to the currently valid price list until the Subscription is terminated. For the avoidance of doubt, the parties agree: The Customer shall remain obliged to pay the remuneration until termination of the Subscription even in the event of an extension of the transitional period in accordance with sections 6.14 and 6.15.
- 11.3 Prices are shown exclusive of value-added tax.
- 11.4 Unless otherwise agreed, the Customer shall be invoiced for STACKIT Cloud Services subscribed to on a monthly basis in arrears after consumption has been determined; invoices shall be due immediately and without deduction upon receipt by the Customer.
- 11.5 Billing and settlement of charges will take place in accordance with the form of payment previously selected by the Customer.
- 11.6 The Customer consents to the electronic transmission of invoices. Couriers or agents may also be used for billing purposes. Invoices will be sent to the Customer's e-mail address provided for general purposes.
- 11.7 STACKIT is entitled to adjust the prices for the subscribed STACKIT Cloud Services in the event of changed market conditions or significant changes in procurement costs with a notice period of at least four (4) weeks. If the Customer does not object to the price adjustment in writing to STACKIT within ten (10) days of receipt of the notification, the adjustment shall be deemed approved. STACKIT shall expressly inform the customer of the legal consequences, the deadline and the date of entry into force upon notification of the change.



- 11.8 The Customer's right to set off may only be exercised with counterclaims that are uncontested, ripe for adjudication or have been declared final and binding by a court of law. Likewise, the Customer's right of retention may only be exercised with claims that are uncontested or have been declared final and binding by a court of law. Claims against STACKIT may not be assigned; this does not apply within the scope of section 354a of the German Commercial Code (*Handelsgesetzbuch* – HGB).
- 11.9 STACKIT has the right to only perform outstanding deliveries or services against advance payment or the provision of security if STACKIT becomes aware of circumstances that are fit to materially impair the Customer's creditworthiness and that jeopardize the settlement of outstanding claims by the Customer under the relevant contractual relationship.
- 11.10 All payments of remuneration are net after deduction or withholding of current or future taxes, if and insofar as these taxes are levied for STACKIT in the Customer's country of residence and are to be paid by the Customer (hereinafter referred to as "**tax deduction**").

The term "taxes" includes all types of payments and duties that are determined or levied by the tax authorities or other public bodies authorized to levy taxes in the Customer's country of residence. This includes, but is not limited to: income tax, corporate income tax, capital gains tax, withholding or deduction tax, together with all types of ancillary services, such as interest, surcharges and other payments on taxes to be made.

If a tax deduction is to be made, STACKIT will support the Customer in order to obtain full or partial exemption from withholding/withdrawal tax and/or full or partial reimbursement of the withholding/withdrawal tax paid on the basis of an applicable double taxation agreement or other national regulations in the customer's country of residence.

## **12. Warranty**

- 12.1 The contractually agreed quality of subscribed STACKIT Cloud Services is set out in the underlying Service Certificates and/or the Service Description, in particular the availability details contained therein.
- 12.2 The Customer must report any defects without undue delay after having become aware of them. Any notices of defects communicated by the Customer must contain, in particular, the following: (i) a detailed description of the incident; (ii) particulars regarding time and duration of the disruption; and (iii) number and location(s) of any persons affected. To the extent reasonable, the Customer must take measures that would facilitate the identification of defects and their causes.
- 12.3 The Customer's right to remedy the defect itself (*Selbstvornahme*) in accordance with section 536a (2) BGB is excluded.
- 12.4 The Customer's rights due to defects in the STACKIT Cloud Services are excluded if the Customer has made changes to the STACKIT Cloud Services subscribed, or arranged for any such changes to be made, without STACKIT's consent, unless the Customer demonstrates that these changes had no undue impact on the analysis and elimination of such defects.

## **13. Rights of use and licensing provisions**

- 13.1 The Customer is granted a non-exclusive, non-transferrable, non-sublicensable worldwide limited license to use the Portal and its contents for the duration of the Terms of Use for the Customer's own business purposes.
- 13.2 In addition, the Customer is granted the right to access the subscribed STACKIT Cloud Service for the duration of the Subscription; this right is limited to the subscribed scope of use. The Customer is not entitled to use the STACKIT Cloud Services beyond the use permitted under these provisions and the underlying Service Certificate and/or Service Description or permit third parties to use said services or make said services available to third parties. Specifically, the Customer may not sell STACKIT Cloud Services, or parts thereof, or cede them to third parties; the foregoing shall not affect the Customer's right to use the subscribed STACKIT Cloud Services as a basis for its own products (e.g., Software as a Service) and then offer these to the Customer's end customers provided that the agreed terms of the Subscription so permit or are complied with; the Customer accepts that its end customers' conduct,

whether in the form of an act, omission or forbearance, shall be attributed to the Customer. Otherwise, Section 13.1 shall apply accordingly to the subscribed STACKIT Cloud Services.

