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**1. Scope – General Conditions**

**1.1.** These General Terms and Conditions shall govern all legal relationships between Habitusnet Consulting AG (“Habitusnet”) and an individual, company, or other entity (“Client”) who uses its services. By making use of the services provided by Habitusnet, the Client accepts these General Terms and Conditions as an integral part of the Contract between the Client and Habitusnet.

**1.2.** Contrary confirmations of the Client in regard to its General Terms and Conditions are hereby rejected.

**1.3.** Differing conditions of the Client are only applicable if Habitusnet expressly consents to this in writing.

**2. Order Confirmation**

**2.1.** Habitusnet provides a product and/or service and any related products and/or services to the extent necessary and applicable, under the General Terms and Conditions together with the relevant specifications for these products and services and payment provisions in their respective applicable version and written individual agreements.

**2.2.** The Contract is concluded either by placing a binding order online, by signature of the Client and Habitusnet, or by a previous offer of Habitusnet and the corresponding order of the Client, if this order was confirmed in writing on the part of Habitusnet or based on an order confirmation of Habitusnet to the Client after its verbal order.

**3. Contract Amendments & Supplements**

**3.1.** Habitusnet reserves the right to change these General Terms and Conditions at any time.

**3.2.** Habitusnet will notify the Client in writing of any amendments to these General Terms and Conditions. The amendments will take effect no earlier than one month after their notification. If the Client does not accept the amended General Terms and Conditions, the Client may terminate the Contract with Habitusnet within 30 days after the notification. If the Client does not contact Habitusnet with objections to the changes made to the General Terms and Conditions within 30 days, it will mean that the Client agrees to them. The new General Terms and Conditions will then become valid at the end of the following calendar month.

**4. Habitusnet’s Obligations and Scope of Services**

**4.1.** Habitusnet shall provide its services to the Client within the bounds of the corporate and technical resources available to

it. The Client shall grant Habitusnet all necessary support so that it may provide its services. These services are outlined in the Scope of Services, which is a part of the Service Level Agreement that the Client has selected and agreed to. If the Client has opted not to have a Service Level Agreement, then these General Terms and Conditions apply.

**4.2.** Habitusnet attaches the greatest importance to providing high reliability and makes every effort to providing its services free of interruptions within the bounds of its operational resources. However, maintenance work, rectification of problems, expansion of services, measures to protect Habitusnet’s infrastructure, etc. may make temporary operation interruptions necessary. Scheduled work will be announced to the Client in advance and in a timely manner.

**4.3.** For managed systems, regular updates are required. Minor updates will be installed by Habitusnet without notice. Major distribution upgrades will be announced. Without the upgrades, the security support may be discontinued and the services may be compromised. This is the reason that Habitusnet may require upgrades for further operation. Should the Client refuse a mandatory security or End of Life (EOL) upgrade, Habitusnet reserves the right to terminate the Contract in compliance with the termination periods.

**4.4.** Habitusnet is entitled to adjust or reduce the Habitusnet products and services if this is necessary due to legal provisions or enforceable statutory instructions. In this case, Habitusnet will adjust the compensation payable by the contracting party accordingly.

**5. Orders, Offers, Projects and Quotes**

**5.1.** If the agreed scope of an order is modified or extended during the course of its execution, then the agreed remuneration will be adjusted accordingly.

**5.2.** All orders placed for hardware and/or software are binding. Once the Client has placed a binding order with Habitusnet, no hardware or software can be returned, and must be paid in full by the Client.

**5.3.** Offers made by Habitusnet are binding for a 30-day period. This does not include the price, delivery dates and services for third party products, which might be subject to change. Such third party products are clearly marked in the offers from Habitusnet.

**5.4.** The preparation of a detailed written service and/or product solution is charged with the following fees:

- 5.4.1. “Standard” solution: CHF 300.00 (excl. VAT)
- 5.4.2. “Medium” solution: CHF 600.00 (excl. VAT)
- 5.4.3. “Complex” solution: CHF 900.00(excl. VAT)

**5.5.** If the Client selects one of the solutions, the fee will not be charged.

**5.6.** Projects with Habitusnet are deemed successfully completed once the Client has accepted the project according to the Acceptance Criteria agreed upon in advance.

