

# General Business Conditions

Edition August 2018



Using this agreement, Client may order managed services, cloud and other services (collectively “TIG Services”), and third party machine or software (collectively “Products”) available from The IT Guys Sarl (“TIG”). Details regarding TIG Services, Products, offerings or orders are provided in contracts, schedules, orders and quotes (“Orders”). This agreement and applicable Orders are the complete agreement (Agreement) regarding transactions under this Agreement.

## Managed Services – Other Services

TIG provides managed services, consulting, installation, customization and configuration, maintenance, and other services as detailed in an Order. Any lease of personal (location de service) is explicitly excluded.

Services may be provided on Client’s site or remotely via Client’s internet or by telephone. When TIG, at its sole reasonable opinion, may consider it a necessity for Client to install remote support program, TIG will procure such program to Client. Client will provide access to its sites and to its IT equipment to TIG personnel for the services’ purposes. Client will furthermore collaborate timely and procure that its employees and third parties co-operate adequately with TIG’s personnel while providing services. Failure or delay in complying with Client obligation may result in additional time spent and expenses, TIG will be entitled to charge such at the then applicable rates.

Client will own the copyright in works of authorship that TIG develops for Client under an Order (“Project Materials”). Project Materials exclude works of authorship delivered to Client, but not created, under the Order, and any modifications or enhancements of such works made under the Order (“Existing Works”). Some Existing Works are subject to a separate license agreement (“Existing Licensed Works”). A software is an example of an Existing Licensed Work and is subject to the software license terms. TIG grants Client an irrevocable (subject to Client’s payment obligations), nonexclusive, worldwide license to use, execute, reproduce, display, perform and prepare derivatives of Existing Works that are not Existing Licensed Works. TIG retains an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, sublicense, distribute, and prepare derivative works of Project Materials.

## Cloud Services

A Cloud Service is an TIG offering hosted for and/or managed by TIG and made available via a network. Each Cloud Service is described in an Order. When TIG accepts Client’s order, TIG provides Client the entitlements specified in the Order. Cloud Services are designed to be available 24/7, subject to maintenance. Client will be notified of scheduled maintenance.

Client may access and use a Cloud Service only to the extent of authorizations acquired by Client. Client shall comply with instructions that TIG may reasonably request. Client is responsible for use of Cloud Services by any party who accesses the Cloud Service with Client’s account credentials. A Cloud Service may not be used for unlawful, obscene, offensive or fraudulent content or activity, in any jurisdiction for any user, such as advocating or causing harm, interfering with or violating the integrity or security of a network or system, evading filters, sending unsolicited, abusive or deceptive messages, viruses or harmful code, or violating third party rights. If there is a complaint or notice of

violation, use may be suspended until resolved, and terminated if not resolved promptly. Unless expressly provided in an Order, Client is not authorized to use a Cloud Service to provide hosting or timesharing services to any third party.

Each Cloud Service is designed to protect the proprietary content that Client inputs into the Cloud Service and to provide for access and use only as part of the Cloud Service. Except as otherwise specified in an Order, TIG will only provide access and use of Client’s proprietary content to TIG employees and contractors as needed to deliver the Cloud Service. TIG will not disclose Client’s proprietary content and will return or destroy it upon the expiration or cancellation of the Cloud Service, or earlier upon Client’s request. TIG may charge for certain activities performed at Client’s request (such as delivering content in a specific format).

The description for each Cloud Service includes the security functions and features applicable to the Cloud Service. TIG will provide Client notice of any unauthorized third party access to Client’s content of which TIG becomes aware and will use reasonable efforts to remediate identified security vulnerabilities. If Client’s content is lost or damaged, TIG will assist Client in restoring it to the Cloud Service from Client’s last available backup copy in compatible format.

The term, including any renewal term, for a Cloud Service is described in an Order. TIG may withdraw a Cloud Service on 30 days’ notice, unless otherwise stated in an Order. TIG will either continue to provide the Cloud Service for the remainder of Client’s unexpired term or work with Client to migrate to another TIG Service. TIG may suspend, revoke or limit Client’s use of a Cloud Service if TIG determines there is a material breach of Client’s obligations, a security breach, or violation of law. Charges will continue to accrue for the Cloud Service during any suspension. If the cause of the suspension can reasonably be remedied, TIG will provide notice of the actions Client must take to reinstate the Cloud Service. If Client fails to take such actions within a reasonable time, TIG may terminate the Cloud Service.

TIG may modify the computing environment used to provide a Cloud Service, without degrading its functionality or security features.