- 13.3 If the subscribed STACKIT Cloud Service includes programs or software of third-party manufacturers, the license terms of these third-party manufacturers will also apply to such programs or software. The Customer shall ensure compliance with the license terms of any third-party manufacturers. The Customer can view the license terms of third-party manufacturers within the relevant Service Certificate of the respective STACKIT Cloud Service; the Customer accepts them when entering into a Subscription.
- 13.4 Whenever the Customer's license to use programs or software for a limited term expires, the Customer must delete all such programs and software, including any copies, and confirm deletion in text form upon STACKIT's request. If statutory retention obligations require the Customer to retain any such software and programs, the Customer's obligation to delete will arise when the statutory retention obligations end.
- 13.5 The Customer understands that the STACKIT Cloud Services and the associated software applications and data may be subject to restrictions under export laws, foreign trade laws, sanctions regimes and other regulations ("**Trade Regulations**"). The Customer hereby agrees to comply with the applicable Trade Regulations. By submitting its offer to register for the Portal, the Customer warrants in particular that it is not based in a country or region that is subject to extensive trade restrictions or embargoes (e.g., Cuba, Iran, North Korea, Syria). Notwithstanding any licensing arrangements to the contrary, the Customer also agrees not to provide any STACKIT Cloud Services to natural or legal persons subject to restrictions under the applicable Trade Regulations. STACKIT is not required to meet any existing performance obligations owed to the Customer if doing so would violate applicable Trade Regulations.

#### **14. Infringement of third-party rights and indemnification claims**

- 14.1 Where STACKIT Cloud Services infringe third-party rights, STACKIT will, at its choice, either procure, at its own cost, the required license to use the infringed rights or modify the relevant services in such a way that they no longer infringe rights but are still in concordance with the contractual agreements. If STACKIT is unable to achieve this within an appropriate period of time, the Customer will be entitled to terminate the affected Subscription with immediate effect (special right of termination).
- 14.2 Provided that STACKIT has acted culpably with regard to such infringement of third-party rights in connection with the provision of STACKIT Cloud Services, and the Customer has informed STACKIT without undue delay about the assertion of claims for an alleged infringement of third-party rights by STACKIT Cloud Services, and the Customer cedes the entire legal defense to STACKIT upon request and assists STACKIT to a reasonable extent in defending against any such claims, STACKIT shall indemnify the Customer against any and all third-party claims that have been declared final and binding by a court of law as well as the associated costs of the legal defense incurred by said third parties. The limitation of liability according to clause 15.1 shall also apply accordingly within the scope of this clause 14.2 .
- 14.3 Provided that the Customer has acted culpably with regard to any infringement of third-party rights in connection with the use of STACKIT Cloud Services (particularly in connection with clause 13.3) and the Provider informs the customer without undue delay about any claims asserted by third parties for an alleged infringement of third-party rights, the customer shall indemnify the Provider from and against any such third-party claims asserted in this context.

#### **15. Liability**

- 15.1 Regardless of the legal grounds, STACKIT shall be liable for damages in accordance with statutory provisions in cases of-
- willful or grossly negligent conduct;
  - loss of life, bodily injury or injury to health caused by ordinary negligence;
  - the assumption of a guarantee;
  - fraudulent concealment of a defect; and