**5.7.** Once a Client has accepted a project, Habitusnet is no longer obligated to provide the Client with any further services pertaining to that project.

**6. Fees**

**6.1.** Service fees are charged based on time and labour, or according to a fee set in advance.

**6.2.** The cost of services may change on a yearly basis depending on the cost of labour, materials as well as taxes and other charges. All adjustments will be communicated to the Client in advance, and are based on the latest benchmarks.

- 6.3.** In the event that special conditions were agreed on for one project with Habitusnet, this does not mean that the same special conditions will apply to subsequent projects with Habitusnet.
- 6.4.** Support Contracts are charged according to a fixed price. This fee must be paid in advance for the entire support period.
- 6.5.** In the event that Habitusnet is contacted to handle an “emergency” (responding within 4 hours to a Client without a Support Contract), Habitusnet will charge an additional fee amounting to twice its hourly rate. The normal hourly fee is charged during regular business hours (Mon – Fri 8.30 a.m. – 5.30 pm). Hourly fees charged outside of regular business hours, unless otherwise agreed upon, is the following:
- 6.5.1. +50% Mon – Fri, 5.30 pm – 10.00 pm
  - 6.5.2. +50% Sat, 7.30 am – 5.30 pm
  - 6.5.3. +100 all other times as well as holidays

## 7. Payment Conditions

- 7.1.** Invoices include VAT, when applicable, and should be paid within 14 days.
- 7.2.** The Client’s right to retention of the remuneration or to offset remuneration against a counterclaim is precluded except if the counterclaim is undisputed or recognized by declaratory judgment.
- 7.3.** Habitusnet is entitled to demand advance payment of costs, or partial invoices in accordance with services and software already provided. If the Client is in arrears with the payment of at least one partial invoice, despite a warning and a deadline extension of 14 days, then Habitusnet is entitled to refuse further execution of the order, withdraw from the Contract and/or demand compensation in place of delivery.
- 7.3.1. All hardware and software must be paid after delivery. If the cost of a delivery exceeds CHF 10,000, 50% of the cost must be paid in advance, and the rest after delivery.
- 7.4.** The Client shall immediately notify Habitusnet in writing, at the latest within 14 days after receipt of the invoice, of any objections to the usage-dependent services billed or recorded in the invoice. If such claims are not made within that deadline, the invoices are deemed fully accepted by the client.

## 8. Delayed Payment

- 8.1.** If the payment deadline of 14 days after delivery has not been met, the following overdue fines and administrative fees will be incurred:
- 8.1.1. >10 days: CHF 50.00
  - 8.1.2. >30 days: CHF 100.00, plus an annual default interest of 8%
  - 8.1.3. Late payment for housing/hosting of Client IT infrastructure and/or IT services from Habitusnet or partners of Habitusnet will result in decommissioning after a second reminder has been sent. The Client will receive notice of the decommissioning a reasonable time in advance. Habitusnet shall not be held liable for any damages incurred to the Client. Habitusnet may also decide to terminate the contract with the Client (please see Section 15 of this GTC).
- 8.2.** Habitusnet reserves the right to reject the assertion of further claims of any kind due to payment default. The appropriate intended and necessary costs for the intervention of lawyers and collection agencies shall be borne by the Client. The Client agrees, in the event of default, with its contractual obligations to reimburse Habitusnet for reminder and collection charges incurred.

## 9. Client Obligations

- 9.1.** The Client must provide Habitusnet with all the necessary information and documents for the execution of the order in full, on time, and free of charge.
- 9.2.** The Client must notify Habitusnet of their own accord of all processes and circumstances that could be significant for the execution of the order.
- 9.3.** The Client must make any changes to their personal information known to Habitusnet immediately, including but not limited to a name or email change, or a move to a different location or country. If the Client fails to provide Habitusnet with this information, all correspondence sent to the email and/or address that the Client initially provided Habitusnet with will be deemed valid.
- 9.4.** The Client must carry out preparations in a timely manner when requested to do so by Habitusnet. Certain preparations may be necessary within a timeframe specified by Habitusnet in order for Habitusnet to provide the Client with a particular service. If a Client is unsure as to what exactly he or she is being requested to do, it is the Client’s responsibility to clarify any uncertainties with Habitusnet immediately.
- 9.5.** In the event that an order cannot be carried out by the agreed date for a reason for which the Client is responsible, Habitusnet reserves the right to charge the Client for the resulting damage(s); this is generally the order value minus saved expenses (each in relation to the relevant date) and is calculated as follows:
- 9.5.1. If the date cancellation takes place at the latest 14 calendar days before the agreed date then 20% of the order value is charged.
  - 9.5.2. If the date cancellation takes place at the latest 5 calendar days before the agreed date then 50% of the order value is charged.
  - 9.5.3. If the date cancellation takes place fewer than 5 calendar days before the agreed date then the full order value is charged.
- 9.6.** The Client undertakes to keep the applications and software that is used (both in respect of the server and the Client) up to the latest technical standard, which includes maintaining them regularly and conducting regular updates. If the Client is unable to do this on their own, they must hire Habitusnet or someone else, who can complete these tasks for them.
- 9.7.** If the Client does not understand any part of these Terms and Conditions, it is their responsibility to contact Habitusnet immediately and ask for explanations and/or clarification.

