

# GTC Operations<sup>1</sup>

## 1. Preamble

cioplenu GmbH, Am Technologiezentrum 5, 86159 Augsburg, Germany (hereinafter referred to as "Contractor") provides the Customer with the web-based software solution Operations<sup>1</sup> for the creation, management and use of digital job descriptions and checklists ("Software").

The use of the Software and the provision of supplementary services ("Services") are subject to these General Terms and Conditions ("GTC").

Our Software and Services are aimed exclusively at businesses (entrepreneurs in the meaning of § 14 of the German Civil Code (BGB). We do not conclude contracts with consumers.

## 2. Rights of Use

**2.1** For the term of the contract, the Contractor shall grant the Customer, subject to the condition precedent of full payment of the agreed remuneration, the paid, worldwide, non-exclusive and non-transferable right to use the Software as intended. The Customer may only use the Software within the scope of the contractual provisions. The Customer shall not receive any right to the source code of the Software. The Customer may only use the Software for its own purposes. The use for own purposes includes the intended use of the Software for general business purposes of the Customer and the processing of the Customer's data. It does not include the use of the Software for third parties, for example as a service provider or any other transfer or brokerage of use to third parties.

**2.2** The Customer is entitled to have the Software used by its own employees or by third parties for its own purposes. The Customer shall create a super admin user account as part of the initial setup. The super admin user can then create standard user accounts. The Software may be used by a corresponding number of named users in accordance with the number of users agreed in the respective order ("Named User License"). The Customer shall document the respective authorized users. Joint use of the Software by different users under a common user account is excluded. The Customer shall be responsible for the use of the Software by its users and for all damage caused by negligent or intentional breaches of duty by its users.

**2.3** Unless otherwise agreed, all rights to the Software and Services provided by the Contractor or developed under this Agreement shall belong solely to the Contractor. All rights to any kind of modification, development or improvement of the Software or Services, which are made by the Customer, shall be the exclusive property of the Contractor.

**2.4** The Software may contain open-source software components. The use of these components is exclusively subject to the corresponding terms of use of the open-source software components that are transmitted and/or referenced within the scope of the open-source software components. No provision of this Agreement shall affect the rights or obligations of Customer under the corresponding terms of use of the open-source software components. In the event of contradictions or conflicting provisions of license terms of the open-source software and the provisions of this Agreement, the license terms of the open-source software shall take precedence.

**2.5** The right to use the Software also extends to fixes, patches, developments, and updates, which the Contractor makes available to the Customer. The right to updates does not include the right to a right to use new/additional products and functionalities that are provided as a separate product/module.

**2.6** Unless otherwise agreed or required by mandatory law or applicable open-source software terms of use, Customer shall not,

- a) copy the Software beyond what is necessary for the contractual use, neither in whole nor in part;
- b) modify, correct, adapt, translate, improve or otherwise make derivative developments to the Software;
- c) rent, lend, sell, license, transfer or otherwise make the Software available to third parties;
- d) reverse engineer, decompile, disassemble or otherwise attempt to decipher the source code of the Software, in whole or in part;
- e) circumvent or violate any security devices or protection mechanisms contained in or used for the Software;
- f) take measures that are likely to cause damage to the Software or the Contractor's servers;
- g) Remove, delete, obliterate, alter, obscure, translate, combine, add to or otherwise modify any trademarks, documentation, warranties, disclaimers or other rights, such as intellectual property, marks, notices, labels or serial numbers, associated with the Software;
- h) use the Software in a way that violates applicable law and/or the rights of third parties;

- i) use the Software for purposes of benchmarking or competitive analysis of the Software, for the development, use or provision of a competing software product or services, or for any other purpose that is detrimental to Contractor; and/or
- j) use the Software for or in connection with the design, construction, maintenance, operation or use of hazardous environments, systems or applications or other safety-critical applications, or otherwise use the Software in a manner that could result in physical harm or serious property damage.

### **3. Obligations of the Customer**

**3.1** The Customer shall support the Contractor in the performance of the contractual services to a reasonable extent. The Customer shall provide in advance, without being requested to do so, all cooperation services, information, data, files, materials which are necessary for the Contractor to fulfill its contractual obligations. If the Customer fails to cooperate sufficiently and/or causes delay, the Contractor shall not be obliged to fulfill the contractual obligations as long and as far as the Contractor is prevented from fulfilling the contractual obligations due to insufficient and/or delayed cooperation of the Customer. The Contractor shall inform the Customer of its insufficient or timely cooperation and set a reasonable deadline for subsequent performance. If the Customer nevertheless fails to fulfill his obligations to cooperate, any resulting increases in remuneration, additional expenses (e.g. additional work, cancellation costs, travel expenses) and postponements of deadlines that cannot be avoided by the Contractor shall be borne by the Customer. After fruitless expiration of the grace period, the affected Software or Service shall be deemed to have been provided or rendered.