- for claims of the Customer under the German Product Liability Act (Produkthaftungsgesetz – ProdHaftG).
- 15.2 Without prejudice to the terms of clause 15.1 STACKIT shall be liable for other damage only if it was caused by the negligent breach of a material contractual obligation; material contractual obligations are obligations, the satisfaction of which is essential for the due and proper performance of the agreement, and on the performance of which the Customer would usually, and is entitled to, rely and which protect the Customer's material legal positions under the contract. In such cases, STACKIT's liability shall be limited to compensation for typical and foreseeable loss or damage.
- 15.3 In the event of STACKIT's liability in accordance with section 15.2, STACKIT's liability shall be limited to an amount of EUR 25,000 per individual event of loss or damage.
- 15.4 STACKIT shall only be liable for the loss or destruction of data if such loss or destruction was caused willfully or through gross negligence or by a breach of a material contractual obligation by STACKIT. In terms of the amount, STACKIT's liability is limited to the loss or damage that would also have occurred if the Customer had properly backed up the data affected.
- 15.5 STACKIT shall not be liable for the data content and data consistency of the Customer's data.
- 15.6 STACKIT shall not be liable for any impossibility to provide STACKIT Cloud Services or any delays in such provision, provided that such impossibility was caused by force majeure or other events that were unforeseeable at the time of contracting (e.g., operational disruptions of whatever kind, disruptions of the Internet or other publicly accessible telecommunication networks, difficulties in obtaining necessary official permits, actions taken by the authorities) for which STACKIT is not responsible pursuant to clause 15.1 or 15.2. Where any such events render the provision of STACKIT Cloud Services considerably more difficult or even impossible for STACKIT and such hindrance is not just of a temporary nature (e.g., Customer's failure to provide the necessary interface), STACKIT has the right to rescind the Subscription if no exchange of service and consideration has taken place yet, or otherwise to terminate the Subscription for the purchase of the affected Subscription. Where hindrances are of a temporary nature, the delivery or performance deadlines will be extended, or the delivery or performance dates will be postponed by the period of the hindrance plus an appropriate start-up time. If the Customer cannot reasonably be expected to accept the subscribed STACKIT Cloud Service in view of its delayed provision, the Customer may terminate the affected Subscription by notice to STACKIT in text form, which must be communicated without undue delay.
- 15.7 Any strict liability under section 536a (1) limb 1 BGB on the part of STACKIT for defects that already existed at the time of contracting is excluded, unless the defect relates to a characteristic that STACKIT has warranted.
- 15.8 Customer's claims for damages or reimbursement of nugatory expenditure are subject to a one-year limitation period. This does not apply to claims under clause 15.1.
- 15.9 In all other respects, STACKIT's liability – for whatever legal reason – is excluded.
- 15.10 To the extent that STACKIT's liability to the Customer is either limited or excluded, this also applies mutatis mutandis to STACKIT's legal representatives, employees, contractors and other vicarious agents.
- 15.11 For damage or loss solely related to the use of the free Portal (i.e., without Subscriptions being also affected at the same time), STACKIT shall only be liable under clause 15.1; any liability beyond this is excluded.
- 16. Use of free services and free period of use**
- 16.1 If STACKIT provides the Customer with free services or free services for trial purposes, (in particular preview versions, alpha or beta versions, free trials, trial access, etc.) ("**Free Services**"), the following provisions also apply. Where the following provisions conflict with any of the other provisions of these Terms of Use, the provisions regarding the use of Free Services have priority.
- 16.2 Free Services which can be accessed via the Portal will not be listed in the cost calculation on the Portal or billed to the Customer.

- 16.3 Special free services for trial purposes are identified as such on the Portal (e.g., as beta, free trial, trial access) ("**Free Services for Trial Purposes**").
- 16.4 Free Services for Trial Purposes are not fully developed products and may cause errors, loss of functionality, bugs or other problems in the form of data loss, data corruption, disruptions, delays and damage, for example.
- 16.5 STACKIT has the right to cease, modify or alter a Free Service for Trial Purposes at any time without notice.
- 16.6 The Customer has no entitlement to (continue to) receive the Free Service for Trial Purposes; STACKIT is under no obligation to further develop the Free Service for Trial Purposes or to offer it as a final product.
- 16.7 STACKIT has the right to use the feedback provided by the Customer with regard to the Free Service for Trial Purposes for the development, enhancement or other improvements of products and services.
- 16.8 STACKIT shall be liable for any loss or damage caused by the use of Free Services for Trial Purposes in accordance with clause 15.1. In all other respects, liability shall be excluded.
- 16.9 If STACKIT grants the Customer a period of free use of the STACKIT Cloud Services, the above provisions shall apply accordingly to all STACKIT Cloud Services subscribed to by the Customer within the free period of use.
- 16.10 The provisions regarding a Switch by the Customer shall not apply to Free Services and Free Services for Trial Purposes.

