

## General Terms and Conditions

### 1. Scope of Applicability, Exclusion of deviating Terms and Conditions, Priority of Application

- 1.1 The following General Terms and Conditions (hereinafter "**GTC**") govern the contractual relationship between by Tideways GmbH, Königswinterer Straße 116, 53227 Bonn, Germany (hereinafter "**Tideways**") and the respective customer (hereinafter "**Customer**", hereinafter Tideways and Customer individually also "**Party**" and jointly "**Parties**"), who uses the software platform "Tideways", including a cloud software solution and a local software component, and the other services of Tideways.
- 1.2 Deviating, conflicting or supplementary contractual or business terms and conditions of the Customer shall only become part of the Contract (as defined in Sections 3.3 and 3.10) if and insofar as Tideways has expressly agreed to their validity in writing. This also applies if Tideways has not expressly objected to the Customer's terms and conditions and/or provides services without objection.
- 1.3 These GTC apply both to the conclusion of a Contract (as defined in Sections 3.3 and 3.10) via self-checkout and by way of an individual Offer (as defined in Section 3.2) in accordance with Section 3.
- 1.4 In the event of ambiguities or deviations, Tideways' individual Offer (as defined in Section 3.2) shall take precedence over these GTC.

### 2. Subject matter of the GTC

- 2.1 The subject of these GTC are
  - a. the provision of the online software platform "Tideways" for application monitoring, profiling and exception tracking (hereinafter "**Software**") in the respective current version for the use of its functionalities and the provision of the local software components "Tideways Daemon and PHP Extension" which have to be installed on the local server infrastructure of the Customer (hereinafter "**Local Components**", hereinafter Software and Local Components collectively the "**Platform**"). The Customer can find the current functionality of the Platform and the scope of services of the Platform in the service description at <https://support.tideways.com/documentation/index.html>
  - b. the provision of additional services, such as consulting services and the implementation of the Platform.
- 2.2 All services of Tideways are aimed exclusively at entrepreneurs within the meaning of § 14 of the German Civil Code (*Bürgerliches Gesetzbuch*). An entrepreneur within the meaning of § 14 of the German Civil Code is a natural or legal person or a

partnership with legal capacity that acts in the exercise of its commercial or independent professional activity when concluding a legal transaction.

- 2.3 The use of the Platform requires a sufficiently dimensioned Internet connection. The Customer can find the necessary software environment for the Platform at <https://support.tideways.com/documentation/compatibility-and-requirements.html>.
- 2.4 Tideways shall be entitled to discontinue or modify the free services at any time. Tideways shall also be entitled to adapt the Platform or individual functions of the Platform for technical reasons, insofar as this is reasonable for the Customer or is required by law.

### 3. Conclusion of Contract

The Contract (as defined in Sections 3.3 and 3.10) may be concluded either via the self-checkout in accordance with Sections 3.1 - 3.8 or via an individual offer in accordance with Sections 3.9 - 3.12.

#### Self-Checkout

- 3.1 The use of the Platform requires registration for a free trial period and the creation of a user account (hereinafter “**Account**”) as follows:
  - a. To register for the free trial period and create an Account, the Customer shall provide the information requested in the registration form. The free trial period is only offered once per Customer.
  - b. By submitting the registration form and accepting these GTC, the Customer submits an offer to conclude a free usage agreement for the use of the Platform during the specified trial period.
  - c. Tideways confirms the registration by sending a confirmation email with a personalized activation link. By confirming the activation link, a user agreement is concluded between Tideways and the Customer for the free use of the platform during the trial period on the basis of these GTC (hereinafter “**User Agreement**”). Upon successful registration, an Account will be created for the Customer, which the Customer can access using its email address and password. The password can be changed at any time via the Account.
- 3.2 If the Customer wants to use the platform after the trial period has ended, the Customer shall book a paid subscription (hereinafter “**Subscription**”). The Customer can find the scope of services of the Subscriptions at <https://tideways.com/profiler/pricing>.
- 3.3 A paid subscription is booked as follows:
  - a. After logging into the Account, the Customer can select a listed Plan, enter its payment details and confirm the booking.

- b. Tideways accepts the booking by sending a confirmation email to the Customer, thereby concluding a paid contract (hereinafter "**Contract**") for the relevant Subscription based on these GTC.
- 3.4 The upgrade to a higher-value Subscription is possible at any time via the Account. In the event of an upgrade, the current term of the Contract shall apply to the upgraded Subscription. Downgrading to a lower Subscription is only possible at the end of the current billing period. If the Customer downgrades at an earlier point in time, the term of the downgraded Subscription shall only commence at the beginning of the following billing period.
- 3.5 The Customer can add additional services, such as add-ons or trainings, to an existing Contract via the Account. The conclusion of additional services shall be governed by Section 3.3. If the additional services are ongoing services in connection with a Subscription, the term of the Contract shall also apply to the additional services.
- 3.6 The Contract shall only be concluded with persons who are legal representatives or other authorized representatives of the Customer acting on its behalf and in accordance with its wishes. In order to verify the authorization in accordance with the above sentence, Tideways will request further documents (e.g., power of attorney, written permission) from the Customer if necessary.
- 3.7 There is no entitlement to registration and conclusion of a User Agreement or Contract. Tideways reserves the right to refuse registration and conclusion of a User Agreement or Contract without giving reasons.
- 3.8 The data requested upon registration and conclusion of a User Agreement or Contract must be provided completely and truthfully. If the data changes, the Customer shall update the information immediately. Upon request by Tideways, the Customer must confirm the data.