## 10. Dates and Terms

- 10.1.** Terms/dates are only binding if they are expressly agreed as such in writing.
- 10.2.** Agreed upon terms/dates shall shift to a reasonable time period with a temporary and unforeseeable obstacle to the scope of work for which Habitusnet is not responsible. This is true even if Habitusnet is hindered by the interpolation of subcontractors at no fault of its own in providing the service in a timely manner.
- 10.3.** The provision terms shall be extended without prejudice to the rights of Habitusnet due to a delay of the Client by the period in which the Client does not fulfil its obligations to Habitusnet.
- 10.4.** The Client is obligated to notify Habitusnet immediately of any disruptions and interruptions in the services Habitusnet provides them. In the event that the Client – either wilfully, unknowingly, or through negligence – has caused an outage through their behaviour or equipment, or if users of the Client’s website have caused an outage and it needs to be repaired, then all expenses incurred, as well as the services

provided by Habitusnet or one of its partners, will be charged to the Client at an hourly rate of CHF 200. The Client must also pay for the services provided by Habitusnet or one of its partners, as well as all associated expenses, if the outage repair, for reasons attributable to the Client, cannot be performed or is only possible for anything other than the time agreed upon with the Client.

- 10.5.** Delays caused by the Client during the performance of remediation cause no release from the obligation of the Client to pay the monthly and/or annual fees.

## **11. Confidentiality, Data Use, Protection**

- 11.1.** Habitusnet will not disclose reports or other facts and documents of which it gains knowledge while executing the contractual services and that refer to the Client or the object of the order to unauthorized persons or use or disclose the same. The following are excepted:

- Anonymized processing of the statistical data
- Disclosure obligations in accordance with an accreditation body's regulations
- Disclosure to safeguard own legitimate interests
- Statutory, court-ordered or official disclosure obligations

- 11.2.** Data stored on Habitusnet servers and access passwords will be kept confidential and will not be passed on to third parties without prior written consent by the Client.

- 11.3.** Habitusnet will save, process, and use person-specific data from the Client for the orderly fulfilment of the order and for its own purposes. In the event that automated data processing systems are used, then Habitusnet guarantees compliance with the requirements of the Swiss Federal Data Protection Act (SDPA). Personnel who work on data processing are compelled by the SDPA and obliged to comply with all data protection regulations.

## **12. Nondisclosure and Covenant not to Compete**

- 12.1.** Habitusnet and the Client agree that all information exchanged between Habitusnet and the Client will be treated as confidential. This obligation shall apply even after the termination of the Contract any time thereafter. Both contracting parties will also impose this obligation on their employees.

- 12.2.** The nondisclosure obligation does not apply demonstrably to information as follows:

- 12.2.1. The information disclosed to the party by the other contracting party lawfully and announced by third parties that are not under the obligation of confidentiality.
- 12.2.2. As a result of publications or otherwise was commonly known among experts or will be after notification.

- 12.3.** During the duration of the Contract between Habitusnet and the Client, and for a period of 3 years after the effective date of the Contract, the Client will not directly or indirectly solicit business from, or attempt to sell, license, or provide the same or similar products or services as are now provided to any customer or client of the Client, unless under mutual agreement.

- 12.4.** This non-compete covenant shall apply to the geographical area that includes the area within a 30 kilometre radius of Zurich, Switzerland.