**3.2** Customer shall be responsible for (i) appropriate security processes, tools and controls for systems and networks interacting with the Software; (ii) maintaining alternative processes in the event of a lack of availability of the Software; (iii) determining whether the technical and organizational data protection and data security measures provided by Contractor meet Customer's specific requirements; (iv) the appropriate internal training of the users and the provision of internal technical support; and (v) the proper backup of all programs and data located on its system environment and of all data transferred to or and work results created with the Software upon commencement of use of the Software and at reasonable regular intervals thereafter.

### **4. Services**

**4.1** Unless otherwise agreed, Services shall be invoiced on a time and material basis at the end of the calendar month in which they are provided. Invoicing shall be based on the Contractor's time sheets. Unless otherwise agreed, reasonable travel expenses shall be borne by the Customer at cost and against receipt and shall be invoiced monthly.

**4.2** Insofar as employees of the Contractor are on the premises of the Customer, they shall comply with safety instructions of the Customer. For this purpose, the Customer shall provide these instructions to the Contractor in writing in advance.

**4.3** The Contractor reserves all rights to technical work results created during the provision of Services. This includes in particular software/code, interfaces, methods, processes, and templates used, created or modified by the Contractor. The Contractor grants the Customer a non-exclusive, non-transferable right of use to such work results for its own purposes in accordance with Section 2.1 of these GTC.

**4.4** Work results created by the Contractor as part of the provision of Services for the Customer, in particular integrations, interfaces and customizing/modification of the Software, are not covered by the standard support, unless these work results are incorporated into the standard Software. In principle, such work results can also only be used with the current version/release of the Software at the time of creation. Any upgrade or update may require additional migration services for which a charge will be made.

### **5. Service Provision**

**5.1** The Customer requires a current standard web browser (for desktop Google Chrome, Microsoft Edge, Mozilla Firefox or Apple Safari, for Android Google Chrome and for iOS Apple Safari) to use the Software. The Customer is responsible for the provision and operation of all hardware and operating software as well as for the secure and fast connection of the IT end devices to the Software.

**5.2** Unless expressly agreed otherwise, setup/installation and configuration of the Software shall be remunerated in accordance with the hourly rates for Services agreed in the respective individual order.

**5.3** Software and other work results shall be deemed to have been handed over as soon as they have been made available to the Customer. Services shall be deemed rendered as soon as the respective service has been completed. Support/maintenance, if applicable, shall be deemed to have been provided on a monthly pro-rata basis as time elapses.

**5.4** Unless otherwise agreed, Software and Services shall not be subject to separate acceptance by

Customer but shall be deemed accepted upon delivery. If acceptance has been contractually agreed and the Customer has not complied with the time or test plan for acceptance or if such a test plan or a time limit for tests and acceptance does not exist, the software and services shall be deemed to have been accepted ten working days after handover.

**5.5** The Contractor is entitled to use subcontractors or other vicarious agents (collectively referred to as "Subcontractors") to fulfill the contractual obligations. The Contractor shall ensure that Subcontractors are bound by obligations regarding confidentiality and data protection in accordance with this Agreement. The engagement of Subcontractors shall not affect the Contractor's contractual obligations to the Customer. The Contractor shall be liable for any poor performance of a subcontractor as for its own fault.

## 6. Support

**6.1** Support includes assistance and advice to Customer in resolving problems in the use of the Software, including reviewing, diagnosing and correcting significant defects and errors in the Software and providing bug fixes, corrections, modifications, changes, enhancements, and updates to ensure the functionality of the Software.

**6.2** Support does not cover problems with or damage to the Software to the extent caused by (i) Customer's negligence, misuse or improper operation; (ii) operation, use or storage/hosting of the Software not in accordance with the requirements of the Documentation or failure to comply with any specifications or limitations provided by Contractor; (iii) modifications to the Software not made or approved by Contractor; (iv) acts of third parties; (v) third party products; and/or (vi) force majeure.

**6.3** For each request/malfunction report, the Contractor shall indicate a priority according to the criteria defined below at its dutiful discretion. The Contractor may combine redundant fault reports by the Customer that relate to the same fault into one fault report. To enable Support, the Customer shall grant the Contractor comprehensive and unrestricted access to the Software.

**6.4** The Contractor provides the availability and response times specified below for the Standard Support. Deviating availability and/or response times will be specified in the respective individual order, if applicable. For effective problem resolving, a competent contact person must be available at the Customer's site who can provide the necessary information, who has the required access rights and who can make the necessary decisions.