## Products

Products are non-TIG manufactured machines or editor software, procured for Client’s acquisition purposes. For avoidance of doubt, machines or software used for providing TIG Services are not Products.

When TIG accepts Client’s Order, TIG transfers title to machines to Client or, upon payment of all amounts due. By placing or accepting an Order for any Product, the Client agrees that the rights and obligations mentioned in terms and conditions from the original manufacturer or editor apply to Products.

## **Warranties**

TIG warrants that it provides TIG Services using commercially reasonable care and skill in accordance with the applicable Order, including any completion criteria, and that Project Materials will comply with the Order at the time of delivery. TIG does not provide any warranties whatsoever for services and/or for products. However, any Product warranties and its related indemnities a software editor or a machine manufacturer may provide are forwarded to the Client for his direct benefit toward such software editor or machine manufacturer. In no circumstances shall any of those warranties or indemnities apply to TIG.

TIG does not warrant uninterrupted or error-free operation of an TIG Service or that TIG will correct all defects or prevent third party disruptions or unauthorized third party access to a TIG Service. These warranties are the exclusive warranties from TIG and replace all other warranties, including the work contract warranties, implied warranties or conditions of satisfactory quality, merchantability, non-infringement, and fitness for a particular purpose. TIG warranties will not apply if there has been misuse, modification, damage not caused by TIG, failure to comply with instructions provided by TIG, or if otherwise stated in an Order. Any date or time mentioned in Orders are estimates only.

## **Charges, Taxes and Payment**

Client agrees to pay all applicable charges specified by TIG, charges for use in excess of authorizations, any customs or other duty, tax, levy, or fee imposed by any authority resulting from Client's acquisitions under this Agreement, and in case of late payment, a late payment fees of 8 %, prorated from the invoice date until the effective received payment date. Client shall pay for TIGs' reasonably incurred expenses when related to providing the services (e.g. travel costs, work or travel time outside normal business hours, parking, etc.). Unless otherwise specified in an Order, amounts for: i) recurring charges will be billed and due in advance, and ii) Products will be prepaid. All amounts are due upon receipt of the invoice and payable within 10 days of the invoice date to an account specified by TIG. Order amounts are mentioned excluding VAT. Prepaid services must be used within the applicable period. TIG does not give credits or refunds for any prepaid, one-time charges, or other charges already due or paid.

TIG reserves its reasonable rights to adjust recurring charges in case the cost of doing business increases, the parties shall discuss such reasonably, in good faith. Any such adjustment will not apply retroactively, but shall always apply for the next renewal period.

Client will reasonably cooperate upon request with TIG in case of TIG or its suppliers' auditor to verify Client's compliance with program licenses and metrics, such as sub-capacity usage, and promptly order any required entitlements, pay additional charges at then current rates (including uses in excess of Client's authorizations or entitlements, and associated maintenance), and other liabilities determined as a result of such verification.

## **Liability**

TIGs' entire liability for all claims related to the Agreement will not exceed the amount of any actual direct damages incurred by Client up to the amounts paid (if recurring charges, up to 12 months' charges apply) for the Product or

service that is the subject of the claim, regardless of the basis of the claim. This limit applies collectively to TIG, its contractors, and suppliers. TIG will not be liable for special, incidental, exemplary, indirect, or economic consequential damages, or lost profits, business, value, revenue, goodwill, or anticipated savings.

TIG has no responsibility for claims based, in whole or part, on items not provided by TIG, on Products, or any violation of law or third party rights whether or not caused by Client's content, materials, designs, specifications.

## **Duration and Termination**

For recurring services (such as Managed and/or Cloud Services) the initial period shall be stated in the Order. Unless otherwise specified in an Order, the initial period shall be automatically renewed for a 12 months' duration.

Either party may terminate without a cause a service upon 90 days' written prior notice to the other. In such case, TIG will provide services and Client will pay charges for Services provided through the effective date of termination. In addition, if Client terminates without cause or TIG terminates for breach, Client will meet all minimum commitments and pay termination or adjustment charges specified in the Order and any additional costs TIG reasonably incurs because of early termination, such as costs relating to subcontracts or relocation. TIG will take reasonable steps to mitigate any such additional costs. Once an Order is placed for Products, such Order is none cancellable.

Either party may terminate the Agreement immediately for cause if the other is in material breach of the Agreement, provided the one who is not complying is given notice and reasonable time to comply. Any terms that by their nature extend beyond the Agreement termination remain in effect until fulfilled, and apply to successors and assignees.