#### **Individual Offer**

- 3.9 The type, content and scope of the respective services of Tideways as well as the scope of services of the Platform are defined in an individualized offer (hereinafter "**Offer**").
- 3.10 By sending the Offer to the Customer, Tideways submits a legal offer to conclude the contract. By confirming the Offer in text form (hereinafter "**Confirmation**") and receipt of the Confirmation by Tideways, the Customer accepts the Offer with legal effect, so that a User Agreement and a contract (hereinafter also "**Contract**") is concluded between the Parties for the agreed services on the basis of the Offer and these GTC. If the Confirmation is not received by Tideways within 30 days of the date of the Offer, no Contract is concluded between the Parties.

- 3.11 By agreement between the Parties, the Contract may be supplemented or amended by further, additional or deviating services. In this regard, Tideways will send the Customer a supplementary offer in text form. Section 3.10 applies accordingly to supplementary offers. The services and remuneration of the Contract shall be adjusted in accordance with the supplementary offer.
- 3.12 Tideways creates an Account for the Customer to use the Platform. Tideways activates access to the Platform to the agreed extent and grants the Customer admin rights under its Account.

#### **4. Up- and Downgrades**

- 4.1 If the Customer At the end of every month we will notify you when the limit was exceeded and after two consecutive months above the limit an automatic upgrade for the next matching request tier is selected automatically. If you cut down the collected requests below the current request tier again, then this upgrade is automatically cancelled.
- 4.2 If the Customer exceeds the scope of the booked Subscription for two (2) consecutive calendar months, the Customer will automatically be upgraded to a Subscription with a higher plan in the following calendar month (hereinafter “**Upgrade**”). Tideways will inform the Customer of the excess at the end of each calendar month. The Customer pays the remuneration for the higher Subscription at the beginning of the month of the Upgrade.
- 4.3 As soon as the Customer falls below the scope of the Upgrade Subscription for two (2) consecutive calendar months, the Customer will be downgraded back to its original Subscription (hereinafter “**Downgrade**”) in the following calendar month. Tideways will inform the Customer of the Downgrade.

#### **5. Rights of use to the Platform**

- 5.1 Tideways grants the Customer the simple, non-exclusive, non-transferable, non-sublicensable right, limited in time to the term of the Contract, to use the Platform for the intended contractual purpose in accordance with the following provisions.
- 5.2 The Customer shall be entitled to use the Platform internally for its own purposes. Use of the Platform by affiliated companies within the meaning of § 15 of the German Stock Corporation Act (*Aktiengesetz*) of the Customer is not permitted. The use of the Platform by the Customer is also restricted to:
- a. the scope defined in the Subscription or the Offer;
  - b. the number of requests, size of applications, units in code base, projects and transactions of the Customer as defined in the Subscription or the Offer.

- 5.3 The respective current version of the Software shall be made available to the Customer for use at the router outlet of the data center in which the servers used by Tideways are located. The Software is not physically provided to the Customer. The respective current version of the Local Components shall be made available to the Customer via download or through various package managers.
- 5.4 The Customer shall not be entitled to provide the Platform, the access to the Platform, handed over copies of the Platform or any backup copies made to third-parties without the permission of Tideways. In particular, the Customer is not permitted to sell, lend, rent or otherwise sub-license the Platform or access to the Platform or to publicly reproduce or make the Platform accessible.
- 5.5 The use of the Platform by the Customer's employees respectively other third-parties subject to the Customer's right to issue instructions is permitted within the scope of intended use.
- 5.6 Tideways hereby informs the Customer that within the framework of the Platform open-source components from third-party providers (hereinafter "**OSS**") are used. The Customer acknowledges that the OSS are subject to the provisions of the respective OSS-licenses of the third-party providers. Section 5.1 does not apply to the used OSS. The terms and conditions of the respective OSS-license apply to the OSS. If the terms and conditions of the applicable OSS-licenses require that Tideways makes an offer to provide the source code of the OSS used in connection with the Platform, such an offer is hereby made.
- 5.7 If and insofar that during the term of the Contract additional software proprietary rights arise in accordance with §§ 69a et seqq. of the German Copyright Act (*Urhebergesetz*) in particular rights of use to the Platform and to any further developments thereof, Tideways shall be exclusively entitled to these together with all proprietary rights. They are hereby assigned/ transferred to Tideways in advance without restriction in terms of content, time or territory. Tideways hereby accepts the assignment/ transfer.
- 5.8 Tideways shall be entitled to use and edit the application and input data processed by the Platform in anonymized form in order to continuously modify the Platform with the aim of further developing and utilization. For this purpose, the Customer grants Tideways the simple, non-exclusive, irrevocable, unlimited in time and territory right of use. Such right shall also apply after any termination of the Contract, provided that it does not conflict with the Customer's legitimate interests. The provisions of § 87a et seqq. of the German Copyright Act remain unaffected.
- 5.9 If Tideways provides the Customer with additions (e.g., patches, additions to the documentation) or an updated version of the Platform (e.g., update, upgrade) during the term of the Contract, these are subject to the provisions of these GTC.
- 5.10 The Customer shall not be granted beyond the rights in these GTC any rights to the Platform or other intellectual property, in particular to copyrights, related and similar

