

## **General Terms and Conditions of OTRS ASIA**

### **1. Scope of application**

- 1.1. These General Terms and Conditions ("GTC") apply to all contracts between OTRS AG, headquartered in Oberursel, Germany, and its customers in which reference is made to the application of these GTC.
- 1.2. Any deviating, conflicting or supplementary general terms and conditions of the customer shall only become part of the contract if and to the extent that OTRS ASIA expressly agrees to their application.
- 1.3. Individual agreements and details in our offers and order confirmations take priority over the GTC.

### **2. Conclusion of the contract**

A contract between OTRS ASIA and the customer ("Agreement") is concluded if the customer accepts OTRS ASIA's contractual offer within the acceptance period granted to the customer or, in the case of an order by the customer, an order confirmation from OTRS ASIA.

### **3. Subject matter of the contract**

- 3.1. OTRS AG is the owner of proprietary software with open-source software components, which it provides to its customers for use via the internet (Software as a Service, "SaaS") or as an on-premise solution. In addition, OTRS AG provides support and consulting services in connection with its software.
- 3.2. SaaS services:

OTRS AG grants to the customer the non-exclusive, i.e., non-sublicensable and non-transferable right, limited in time to the term of the agreement to use the current version of the contractual software for the contractually agreed number of users by means of access via a browser in accordance with the contractual provisions for its own business purposes. For this purpose, OTRS AG shall make the contractual software and the customer data available for use by the customer via an internet connection from the start of the term.
- 3.3. On-premise services:

OTRS AG grants to the customer the non-exclusive, i.e., non-sublicensable and non-transferable right, limited in time to the term of the agreement to use the current version of the contractual software at the time of acceptance of the agreement for the contractually agreed number of users for its own business purposes. If and to the extent that OTRS AG provides the customer with new versions, updates, upgrades, modifications or extensions of the contractual software during the term of the agreement the provision in the foregoing sentence shall also apply to these. A connection to cloud.otrs.com via HTTPS is required for the installation and use of the software. Use of the software also requires registration of the customer system.
- 3.3.1 The customer shall immediately notify OTRS ASIA of any changes to the operating environment (platform) of the contractual software that may affect the contractual services of OTRS ASIA before the work is carried out. The customer shall provide all necessary information and documents within a reasonable period of time; at the latest 4 weeks after contract formation.
- 3.3.2 The customer must make the necessary technical and organisational preparations as specified by OTRS ASIA for services that are provided via remote access.
- 3.3.3 The customer is obliged to provide sufficiently qualified contact personnel.
- 3.4. The contractual software contains components that are licensed as open-source software. According to the open-source definition of the Open-Source Initiative, open-source software is software that is licensed by the respective rights holders to anyone for comprehensive use, free of licence fees and whose source code is available. The customer can acquire a simple right of use to the open-source software used from the respective rights holders under the conditions provided for in the applicable open-source licences. As long as the customer exclusively uses the open-source components internally, the customer has no licence obligations towards the rights holders of these open-source components. The provisions in sections 3.2 and 3.3 shall

only apply to the components of the contractual software that are not licensed as open-source software. The remaining provisions of these GTC also apply to open-source software in relation to OTRS ASIA if and to the extent they do not contradict the terms of the applicable open-source licences.

- 3.5. The entitlement to support and maintenance services and their respective scope is determined by the Agreement concluded with the customer and the documents referenced therein.
- 3.5.1 In order to comply with the agreed response times, the initial notification of a service request must be made via the OTRS external customer portal. The customer must classify its request according to the impact by selecting and naming a corresponding service level.
- 3.5.2 Insofar as a service request can be divided into individual and independent events, each of these events is considered a service request and reduces the agreed request quota accordingly.
- 3.5.3 Service requests are deemed to be:
  - Incidents (malfunctions) that are not part of the normal operation of the contractual software.
  - Questions about functions, configuration, backup and recovery, bugs, fixes, releases.
- 3.5.4 Service requests that have not been used by the end of the respective minimum or renewal term shall expire.