The response time is the time between the first request/fault report by the Customer (by telephone or electronically) and the first response (by telephone or electronically) from the Contractor. Only time intervals during the availability times are relevant for the response time.

**Availability:** Weekdays (except Saturdays) 9:00 a.m. - 5:00 p.m. (CET) via Intercom Messenger

Languages: German, English

**Priority Showstopper** (the Software or essential parts of it do not work or are not available and the business of the Customer is severely affected by the malfunction): Response time 2 hours

**Priority 5** (the functionality of the Software or essential parts of it is severely limited and the business activity of the Customer is severely affected by the malfunction): Response time 4 hours

**Priority 4** (certain functionalities of the Software are restricted, the effects are noticeable/annoying, but the business activity of the Customer is not significantly affected by the malfunction): Response time 8 hours

**Priority 1-3** (the functionality of the Software is not fundamentally affected by a potential malfunction, the business activity of the Customer is not significantly affected): Response time 48 hours

## 7. Provision of the Software

**7.1** Contractor shall make the Software available to Customer in a logically separated account. The Contractor shall make the Software available to the Customer for remote access in a secure system environment. A transfer of the Software to the Customer shall not take place.

**7.2** The Software shall be made available to the Customer in its respective current version/release.

**7.3** The Contractor shall make the Software available to the Customer with an availability of at least 99 % of the respective calendar month (hereinafter "Minimum Availability"). In this context, the Software is available if there is an uninterrupted connection between the servers on which the Software is hosted and the transfer point to the Internet and the Customer is able to log in and access the Software. The minimum availability does not apply to test and development servers.

**7.4** Contractor shall be entitled to access the Software to verify Customer's compliance with the terms and conditions of use of the Software, including compensation; and to perform diagnostics and analysis, and to adjust the settings of the Software to improve the performance and/or security of the Software, provided that such adjustments do not adversely affect Customer's use of the Software; collect system

data (not personal data) about the use of the Software for use in identifying and correcting potential defects and errors in the Software; perform statistical analysis; and support research and development.

## **8. Warranty**

**8.1** Software and Services shall be provided or rendered by the Contractor free of defects and, when used as intended, shall essentially comply with the specifications stated. The Contractor's services shall be performed competently and professionally in accordance with industry standards by instructed and experienced personnel. The granting of the agreed rights of use to the Customer shall not be opposed by any rights of third parties. Technical data, specifications, and performance data in public statements, in particular in advertising material, shall not be deemed to be quality data.

**8.2** In the event of defectiveness, the Customer's claims for defects shall initially be limited to subsequent performance. The Customer shall notify the Contractor in writing of any defects that occur, including a description of the defect, and request that the defect be remedied. In the event of proven defects, the Contractor shall provide warranty by subsequent performance in such a way that it provides or renders the software or service again in a defect-free condition or eliminates the defect.

**8.3** If subsequent performance finally fails after two attempts at subsequent performance, the Customer may withdraw from the respective individual contract or reduce the remuneration appropriately. The Contractor shall provide compensation for damages or reimbursement of futile expenses due to a defect within the limits of liability set forth in these GTC.

## **9. Payment Terms**

Unless otherwise agreed, Software shall be invoiced annually in advance upon delivery. The Customer shall pay invoices within 20 days of the invoice date without discount or other deductions. Unless otherwise agreed, the specification of a purchase order number on the invoice is not a prerequisite for the payment obligation. In the event of default in payment, the Contractor shall be entitled to suspend the contractual services, in particular to block access to the Software, and interest on arrears shall be due at the statutory rate. The prices quoted do not include sales tax or other taxes. These will be invoiced separately to the Customer, if applicable.

## **10. Limitation of Liability**

**10.1** The Contractor shall only be liable for simple negligence, both for its own conduct and for attributable conduct, insofar as essential contractual obligations (cardinal obligations) are violated. In this case, the liability is limited to the contract-typical and foreseeable damage. Material contractual obligations are obligations whose breach jeopardizes the achievement of the purpose of the contract, whose fulfillment makes the proper execution of the contract possible in the first place and on whose compliance the Customer regularly relies.

**10.2** For the aforementioned cases of limited liability, the amount of such liability shall additionally be limited to 500,000 Euros per contractual year.

**10.3** The Contractor shall only be liable for indirect and consequential damages as well as for lost profits, additional personnel costs, useless expenses and omitted savings, etc. in the event of intent and gross negligence.

**10.4** The limitations of liability shall not apply to claims based on intent and gross negligence, in the event of personal injury, in the event of fraudulent intent, insofar as the Product Liability Act applies, and for damages that fall within the scope of protection of an independent guarantee, quality or durability guarantee given by the Contractor, insofar as nothing to the contrary results from the respective guarantee agreement.