rights, rights to inventions, patents, know-how, trade secrets, trademarks and trade names, design rights, database rights and rights to data, rights to the topography of semiconductor chips, domain names and all similar rights, in each case whether registered or not, including all applications for protection or registration of such rights, including all renewals and extensions of such rights or applications, by Tideways.

## **6. Account use, Sanctions and Account Suspensions**

- 6.1 The Customer shall be obliged to take the necessary precautions to prevent unauthorized persons from using the Platform.
- 6.2 The Customer shall not misuse the Platform by knowingly introducing viruses, trojans, worms, logic bombs or other material which is malicious or technologically harmful. The Customer must not attempt to gain unauthorized access to the Platform, the server on which the Software is stored or any server, computer or database connected to the Platform. The Customer must not attack the Platform via a denial-of-service attack or a distributed denial-of service attack.
- 6.3 The Customer shall ensure that the Platform is not used for purposes that are racist, discriminatory, pornographic, jeopardise the protection of youth, are politically extreme or otherwise unlawful or violate official regulations or requirements, or that corresponding data, in particular application data, are created and/or stored.
- 6.4 The Customer shall not be entitled to record or log passwords, API keys or other confidential data or personal data on the Platform or in connection with the Platform.
- 6.5 Tideways is entitled to irrevocably delete content and information that violates the GTC or legal regulations or is otherwise offensive and/or inappropriate.
- 6.6 If the Customer violates the GTC or legal regulations or if there is another good cause, Tideways may
  - a. modify or delete content and information provided by the Customer;
  - b. temporarily restrict or permanently suspend the Customer's Account;
  - c. terminate the Contract with the Customer without notice.
- 6.7 Tideways may impose these sanctions without prior notice and without consulting the Customer. After imposing sanctions, Tideways will give the Customer the opportunity to comment and will review the sanctions after receiving a counterstatement.
- 6.8 After a permanent suspension, there is no right to have the suspended Account reactivated. Once a Customer has been suspended, the Customer shall not log in with or register another Account.

## **7. Further User Accounts**

- 7.1 In addition to the Account, the Customer can have his own employees or other third-parties bound by instructions (hereinafter jointly "**Users**") activated as additional

Users of the Platform. Therefore, the Customer invites additional Users via email through its Account to register for the Platform and creates additional user accounts (hereinafter "**User Account**" or "**User Accounts**").

- 7.2 The Customer guarantees that it will only invite persons to use the Platform if the Customer is authorized to do so. The Customer shall ensure that the Users agree to receive the invitation email. In the event that a User asserts claims against Tideways due to the unsolicited sending of the invitation, the Customer shall indemnify Tideways from all claims in connection with the sending of the invitation. Tideways reserves the right to assert further claims against the Customer arising from this circumstance.
- 7.3 Each User must create a password in the registration form. By submitting the completed registration form, the User gains access to its User Account.
- 7.4 Access to the User Account is only permitted to natural persons with unlimited legal capacity (unbeschränkt geschäftsfähig) and only in their own name. Users must be at least 18 years old at the time of registration.
- 7.5 The Customer can restrict or delete User Accounts at any time. User Accounts will be ended automatically upon termination of the Contract.

## **8. Interfaces**

Tideways offers a software interface (also called "API") for the Platform which can be used to transfer the Customer's data and execute functions provided by the Platform using the Customer's technology or technology of third-party software suppliers. Tideways shall solely ensure the functionality of the interfaces in accordance with the availability provisions of these GTC insofar as such functionality lies within Tideways' scope of influence. In particular, Tideways shall not be liable for the interfaces' possible lack of compatibility or access capability where the defects lie in the Customer's or the third-party supplier's software.

## **9. Rights to the Customer's Content, rights to Customer Suggestions and Feedback, Indemnification**

- 9.1 The Customer grants Tideways free of charge a simple, non-exclusive, unlimited in time and territory, right of use to process the data and content uploaded by the Customer to the Platform or otherwise used within the framework of the Platform (hereinafter "**Customer Content**") for the purpose of processing the Customer Content to provide the contractual services, for pattern recognition analysis for improvement of the Platform and to create industry reports with aggregated data.
- 9.2 The Customer grants Tideways free of charge a simple, non-exclusive, unlimited in time and territory, right of use to the feedback expressed by the Customer as well as to suggestions and ideas of the Customer (hereinafter "**Customer Suggestions**"). Tideways shall in particular be entitled to implement the Customer Suggestions

within and outside the Platform, to further develop, publish them, make them publicly accessible, technically edit, prepare and adapt them.