#### **4. Contract components; right of amendment**

- 4.1. The contractual relationship between OTRS ASIA and the customer is governed by the following legal bases in the following order of priority:
  1. The agreement between OTRS ASIA and the customer
  2. These GTC
  3. The Service Level Agreement ("SLA")
  4. The legal regulations
- 4.2. OTRS ASIA reserves the right to make further developments and service changes on account of changes in legal conditions, of technical progress, error correction or performance optimisation after conclusion of the agreement. OTRS ASIA therefore has the right to unilaterally change the contractual software in the course of ongoing updates, provided that this is done uniformly for all customers of the same software and that this does not result in a loss of essential functionality of the software existing at the time of acceptance of the agreement and that the software as a whole remains in a condition suitable for its intended use. The customer has no right to the continued existence of individual functions or features of the software that do not significantly impair its intended use as a whole.
- 4.3. OTRS ASIA reserves the right to amend at any time these GTC and the SLA as agreed with the customer in the event of a change in the law, supreme court jurisprudence or market conditions, provided that such change does not lead to a transformation of the contractual structure. The customer shall be notified of the amended GTC or SLA at least two months before they come into force. The amended GTC or SLA shall be deemed approved by the customer unless the customer objects to them in writing to OTRS ASIA within 4 weeks of notification. OTRS ASIA will specifically inform the customer of this deadline and the consequences of missing the deadline when announcing the changes. In all other respects, the provisions of sections 5.1.2 and 5.1.3 apply accordingly to changes to these GTC and the SLA as Agreed with the customer.

#### **5. Remuneration and terms of payment**

- 5.1. The customer shall pay OTRS ASIA the remuneration as specified in the agreement. The recurring remuneration shall apply for the minimum term agreed therein. The remuneration applicable to a renewal term corresponds to the remuneration of the respective preceding minimum or renewal term, unless OTRS ASIA increases the remuneration as follows:
  - 5.1.2 OTRS ASIA may change the recurring remuneration with a minimum notice period of three months, taking effect from the beginning of the next renewal term by means of a declaration of adjustment to the customer. The increase in remuneration is permitted up to a maximum of 10 % per renewal term.
  - 5.1.3 If the customer does not make a timely termination of the Agreement prior to the end of the current term at the time of the adjustment declaration in accordance with section 6.3, the adjusted remuneration shall be deemed agreed upon for the renewal term where automatic term

- renewal has been accepted. OTRS ASIA shall inform the customer of this in the adjustment declaration.
- 5.2. The agreed annual remuneration for the use of the contractual software shall be invoiced before the start of the term, or, in the case of a contract renewal, before the start of the subsequent renewal term.
  - 5.3. In the case of agreed upon consulting services, OTRS ASIA shall issue invoices before the services have been rendered. Unless otherwise agreed, consulting services shall be remunerated on a time and material basis. Billing shall be based on actual person-days. The agreed daily rate for a person-day shall be invoiced if at least 4 hours of consulting services have been provided. If less than 4 hours or more than 8 hours are provided, these consulting services shall be remunerated on a pro rata basis.
  - 5.4. In the event of cancellation of agreed upon consulting services less than 10 days before the mutually accepted date, the agreed remuneration for the consulting services will be charged in full with no further obligation from OTRS ASIA to provide the services.
  - 5.5. In the case of SaaS or on-premise contracts with initial consulting services, a total invoice is issued when the order is placed. The consulting services included must be used by the customer within 12 months of the order being placed, otherwise the right to these services shall lapse. In such a case, the customer shall not be entitled to a refund of the remuneration already paid for the consulting services not used, unless agreed prior otherwise with OTRS ASIA.
  - 5.6. If the number of users as agreed upon by the customer is exceeded, OTRS ASIA reserves the right to issue a subsequent adjusted invoice. The basis for the adjustment is the current list price of the SLA as agreed upon by the customer. The adjustment is made for the entirety of the current term and also forms the basis for invoicing in the event of a renewal of the agreement.
  - 5.7. All remuneration, including travel costs and other expenses, are subject to the applicable taxes, which are invoiced extra. Receipts for travel costs and other expenses will not be submitted as part of the invoicing process.
  - 5.8. OTRS ASIA invoices are due for payment without deduction within 14 days of receipt. After the due date, OTRS ASIA may demand default interest at the applicable statutory default interest rate. If the customer is in default of payment, OTRS ASIA may temporarily refuse to provide the contractually agreed services in whole or in part until payment has been made after a reasonable grace period has expired without result.
  - 5.9. OTRS ASIA always provides maintenance of the current release for on-premise contracts. Maintenance is understood as the provision of fixes to eliminate security vulnerabilities and software bugs. If the customer does not use the current release of the contractual software, OTRS ASIA will not provide any software maintenance and the recurring remuneration for the use of the contractual software to be paid by the customer will increase by 100 %.
- 6. Term and termination**
- 6.1. If the start of the term has not already been specified in the agreement this shall take place on the first day of providing the consulting services in the case of a new implementation and, in the case of a transfer of an existing OTRS on-premise instance, with the provision of an upload share by OTRS ASIA.
  - 6.2. The term is set out in the agreement. Unless otherwise stated, the agreement shall initially run for a minimum term of one year and shall be automatically renewed by one year at the end of the minimum term or any renewal term, unless it is terminated by either party in accordance with section 6.3.
  - 6.3. Ordinary termination of the agreement is excluded during the minimum or renewal term. Either party may terminate the agreement by giving notice at least two months prior to the expiration of the minimum or renewal term. Extraordinary termination rights for good cause remain unaffected.
- 7. Defects of title; indemnification**
- 7.1. OTRS ASIA warrants that the contractual software does not infringe on any third-party rights. If a third party claims that customer's use of the contractual software infringes its intellectual property rights, the customer must fully inform OTRS ASIA in writing without delay. In such a case, the customer shall conduct court proceedings with the third party only with OTRS ASIA's