## **Governing Law and Geographic Scope**

Each party is responsible for complying with: i) laws and regulations applicable to its business and content, and ii) import, export and economic sanction laws and regulations, that prohibit or restrict the export, re-export, or transfer of technology, services or data, directly or indirectly, to or for certain countries, end uses or end users. Client is responsible for its use of TIG Services and Products.

Both parties agree to the application of the laws of Switzerland to this Agreement, without regard to conflict of law principles. All rights, duties, and obligations are settled exclusively by the competent court of Lausanne. If any provision of the Agreement is invalid or unenforceable, the remaining provisions remain in full force and effect. Nothing in the Agreement affects statutory rights that cannot be waived or limited by contract. The United Nations Convention on Contracts for the International Sale of Goods does not apply to transactions under this Agreement.

## **General**

Parties will not disclose confidential information without a separate, signed confidentiality agreement. If confidential information is exchanged in connection with this Agreement, the applicable confidentiality agreement is incorporated into, and subject to, this Agreement.

Client accepts an Order by ordering, enrolling, using, or making a payment for, the offering, the Product or service. Since this Agreement may apply to many future Orders, TIG

reserves the right to modify it by providing Client at least three months' written notice. However, changes are not retroactive; they also apply, as of the effective date, to new Orders and renewals. For Orders with a renewable contract period, Client may request that TIG defer the change effective date until the end of the current contract period. Client accepts changes by placing new Orders after the change effective date or allowing transactions to renew after receipt of the change notice. If there is a conflict, an Order prevails over the terms of these General Business Conditions.

For transactions which involve the processing of personal data, the following terms apply: Client is the sole controller of the personal data and Client appoints TIG as a processor to process (as those terms are defined in EU Directive 2016/679, as amended or replaced, from time to time) such personal data. Client will not use the TIG Service in conjunction with personal data to the extent that doing so would violate applicable data protection laws. Except as otherwise specified in an Order, TIG will only process such personal data to the extent required to make the TIG Service available in accordance with the Order and Client agrees that any such processing is in accordance with Client's instructions. Client agrees that TIG may use subcontractors worldwide, to provide the TIG Service. Where subcontractors process Client's personal data, Client acknowledges that it has been provided with details of such subcontractors as at the execution date of the Order and TIG will provide Client with notice of any changes in its subcontractors.

TIG shall reasonably cooperate with Client in its fulfilment of any legal requirement, including providing Client with access to personal data. If required by law, the parties will enter into additional agreements for the protection of personal data. The Order describes the appropriate technical and organizational security measures which TIG will implement to protect personal data. By using the TIG Service, Client accepts that they meet Client's requirements. TIG will return or destroy the Client's personal data upon the expiration or cancellation of the Cloud, other services, or earlier upon Client's request.

During the Agreement period and for an additional twelve months thereafter, Client agrees neither to solicit nor to offer, whether directly or indirectly, employment to any TIG personnel. In the event Client breaches this obligation,

Client shall pay, immediately on demand, the equivalent of twelve months' gross income of the involved personnel.

TIG is an independent contractor, not Client's agent, joint venturer, partner, or fiduciary, and does not undertake to perform any of Client's regulatory obligations, or assume any responsibility for Client's business or operations. Each party is responsible for determining the assignment of its personnel and contractors, and for their direction, control, and compensation.

Client is responsible for obtaining all necessary permissions to use, provide, store and process content in Cloud, other services, and grants TIG permission to do the same. Some of Client's content may be subject to governmental regulation or may require security measures beyond those specified by TIG for an offering. Client will not input or provide such content unless TIG has first agreed in writing to implement additional required security measures.

TIG and its subcontractors may process the business contact information of Client, its employees and contractors for our business relationship, and Client has obtained the necessary consents. TIG will comply with requests to access, update, or delete such contact information. TIG may use personnel and resources in other locations and third party suppliers to support the delivery of services.

Neither party may assign this Agreement, in whole or in part, without the prior written consent of the other. Assignment of TIG rights to receive payments is not restricted.

All notices under this Agreement must be in writing and sent to the address on the Order, unless a party designates in writing a different address. The parties consent to the use of electronic means and facsimile transmissions for communications as a signed writing. Any reproduction of the Agreement made by reliable means is considered an original. The Agreement supersedes any course of dealing, discussions or representations between the parties.

No right or cause of action for any third party is created by this Agreement or any transaction under it. Neither party is responsible for failure to fulfil its non-monetary obligations due to causes beyond its control. Each party will allow the other reasonable opportunity to comply before it claims the other has not met its obligations. Where approval, acceptance, consent, access, cooperation or similar action by either party is required, such action will not be unreasonably delayed or withheld.