- 9.3 The Customer guarantees that he is the owner of the rights granted under this Section 9 and that the Customer is able to effectively grant the rights. The Customer also guarantees that the Customer Content and Customer Suggestions do not infringe any third-party rights, in particular trademark rights, competition rights, copyrights, property rights or personal rights.
- 9.4 The Customer shall be obliged to indemnify Tideways on first demand against all claims by third-parties, in particular claims for infringement of trademarks, copyrights, trade and business secrets and personal rights, which may be asserted against Tideways in connection with the Customer Content or Customer Suggestions provided by the Customer. The Customer shall also be obliged to defend against unfounded claims by third-parties with regard to the Customer Content and Customer Suggestions provided. The Customer must inform Tideways immediately of any third-party claims of which it becomes aware. Tideways shall be entitled to take suitable measures itself to defend against third-party claims or to pursue its own rights. The indemnification also includes the reimbursement of costs that Tideways incurs or has incurred as a result of legal prosecution/ defense. This does not affect Tideways' further claims for compensation damages. Insofar as Tideways itself is responsible for the infringement of rights, claims against the Customer are excluded.

## **10. Availability**

- 10.1 Tideways warrants the availability of the Software of 99% on an annual basis (hereinafter "**Uptime**"). The following are not taken into account when calculating the Uptime
- a. Downtimes that are not due to a breach of obligation by Tideways, such as attacks on Tideways' systems or systems of the services used by Tideways by third-parties, non-culpable failures of the hardware of Tideways or the services used by Tideways or cases of force majeure.
  - b. Planned Maintenance in accordance with Section 10.2.
- 10.2 In order to carry out maintenance work and software updates, Tideways shall be entitled to interrupt the availability of the Software on every day between 8 pm and 6 am (UTC) for a maximum of three (3) hours per calendar month (hereinafter "**Planned Maintenance**"). If it is foreseeable for Tideways that downtimes for maintenance and software updates will last longer than three (3) hours, Tideways will inform the Customer of this at least three (3) days before the start of the respective Planned Maintenance by email or via notification on the Platform.

## 11. Load Tests

A functionality of the Platform allows the Customer to subject the Customer's website to load tests in order to check its performance under extraordinary and stressful circumstances. The Customer shall be solely responsible and liable for performing these load tests and should take into account that the availability of its website might be impaired by those load tests.

## 12. Support

12.1 Tideways shall provide maintenance and support services for the Platform (hereinafter collectively "**Support**") during Tideway's usual business hours. Support includes all services necessary to maintain and restore the operational availability of the Platform, as well as updates to the Platform for debugging purposes.

12.2 The Customer shall support Tideways to a reasonable extent in the performance of the Support at its own expense, in particular by providing a sufficient description of the defect, the circumstances that led to the defect and the circumstances surrounding the occurrence of the defect. The Customer's obligations to cooperate are genuine obligations on the part of the Customer. In particular, the Customer shall notify Tideways of all malfunctions that occur, providing all information necessary for a malfunction analysis and for isolating the cause of the defect.

## 13. Consulting and Implementation Services

13.1 If and to the extent agreed in the Subscription or the Offer, Tideways shall provide services in relation to the Platform. The subject matter of services are in particular consulting services in form of workshops, trainings and performance consulting (hereinafter "**Consulting Services**") and the implementation of the Platform for the Customer (hereinafter "**Implementation**"; hereinafter the aforementioned services together "**Service**"). The type, content and scope of the Services shall be bindingly defined by the Parties in the Subscription or in the Offer.

13.2 The provision of Services is based on a service contract within the meaning of §§ 611 et seqq. of the German Civil Code.

13.3 The Customer shall be obliged to provide Tideways with the documents, files, templates and other information required for Implementation without being asked, as early as possible, respectively timely for fulfilment of the Contract and free of third-party rights in the agreed format, and to agree and coordinate appointments with Tideways. The Implementation will be carried out remotely or on site at Tideways' discretion.

13.4 Tideways is free to choose the persons it deploys to provide the Services. The persons deployed by Tideways do not enter into an employment relationship with the Customer and are not subject to the Customer's authority to issue instructions. This applies in particular if persons deployed by Tideways provide the Services on the

Customer's premises. Tideways shall be entitled to deploy subcontractors to provide the Services. Tideways shall ensure that the essential requirements of the Contract, which apply to the part to be performed by the subcontractor, become part of the contract that Tideways concludes with the respective subcontractor.

- 13.5 If there are comprehensible reasons on the part of the Customer or Tideways (such as illness, force majeure or similar circumstances) which make it impossible to perform the Services within the agreed period or which mean that the Services can only be performed with disproportionate effort, the Parties shall be obliged to agree on a suitable alternative period (hereinafter "**Alternative Date**") for the performance of the Services. Tideways shall be obliged to inform the Customer of at least two Alternative Dates for this purpose. If the Customer does not select one of these Alternative Dates without a comprehensible reason, his claim to the performance of the Services shall lapse. In this case, the Customer shall be obliged to pay Tideways the actual expenses incurred by Tideways due to the preparation of the Services as damage compensation, unless the Customer can prove that a lesser damage has been incurred.
- 13.6 Upon payment of the full remuneration for the relevant Service, Tideways grants the Customer the simple, non-exclusive right to use the service results individually created by Tideways for the Customer (e.g., individually created presentations and analyses) unlimited in time and territory, for internal purposes.