agreement or shall authorise OTRS ASIA to conduct the dispute. The same applies with appropriate adjustments (*mutatis mutandis*) in cases where a third party makes claims against OTRS ASIA that are due to acts by the customer.

- 7.2. In the case of SaaS contracts, the customer warrants that the content and data stored on OTRS ASIA's servers and its use and provision by OTRS ASIA do not violate applicable law, official orders, third party rights or Agreements with third parties. The customer shall indemnify OTRS ASIA against claims made by third parties due to a violation of this section 7.2 upon first request.

## **8. Limitation of liability**

- 8.1. In all cases of contractual and non-contractual liability OTRS ASIA compensates for damages or for loss or wasted expenditure only in the following manner:
- 8.1.1 In cases of intentional acts, OTRS ASIA's liability extends to the full loss;
- 8.1.2 In cases of gross negligence, simple negligent breach of a major obligation (Cardinal duty) and in absence of a guaranteed function, liability is limited to the amount of foreseeable loss that would have been prevented by the breached obligation or the presence of the guaranteed function. A breach of a major obligation exists where the duty itself is a necessary prerequisite for the contractual performance, or where the breach of the relevant duty jeopardises the purpose of the contract and where the customer could legitimately rely upon its fulfilment.
- 8.2. The limitations of liability pursuant to section 8.1 do not apply to personal injury liability and liability under the German Product Liability Act.
- 8.3. If and to the extent that OTRS ASIA is obliged to compensate for the cost of restoring destroyed or lost data in the case of on-premise contracts due to a breach of duty, this obligation to pay compensation is limited to the cost that would have been necessary to restore the data if the customer had properly backed up the data.
- 8.4. Any liability of OTRS ASIA beyond the provisions in sections 8.1. and 8.2. is excluded.
- 8.5. All claims against OTRS ASIA in contract, tort, or otherwise for loss or wasted expenditure are barred after a period of one year of the underlying event(s). The provision in sentence 1 does not apply to liability for intentional acts or gross negligence, liability for personal injury or liability under the German Product Liability Act.