**10.5** If the Customer violates its obligation to properly back up data, the Customer's liability for loss of data shall be limited to the amount of damage that would have occurred even if the Customer had properly and regularly backed up the data.

## **11. Confidentiality**

**11.1** Each of the parties undertakes to treat as confidential all information received within the framework of the contractual cooperation which (a) is marked as "confidential" or "secret" or with an equivalent indication or is verbally designated as confidential; (b) is to be regarded as confidential by virtue of its content; or (c) is derived from confidential information which has been made available; exclusively for the purposes of the contractual cooperation and to protect it from being disclosed to unauthorized third parties. This confidentiality obligation shall be imposed on all persons entrusted with the execution of the contract between the parties.

**11.2** Excluded from the confidentiality obligation is information that (a) is publicly available or subsequently became publicly available or was already known to the other party at the time of the conclusion of the contract; (b) was independently and autonomously developed by the other party; (c)

was disclosed to the other party by a third party that is not subject to a confidentiality obligation, or (d) must be disclosed due to statutory provisions or official or judicial orders (in this case, the party concerned must be informed thereof without undue delay).

## 12. Data Protection

**12.1** Within the scope of the use of the software, personal data of the users of the software may be processed. The Customer is the Controller and the Contractor is a processor. This data processing by the Contractor on instruction of the Customer is regulated in the Data Processing Agreement between the Customer and the Contractor, which is available at <https://operations1.com/en/terms-and-conditions> and is expressly incorporated into these GTC and the contract between the parties.

**12.2** Within the scope of a free trial version, no real personal data may be processed with the software.

**12.3** The Contractor shall be entitled to use anonymized data in connection with the use of the Software for internal business and/or operational purposes, in particular to analyze the use of the Software and to improve the Software. The Customer shall issue a corresponding instruction to anonymize the personal data required for this purpose.

**12.4** With regard to the processing of the data of the contact persons of the Customer, reference is made to the privacy policy on the Contractor's website.

## 13. Term

Unless otherwise stipulated in the respective individual order, the respective contract shall have a term of 12 months. Unless otherwise stipulated in the respective individual order, the respective contract shall always be extended by a further 12 months in each case unless it is terminated in writing at least 3 months before the end of the respective term. The respective contract may be terminated by either party without notice at any time in the event of a material breach of contract by the other party if the breach is not remedied within 30 days. This period shall commence from the date of delivery of the written notice of the material breach of contract. The Contractor may terminate the contract without notice at any time if the Customer is dissolved or liquidated or initiates steps to this end and/or if the Customer becomes insolvent or bankrupt.

## 14. Miscellaneous

**14.1** This contract is subject to German law. In the event of disagreements arising from this contract, the parties undertake to first find an amicable settlement. Should this not be possible, the parties agree already now on Augsburg as general place of jurisdiction.

**14.2** The Contractor shall have the right to publicly express the fact that the Customer uses the Operations1 Software and/or is a customer of the Contractor and to use the name and logo of the Customer for this purpose in the Contractor's marketing materials, including on the Internet. Any other use of the name or logo of the Customer requires the prior consent of the Customer.

**14.3** For additional agreements, the written form is required. Should individual parts of this contract be invalid, this shall not affect the validity of the remaining provisions of the contract. All notices under this contract must be in writing and shall become effective upon first delivery.

**14.4** The Contractor shall be entitled to transfer its rights and obligations under this Agreement to a third party (assumption of the Agreement) if the assumption of the Agreement does not impair serious interests of the Customer, for example if the third party does not provide sufficient guarantee for the performance of the contractual obligations. In the event of such a contract takeover, the Contractor shall inform the Customer electronically with reasonable notice in advance about the contract takeover and the new contractual partner and shall grant the Customer a right of objection in the event that serious interests of the Customer could be impaired.

The Contractor may make changes to these GTC if these become necessary due to changed circumstances, for example in the event of significant changes in legislation or case law, the relevant market and business environment or due to technical developments, and if these are reasonable for the Customer. The Contractor shall inform the Customer of the changes in electronic form within a reasonable period of time, at least one month, before the changes come into force. The Customer shall be entitled to object to such changes within 14 days after receipt of the change notification. In the event of an objection by the Customer, the Contractor shall have the right to terminate the contractual relationship extraordinarily without observing a notice period. If the Customer does not object, its consent shall be deemed to have been granted after expiry of the above-mentioned periods. The Contractor shall expressly point out the duration of the period and the significance of its expiry without result when announcing the changes to these GTC.