#### **14. Obligations of the Customer to co-operate**

- 14.1 The Customer has informed himself about the essential functional features of the Platform and bears the risk as to whether these correspond to his wishes and needs. In case of questions of doubt, the Customer has taken advice from Tideways or an expert third-party before concluding the Contract.
- 14.2 The Customer shall be obliged to provide Tideways with all data, documents, files, templates, passwords/ access data and other necessary information in a standard market format without being requested to do so, as early as possible respectively timely for fulfilment of the Contract and free from third-party rights.
- 14.3 The Customer shall be obliged to co-operate immediately with requests from Tideways to provide explanations, documents or information.
- 14.4 The Customer is solely responsible for setting up a functional hardware and software environment for the Platform that is sufficiently dimensioned, also taking into account the additional load caused by the Platform.
- 14.5 The Customer shall follow the notes provided by Tideways for the configuration and operation of the Platform.
- 14.6 If and insofar as technically possible, the Customer shall take appropriate precautions for the event that the Platform does not work properly in whole or in part, in particular by fault diagnosing and regularly reviewing the data processing results.

14.7 The Customer shall be obliged to bear all costs incurred as a result of the fulfilment of the obligations to co-operate. The Customer shall also be obliged to bear all additional costs incurred by Tideways due to the (partial) non-fulfilment or delayed fulfilment of the obligations to co-operate.

## **15. Prices and Terms of Remuneration**

15.1 The amount and due date of the remuneration shall be determined in accordance with the provisions in the Subscription or in the Offer. If no provisions have been made in the Subscription or in the Offer,

- a. the remuneration for the use of the Platform is due for the agreed term in advance;
- b. the remuneration for fixed fees and additional Services is due in advance;
- c. the remuneration for services on an hourly basis is due monthly at the end of each a calendar month.

15.2 Other services are due for remuneration within fourteen (14) days of the invoice date.

15.3 Tideways shall be entitled at any time to verify the Customer's compliance with the terms of the Contract, in particular compliance with the scope of use of the Platform agreed in the Subscriptions or the Offer. If the Platform is used beyond the agreed scope or if the Customer does not, no longer or does not fully meet the agreed qualifications and conditions (hereinafter collectively "**Overuse**"), the Customer shall pay, including retroactively, the remuneration corresponding to the Customer's use, qualifications and the conditions of the respective service. Further claims by Tideways in the event of Overuse remain unaffected.

15.4 The Customer agrees to receive invoices solely in electronic form (PDF format).

15.5 The Customer shall bear all costs incurred by the chargeback of payment on the Customer's side (e.g., due to insufficient funds or rejected credit card debits).

15.6 Tideways is entitled to suspend access to the Platform if and to the extent that the Customer has not provided a valid and sufficient payment method for the payment of the remuneration.

15.7 The Customer may be invoiced costs by third-parties in connection with the use of the Platform (e.g., for the use of telecommunication networks). Tideways has no influence on such costs.

15.8 All prices are subject to the respective applicable statutory value added tax, if applicable.

## **16. Term and Termination**

16.1 User Agreements are concluded for an indefinite period. User Agreements may be terminated by either Party at any time. If the Customer terminates the User

Agreement during the term of a Contract, the User Agreement shall remain in force until the end of the Contract and shall expire upon expiry of the Contract.

- 16.2 The Contract is concluded for an indefinite period and may be terminated by either party with one (1) day notice to the end of the respective billing period.
- 16.3 If the User Agreement is not also terminated, the User Agreement shall remain in force after termination of the Contract.
- 16.4 The right to terminate the Contract for good cause remains unaffected.
- 16.5 The right to change terminate the Contract pursuant to Section 17.3 remains unaffected.
- 16.6 Tideways may terminate the Contract without notice if the Customer is in default with the payment of the remuneration or a not insignificant part of the remuneration for 28 consecutive days or.
- 16.7 Any termination must be made in text form or via the Account.

## **17. Special provisions regarding the EU Data Act**

- 17.1 Tideways provides its services as a data processing service within the meaning of Regulation (EU) 2023/2854 (hereinafter referred to as the “Data Act”). The rights and obligations set out below apply in addition to the other terms and conditions of these GTC.
- 17.2 Tideways shall inform the Customer in advance and upon request about:
  - a. the applicable deadlines and conditions for the Change Termination (as defined in Section 17.3),
  - b. the manner in which data access and data transfer will take place in the event of termination of the Contract, and
  - c. the amount of the Early Termination Fee (as defined in Section 17.6).

### **Early termination under the Data Act**

- 17.3 The Customer is entitled to terminate the Contract with two (2) months' notice to the end of the month if it wishes to switch to another data processing service within the meaning of the Data Act (hereinafter “**Change Termination**”).
- 17.4 The Change Termination shall only be declared after the end of the first billing period, unless the Customer can prove that the termination is absolutely necessary to enable the switch to another data processing service.
- 17.5 The right to extraordinary termination for good cause remains unaffected.