## **9. Data protection; confidentiality**

- 9.1. OTRS ASIA and the customer shall comply with applicable data protection regulations.
- 9.2. If and to the extent that OTRS ASIA has access to the customer's personal data in the course of providing the service, the parties will conclude a corresponding processing agreement before processing begins. In that case, OTRS ASIA will process the relevant personal data solely in accordance with the provisions set forth therein and in accordance with the customer's instructions.
- 9.3. OTRS ASIA and the customer are obligated to maintain secrecy about all confidential information (including business secrets) which the other party discloses in connection with the agreement and its execution and not to disclose it to third parties, pass it on or use it for purposes outside the agreement. Confidential information means all information which is designated as confidential or should reasonably be understood to be confidential arising from the circumstances surrounding its disclosure, irrespective of whether it has been communicated in written, electronic, embodied or verbal form. The receiving party may disclose the disclosing party's confidential information to third parties to the extent legally required; provided, that the receiving party required to make such a disclosure uses reasonable efforts to give the disclosing party reasonable prior notice of such required disclosure (to the extent legally permitted) and provides reasonable assistance in contesting the required disclosure, at the request and cost of the disclosing party. The receiving party shall use commercially reasonable efforts to disclose only that portion of the confidential information which is legally requested to be disclosed and shall request that all confidential information that is so disclosed is accorded confidential treatment. The restrictions on use or disclosure of confidential information will not apply to any confidential information that
- a) is independently developed by the receiving party without reference to the disclosing party's confidential information,

- b) has become generally known or available to the public through no act or omission by the receiving party,
  - c) at the time of disclosure was known to the receiving party free of confidentiality restrictions,
  - d) is lawfully acquired free of restrictions by the receiving party from a third party having the right to furnish such confidential information, or
  - e) the disclosing party agrees in writing is free of confidentiality restrictions.
- 9.4. The confidentiality obligation pursuant to section 9.3 shall remain in force even after termination of the agreement.

## **10. Subcontractor**

- 10.1. OTRS ASIA reserves the right to transfer the services to be provided by it in whole or in part to subcontractors selected by it at its due discretion.
- 10.2. OTRS ASIA is liable vicariously, within the scope of section 11.1 and 11.2, for the fault of its subcontractors.
- 10.3. Insofar as subcontractors have or may have access to personal data of the customer and/or the users and/or contact persons authorised by the customer within the scope of the subcontracted service provision, the corresponding provisions of the processing agreement shall take precedence.

## **11. Force majeure**

- 11.1. OTRS ASIA shall not be liable to the extent that events of force majeure make it impossible for OTRS ASIA to provide services. Force majeure includes all circumstances independent of the will and influence of the parties, such as natural disasters, government measures, decisions by authorities, blockades, war and other military conflicts, mobilisation, civil unrest, terrorist attacks, strikes, lockouts and other labour unrest, confiscation, embargoes, epidemics, pandemics or other circumstances that are unforeseeable, serious and beyond the control of the parties and occur after the conclusion of the agreement offered here.
- 11.2. If OTRS ASIA is prevented from fulfilling its contractual obligations due to force majeure, this shall not be considered a breach of duty and due services shall be extended appropriately according to the duration of the force majeure. The same applies if OTRS ASIA is dependent on the performance of a subcontractor and same is delayed due to force majeure.
- 11.3. OTRS ASIA will do everything in its power that is necessary and reasonable to minimise the extent of the consequences caused by the force majeure. OTRS ASIA shall immediately notify the customer in writing of the beginning and end of the hindrance caused by force majeure.
- 11.4. If a force majeure event lasts longer than 2 months, the customer may terminate the agreement without notice for good cause if it is no longer reasonable to expect the customer to adhere to the agreement. However, services rendered must be paid for up to the date of termination.

## **12. Miscellaneous**

- 12.1. Amendments and additions to the agreement and any contractually relevant notices as well as notices influencing a legal relation, such as termination notices, reminders, or notices to set time limits, require written form. Written form in this meaning includes text form in accordance with Law of the European Union.
- 12.2. All contractual and non-contractual claims arising out of and in connection with the agreement between OTRS ASIA and the customer shall be governed exclusively by German law, excluding conflicts of law provisions and the application of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- 12.3. The exclusive place of jurisdiction for all disputes arising out of or in connection with the agreement is the registered office of OTRS ASIA. Mandatory statutory provisions on exclusive places of jurisdiction remain unaffected by this provision.
- 12.4. Should individually provisions of these GTC or of the agreement between OTRS ASIA and the customer be invalid or unenforceable, this shall not affect the validity of the remaining provisions. The parties shall work together to replace ineffective or unenforceable provisions with provisions that correspond as closely as possible to the ineffective or unenforceable provisions.