## **17. Confidentiality**

- 17.1 The Parties shall treat confidential information disclosed by the other Party as confidential during the contractual term plus five (5) years after termination of the contractual relationship; specifically, they shall not disclose such information to third parties, shall protect it against unauthorized access by implementing appropriate technical, organizational and legal non-disclosure measures, and shall use it solely within the scope of the cooperation. The right of termination subject to a notice period with respect to this non-disclosure obligation shall be excluded.
- 17.2 In this context, confidential information shall include trade and business secrets (as defined in section 2 of the German Act on the Protection of Trade Secrets (Gesetz zum Schutz von Geschäftsgeheimnissen – GeschGehG)) as well as any other information that must reasonably be regarded as confidential, and any and all information and documents that is disclosed to one Party by the other Party or a Schwarz Group company, or about the other Party or a Schwarz Group company, in connection with the cooperation.
- 17.3 This non-disclosure obligation shall not apply if and to the extent that
- the confidential information was already known to the other party prior to the execution of the Terms of Use or is subsequently disclosed to it by a third party lawfully, i.e., without breach of any non-disclosure agreement, statutory provision or official order;
  - the confidential information was in the public domain prior to execution of the Terms of Use or subsequently enters the public domain without any culpable breach of the above obligation;
  - confidential information was independently discovered or created by the other party or acquired using a product that had already been made publicly available;
  - disclosure is required in the context of the cooperation or to protect the legal interests of the party and such disclosure is made to agents who are bound in writing to the same non-disclosure obligation stipulated above or to advisors who are subject to a professional duty of confidentiality;
  - disclosure is made by the Customer or a company affiliated with the Customer pursuant to section 15 et seq. of the German Stock Corporation Act (Aktiengesetz – AktG) to another company affiliated with the Customer pursuant to section 15 et seq. AktG that is bound in writing to the same non-disclosure obligation stipulated above;

- disclosure is made by one company of Schwarz Group to another company of Schwarz Group that is bound in writing to the same non-disclosure obligation stipulated above;
- the disclosing party has released the receiving party from the non-disclosure obligation;
- in cases involving section 5 of the German Act on the Protection of Trade Secrets (Gesetz zum Schutz von Geschäftsgeheimnissen); or
- disclosure is mandated by or under law or by court or official order. In such case, the party subject to disclosure shall without undue delay notify the other party of the disclosure in writing or in text form and together the parties will determine the extent to which they may limit disclosure within the bounds of the law.

17.4 Companies of the Schwarz Group shall include D. Schwarz Beteiligungs-KG as well as any and all domestic and foreign entities in which the aforementioned entity holds a direct or indirect majority equity interest.

## 18. Special Duties of Confidentiality

STACKIT is aware of the statutory non-disclosure obligation of persons subject to professional secrecy under section 203 of the German Criminal Code (Strafgesetzbuch – StGB). STACKIT and its staff are subject to a non-disclosure obligation with respect to the data uploaded by the Customer in connection with using the STACKIT Cloud Services ("**Contents of Communication**"). When using subcontractors who could potentially become privy to Contents of Communication in the course of performing their services for STACKIT, STACKIT must ensure that they are bound to secrecy and are only able to gain access to such information to the extent necessary to perform the respective service. If any subcontractor engaged by STACKIT subcontracts its work to another subcontractor, STACKIT shall ensure that the subcontractor engaged by it imposes the same non-disclosure obligations on that subcontractor as those to which the subcontractor engaged by STACKIT is itself subject.

## 19. Amendment of the Service Certificates, Service Description and Terms of Use

19.1 In the event that this is necessary for good cause and the amendment or modification of the Service Certificates, Service Description or Terms of Use (collectively "**Contractual Documents**") does not unreasonably disadvantage the Customer, in particular because the ratio of service and consideration does not shift predominantly to the disadvantage of the Customer, STACKIT is entitled to amend the contractual documents in whole or in part with effect for the future. This includes, in particular, regulatory or legal reasons, reasons of security, further development, optimization and addition of service content, technical adjustments and ensuring the functionality of the portal.

19.2 The Customer will be notified of the amendments to the Contractual Documents by email at least eight (8) weeks before the new Contractual Document comes into effect. They shall be deemed approved if the Customer does not expressly object to the amendments after receipt of the amendment notification and until the amendments take effect. In the notification of change, the Customer shall be informed separately of this legal consequence, the start of the period, the period and the date on which the change comes into effect. In the event that the Customer objects to the amendment of a Contractual Document, STACKIT shall be entitled to an ordinary special right of termination with immediate effect (i) with regard to the respective STACKIT Cloud Service, insofar as this is affected by the amendment or (ii) - if the amendment affects the Portal - all Contractual Documents.

19.3 STACKIT hereby advises the Customer that, to the extent that the Service Description or the relevant Service Certificate contains provisions that conflict with the change in STACKIT Cloud Services, any such deviating provisions will prevail.