### **Early Termination Fee**

- 17.6 If the Customer declares a Change Termination and terminates the Contract before the end of the agreed billing period, Tideways is entitled to demand reasonable compensation (hereinafter referred to as “**Early Termination Fee**”).
- 17.7 The Early Termination Fee serves to offset the investments already made by Tideways in the individual provision of the Platform, which are not fully amortized in the event of early termination of the Contract.
- 17.8 The Early Termination Fee amounts to 20% of the monthly remuneration remaining until the end of the respective billing period, but no more than the remuneration for a period of six (6) months.
- 17.9 Upon request, Tideways shall prove to the Customer that the calculation of the Early Termination Fee is in reasonable proportion to the actual lost revenue and the saved expenses.

### **Support with switching and data access**

- 17.10 Upon receipt of a notice of a Change Termination, Tideways shall support the Customer in transferring the data stored at Tideways to another data processing service within the meaning of Art. 28 of the Data Act.
- 17.11 Tideways shall provide the data in a structured, commonly used, and machine-readable format and shall grant the new data processing service access to the data for a period of up to 30 days after the end of the Contract, insofar as this is technically possible and necessary for the purpose of transfer.

### **Data export in accordance with the Data Act**

- 17.12 Upon receipt of a notice for termination or Change Termination, Tideways shall, upon request, provide the Customer with all data stored at Tideways, provided by the Customer, or generated in the course of using the Platform (hereinafter “**Data Export**”). The Data Export shall be provided in a structured, commonly used, and machine-readable format that enables interoperability with standard IT systems.
- 17.13 The Data Export shall be carried out via a secure electronic interface (API or data export tool). At the Customer's request, the Data Export can alternatively be provided as a compressed data file (e.g., ZIP archive with CSV/JSON/XML files).
- 17.14 The Data Export must be completed within 30 days of the termination taking effect. The Customer's access to the Data Export will be maintained for a maximum of 30 days after the end of the Contract.
- 17.15 Tideways will carry out the Data Export free of charge, insofar as this is possible within the scope of the standard export functionalities. Tideways may charge a reasonable fee for additional, customer-specific support services.

17.16 Tideways is liable for the proper Data Export in accordance with the technical standards and requirements of the Data Act. Tideways shall not be liable for the compatibility of the Data Export with the systems of the new data processing service, unless this is due to a violation of the interoperability requirements of the Data Act.

## **18. Processing after Termination**

18.1 The (personal) data stored by the Customer and the Account will be deleted by Tideways thirty (30) days after the end of the User Agreement. If Tideways is not entitled to delete data for legal or other reasons, Tideways may alternatively block them. As soon as Tideways is entitled to delete the aforementioned data, such blocked data will also be deleted by Tideways.

18.2 The Customer shall delete the Local Components

- a. within 30 days of the end of the trial period, unless the Customer concludes a Contract within this 30 days period; and
- b. immediately after termination of the Contract.

## **19. Warranty**

19.1 Tideways does not warrant the suitability of the Platform for any purpose intended by the Customer, unless otherwise specified in the service description of the Platform. Specifications set out in the service description of the Platform or other documentation do not constitute guarantees unless they are expressly designated as such.

19.2 In the event of a warranty case, Tideways shall be obliged to, at its own discretion, remedy defects in the Platform by rectifying defects, procuring replacements, updates or releases of a new version of the Platform.

19.3 The Customer is not entitled to any warranty claims,

- a. if the Customer does not use the Platform as intended or misuses it, or
- b. if the Customer modifies or amends the Platform outside the planned functionalities without Tideways' prior express consent in text form, or
- c. if problems or defects are due to the Platform has been used with programs that are not compatible with the Platform,

unless the Customer proves that the defect is attributable to the Platform and was present even without its doing.

19.4 The strict liability (*verschuldensunabhängige Haftung*) of Tideways for damage compensation (§ 536 a of the German Civil Code) for defects existing at the time of conclusion of the Contract is excluded for the Platform.

19.5 If the Customer is entitled to a claim for damage compensation or reimbursement of futile expenses on the basis of warranty, this is subject to the limitation of liability in the following Section 19.

## **20. Limitations of Liability**

20.1 Subject to the further provisions of this Section 19, Tideways shall only be liable if and to the extent that Tideways, Tideways' legal representatives, executives, employees or other vicarious agents are liable for intent or gross negligence. However, in the event of default by Tideways or the impossibility of performance for which Tideways is responsible, as well as in the event of a breach of essential contractual obligations (so-called "cardinal obligations"), Tideways shall be liable for any own culpable conduct and that of Tideways' legal representatives, executives, employees or other vicarious agents. "Essential contractual obligations" are abstractly defined as those obligations whose fulfilment is essential for the proper execution of the Contract and on whose compliance the Customer may regularly rely.

20.2 Except in cases of intent or gross negligence of Tideways, its legal representatives, executives, employees or other vicarious agents, Tideways' liability shall be limited to the amount of damages typically foreseeable at the time of conclusion of the Contract.