## 20. Reselling

20.1 In the event that the Customer receives access to the Portal for the purpose of obtaining STACKIT Cloud Services via a separate contractual relationship with a reselling partner of STACKIT, the contractual partner of the Customer with regard to the respective Subscription concluded is the reselling partner ("**Reselling**").

- 20.2 Separate contractual provisions between the Customer and the reselling partner shall remain unaffected by these Terms of Use.
- 20.3 In the case of Reselling, these Terms of Use shall apply with the following adjustments and modifications between STACKIT and the Customer:
- a) Orders, modifications, and terminations of Subscriptions made by the Customer via the Portal or the respective available STACKIT API shall be executed by STACKIT in accordance with these Terms of Use, thereby serving as the recipient of the Customer's declarations to the reselling partner. In this regard, the Customer must note and is responsible for ensuring that any orders, modifications, and terminations made via the Portal or the STACKIT API are executed in compliance with the contractual terms (if any) of their reselling partner. The termination of subscribed STACKIT Cloud Services must also be effected via the self-service area of the Portal or the STACKIT API, even in the case of reselling.
  - b) Section 11 (Prices and billing) shall not apply. The remuneration for the reselling partner shall be agreed by the Customer directly with the reselling partner. The Customer shall pay remuneration for STACKIT Cloud Services directly and exclusively to the reselling partner;
  - c) Notwithstanding Section 12 (Warranty), the Reselling Partner shall be the Customer's first point of contact for all questions relating to the warranty and support for STACKIT Cloud Services;
  - d) In the event of an availability deficit, the Customer shall receive any credits (service payback) based on the Service Description or the applicable Service Certificate directly and exclusively from the reselling partner;
  - e) The Customer shall notify (i) the Reselling Partner of any termination of these Terms of Use and (ii) STACKIT of any termination of the agreement between the Customer and the Reselling Partner;
  - f) STACKIT is entitled to temporarily or permanently block the Customer's access to the subscribed STACKIT Cloud Services if the Reselling Partner fails to pay an undisputed invoice for STACKIT Cloud Services because the Customer has not paid the Reselling Partner.
- 20.4 STACKIT is entitled to share confidential information of the Customer with the Reselling Partner. In this respect, the Customer releases STACKIT from its confidentiality obligation in accordance with section 17.3.

## **21. Miscellaneous**

- 21.1 These Terms of Use constitute the sole contractual basis for registering as a Customer for the Portal. In addition to the present Terms of Use and the Service Description and/or Service Certificate underlying the relevant STACKIT Cloud Service, deviating or supplementing provisions may also apply to the use of the STACKIT Cloud Services offered; the Customer can view these provisions via the Portal prior to contracting. Any conflicting terms and conditions of the Customer shall be excluded, even if they are not expressly objected to.
- 21.2 The legal relationships between the Customer and STACKIT that arise under these Terms of Use and the Subscriptions purchased are governed by German law to the exclusion of the conflict of law rules and the provisions of the UN Convention on Contracts for the International Sale of Goods (CISG).
- 21.3 Should any provision of these Terms and Conditions or any Subscription be or become void, invalid or unenforceable, either in whole or in part, this shall not affect the validity or enforceability of the remaining provisions of the Terms of Use or the Subscription. The void, invalid or unenforceable provision shall be replaced by a provision that most closely reflects the economic intent and the purpose of the void, invalid or unenforceable provision to the extent permitted by law. This shall apply mutatis mutandis to any unintended omissions in these Terms of Use or the Subscription.
- 21.4 The exclusive place of jurisdiction for any and all disputes arising out of or in connection with these Terms of Use or any Subscriptions of STACKIT Cloud Services shall be Stuttgart, Germany.

- 21.5 In the event of a dispute, the parties are entitled to conduct conciliation proceedings under the applicable conciliation rules of the competent conciliation office (for IT disputes) of the International Chamber of Commerce (ICC) before conducting court proceedings. Where the competent arbitration board does not provide conciliation rules for IT disputes, the conciliation proceedings will be conducted in accordance with the IT Conciliation Rules of the German Association of Law and Informatics (Deutsche Gesellschaft für Recht und Informatik – DGRI).
- 21.6 The Contractual Documents have been drafted in German and English. In the event of conflicts between the German and English versions of the Contractual Documents, the German versions, available at <https://www.stackit.de/de/agb/cloud-services/> shall prevail.