20.3 The exclusions and limitations of liability regulated in the aforementioned Sections 19.1 and 19.2 do not apply in the case of the assumption of express guarantees, in the case of claims due to the absence of warranted characteristics and for damages resulting from injury to life, limb or health and in the case of mandatory statutory provisions. The limitations of liability regulated in Section 19.2 shall also not apply in the event of default by Tideways, for claims for default interest, for the default lump sum in accordance with § 288 para.5 of the German Civil Code and for compensation for the damage caused by default, which is based on the costs of legal prosecution.

20.4 Claims under the Product Liability Act (*Produkthaftungsgesetz*) remain unaffected by the provisions of this Section 19.

## **21. Confidentiality**

21.1 The Parties shall be obliged to treat as strictly confidential all confidential information and trade and business secrets within the meaning of 20.2 (hereinafter "**Confidential Information**") relating to the Parties which are communicated or disclosed during the term of the Contract or pre-contractually or which otherwise come to their knowledge and to use them only for the purposes of performing the Contract, in particular not for their own or third-party competitive purposes. Subject to the provisions of this Section 20, neither Party shall be entitled to disclose or otherwise reveal such information to third-parties without the prior consent of the respective other Party.

- 21.2 The following shall be considered as Confidential Information in the sense of this Section 20:
- a. all trade and business secrets within the meaning of § 85 para.1 of the German Limited Liability Companies Act (*Gesetz betreffend die Gesellschaften mit beschränkter Haftung*);
  - b. business secrets within the meaning of § 2 no. 1 of the Secrecy Breaching Act (*Gesetz zum Schutz von Geschäftsgeheimnissen*), i.e. information (i) which are not generally known or readily accessible, either as a whole or in the precise arrangement and composition of its components, to persons in the circles that normally deal with this type of information and are therefore of economic value, and (ii) which is the subject of confidentiality measures that are appropriate in the circumstances by its legitimate owner, and (iii) for which there is a legitimate interest in confidentiality; and
  - c. beyond the scope of protection and application of § 1 of the Secrecy Breaching Act, also such (trade and business) secrets and other confidential information that are not the subject of appropriate confidentiality measures or has no particular economic value or for other reasons does not constitute a trade secret within the meaning of § 2 no. 1 of the Secrecy Breaching Act,
  - d. in particular business and/ or financial plans, (marketing/sales/business/pricing) strategies, (marketing/ sales/ software/ business) concepts, calculation bases, price lists, software algorithms, product and/ or program specifications, supplier and/or customer data, sales and marketing data or marketing plans, other information on (i) sources of supply, (ii) operating and other costs, (iii) the organization, shareholding structure, management, employees, suppliers, cooperation partners and/or customers, (iv) the financial, technical, legal, tax or (business) economic circumstances of the Parties.
- 21.3 For the classification as Confidential Information it is irrelevant (i) whether and on which carrier medium the respective Confidential Information is embodied; (ii) whether the respective Confidential Information is marked as "confidential" or "secret"; (iii) whether the respective Confidential Information has a special economic value from the point of view of the receiving Party; (iv) whether other technical or organizational measures are taken to protect confidentiality in addition to the conclusion of the Contract.
- 21.4 Such information is not considered Confidential Information,
- a. that were at the time of disclosure by the respective other Party obvious, readily available to the public or generally known;
  - b. which are part of the general specialized knowledge or state of the art;
  - c. which become public knowledge after disclosure by one Party without culpable breach of statutory or contractual confidentiality obligations by the other Party;

- d. which has already become lawfully known to one Party prior to disclosure by the other Party without breach of statutory or contractual confidentiality obligations, in particular if the Confidential Information in question becomes available to one Party through a source other than the other Party, provided that one Party has no reason to believe that this source is itself prevented from disclosing the Confidential Information by a statutory or contractual obligation;
- e. which were already in the possession of the other Party or otherwise known to the other Party at the time of disclosure by one Party, without this being based on a breach of statutory or contractual confidentiality obligations;
- f. that have been independently developed by the other Party, its governing bodies or employees at the time of disclosure by one Party.

21.5 The obligations set out in Section 20.1 do not apply,

- a. to the extent that the Party concerned has given its prior written consent to transfer, disclosure or utilization for non-contractual purposes;
- b. for transfer or other disclosure to employees, shareholders, consultants, provider of service, suppliers, subcontractors, Service Providers (e.g. data centers) of a Party, insofar as necessary for the execution or termination of the Contract, in particular for the purpose of the Contract (need-to-know principle) and for the purpose of fulfilling legal obligations and for legal prosecution or defense;
- c. for a transfer or other disclosure due to a binding court decision or a mandatory official order or mandatory statutory (disclosure) obligations. In this case, each Party shall notify the other Party in text form immediately after becoming aware of the disclosure obligation. The Confidential Information may only be disclosed to the extent that a mandatory disclosure obligation requires it.

21.6 Mandatory statutory exceptions to the confidentiality obligation regulated in this Section 20 (e.g. §§ 3 para.2, 5 of the Secrecy Breaching Act, §§ 6 and 9 of the Whistleblower Protection Act (*Hinweisgeberschutzgesetz*) remain unaffected.

21.7 The Parties shall be obliged to take all necessary and appropriate measures to protect the Confidential Information from unauthorized access, unauthorized provision, use, exploitation or publication and from misuse by third-parties. In doing so, at least the same care shall be taken as the receiving Party takes to protect its own information of a comparable confidential nature.

21.8 The Parties shall be obliged to return all Confidential Information provided to them (including all copies, transcripts, recordings on electronic or other data carriers or other reproductions) to the other Party immediately after termination of the Contract respectively ensure their return or, at the request of the Party concerned, destroy them and/or delete them from data carriers respectively ensure that they are destroyed respectively deleted, unless there is a legal obligation to retain respectively store them. There is no right of retention in this respect.

- 21.9 Any further rights and claims with regard to Confidential Information, including those arising from the Secrecy Breaching Act and the Whistleblower Protection Act, remain unaffected by the provisions of this Section 20.
- 21.10 The breach of the confidentiality obligation constitutes a material breach of the Contract, which entitles the breached Party to terminate the Contract for good cause. If the breached Party does not exercise this right of termination for such a breach in an individual case, it reserves the right to terminate the Contract (for good cause) in the event of recurrence.
- 21.11 The violation of statutory and contractual confidentiality obligations is subject to criminal sanctions in accordance with § 23 of the Secrecy Breaching Act.
- 21.12 For the avoidance of doubt, the confidentiality obligation shall continue to apply for two (2) years after termination of the Contract.

## **22. Data protection**

- 22.1 The Parties shall comply with the applicable data protection regulations, in particular those applicable in Germany.
- 22.2 Tideways hereby informs the Customer that the Customer shall not process any personal data, in particular customer data, via the Platform.
- 22.3 The privacy policy of Tideways is available at: <https://tideways.com/privacy>.
- 22.4 The data processing agreement available at [LINK] applies to the provision of services by Tideways (Art. 28 para.3 General Data Protection Regulation (*Datenschutz-Grundverordnung*)).

## **23. Reference**

The Customer grants Tideways the revocable right to name the Customer as a reference customer using the company logo. The revocation must be made in text form. The revocation does not invalidate the legality of the naming in the past. References on the Internet will be removed from Tideways' website within two weeks of revocation. In the case of print products that have already been printed at the time of the revocation, the revocation shall only apply with regard to a new edition.

## **24. Applicable law, Place of Jurisdiction and Place of Fulfilment, Written Form**

- 24.1 These GTC and the contracts regulated therein are subject exclusively to the law of the Federal Republic of Germany, excluding the United Nations Convention on Contracts for the International Sale of Goods.
- 24.2 The registered seat of Tideways is the exclusive place of jurisdiction for all legal disputes arising from or in connection with the GTC and the contracts regulated therein. Otherwise, the statutory places of jurisdiction shall apply.
- 24.3 The place of fulfilment is the registered seat of Tideways.

- 24.4 Tideways reserves the right to amend these General Terms and Conditions if this appears objectively justified. Objectively justified changes include, for example, an expansion of the platform's functions, a change in the legal or statutory situation (e.g., if a clause is declared invalid by a court of law) or if unforeseeable changes that are not caused by Innoloft and over which Innoloft has no influence significantly disrupt the balance of the contract as it existed at the time of conclusion. A prerequisite for any change is that it is reasonable for the Customer. Customers will be notified of changes to the General Terms and Conditions. They shall be deemed approved if the Customer has not objected to the validity of the amended General Terms and Conditions in writing or by email to Innoloft within four (4) weeks and Tideways has pointed out the legal consequences of not objecting.
- 24.5 Amendments and supplements to these GTC beyond Section 23.4 must be made in writing.
- 24.6 The written form requirement under these GTC is also met,
- a. if the Parties transmit an electronic copy of a handwritten signed document;
  - b. if the Parties provide their signatures at least by means of electronic signatures within the meaning of Art. 3 no. 10 of the European eIDAS Regulation (i.e. data in electronic form that is connected or logically linked with other electronic data and that the signatory uses to sign); e.g., via DocuSign.

## **25. Severability clause**

Should a provision of these GTC or a provision included herein in the future be wholly or partially legally invalid or unenforceable or subsequently lose its legal validity or enforceability, this shall not affect the validity of the remaining provisions of these GTC. The same shall apply if it should transpire that these GTC contain regulatory gaps. In place of the invalid or unenforceable provisions or to fill the gap, an appropriate provision shall apply which, as far as legally possible, comes closest to what the Parties intended or would have intended in accordance with the meaning and purpose of these GTC if they had considered the point when concluding the Contract or when subsequently including the provision in question. The Parties are aware of the case law of the Federal Court of Justice, according to which a severability clause merely reverses the burden of proof. However, it is the express intention of the Parties to maintain the validity of the remaining contractual provisions under all circumstances and thus to waive § 139 of the German Civil Code in its entirety.

**Last updated on 1 November 2025**