- 12.5.** The Client will pay compensation to Habitusnet for breaching the non-compete covenant in the amount of CHF 50,000. This amount shall be payable in a lump sum within 3 months of the violation of this agreement.

## **13. Remediation**

- 13.1.** The Client must notify Habitusnet promptly after the discovery of any complaints, if the Client does not do so within 7 days, the Client loses their right to request remediation in accordance with this clause.

- 13.2.** In the event that Habitusnet must improve inadequate services or does not fulfil its obligations to the Client, Habitusnet has the right to do so within a reasonable period of time.

## **14. Discontinuance of Service**

- 14.1.** Habitusnet has the right to discontinue (suspend) the provision of services entirely or partially if any of the following apply:

- 14.1.1. The Client is in default to Habitusnet with its payment obligations.
- 14.1.2. The Client has violated other contractual obligations, in particular those that serve to secure the efficient operation of public telecommunications networks or the protection of third parties, despite the obligation to maintain these.
- 14.1.3. The Client loses their legal or contractual capacity.
- 14.1.4. Regarding the Client, insolvency proceedings are imminent or a request was made to open them or their credit rating is jeopardized for other reasons or no longer exists and a warning of suspension has been issued.
- 14.1.5. Reasonable grounds exist for suspecting that the Client is misusing the service or the services related thereto, in particular fraudulently, or is tolerating abuse of the same by third parties.

## **15. Termination of the Contract**

- 15.1.** Contracts end when notice is given by either party in writing or when a fixed-term Contract expires. Contracts may be terminated by either party with a notice of 90 days, unless otherwise specified in the Contract.

- 15.2.** The Contract can be terminated by either party at any time in writing for good cause. In particular, Habitusnet is entitled to withdraw for good reason, but not limited to the following reasons:

- 15.2.1. The Client refuses or neglects cooperation.
- 15.2.2. Violation of the Acceptable Use Policy (AUP).
- 15.2.3. The Client attempts to falsify the result of the order.
- 15.2.4. Insolvency proceedings are opened on the Client's assets or if the same is rejected due to lack of assets.
- 15.2.5. The Client has not paid a due invoice within a reasonable period despite two reminders.

- 15.3.** If Habitusnet has (in accordance with clause 14) suspended the provision of services, the right to withdraw from this contract under the terms set out before is not affected.

- 15.4.** If the Contract is terminated for good reason for which Habitusnet is not responsible then Habitusnet retains the remuneration claim as for execution of the contractual service until the next date to which the Contract could have been duly terminated.

- 15.5.** Upon termination of the Contract – for whatever reason – Habitusnet is entitled to delete the stored or accessible contents of the Client's data within 60 days. The Client is solely responsible for the retrieval of their data during the active Contract or to make other arrangements for a timely retrieval within the 60 day time frame.

## **16. Liability**

- 16.1.** Habitusnet is liable without limitation for damage caused by injury to life, body or health, or other damage caused by the

intentional or grossly negligent violation of the obligation of a legal or vicarious agent of Habitusnet.

- 16.2.** Liability of Habitusnet for subsequent damages and indirect losses such as loss of profit, savings or other indirect damages, except in the case of intentionally caused damage, is excluded.
- 16.3.** Habitusnet is not liable for damages, insofar as the Client was not able to prevent the occurrence through appropriate measures, in particular, program and data backups as well as adequate training of the individual user and their own security measures. Damage compensation for restoration of destroyed or lost data is limited to the costs of the recovery of such data from backups.
- 16.4.** Habitusnet is also not liable for any damages caused to the Client arising from Habitusnet's other clients' use of or inability to use the server, web hosting packages, or any other services for any reason.
- 16.5.** The preceding limitations of liability apply in favour of the employees of Habitusnet and the companies and their employees affiliated with Habitusnet in the performance of the Contract.
- 16.6.** In the event of negligent breach of the service specific material duty, the obligation to pay compensation is limited to damage foreseen as typical for the Contract when the Contract was agreed, but no more than the annual cost of the service.
- 16.7.** Any further liability by Habitusnet is excluded.
- 16.8.** The Client must notify Habitusnet immediately and in writing of any damage for which Habitusnet must pay.
- 16.9.** Where compensation claims against Habitusnet are excluded this is also valid for the personal liability of Habitusnet employees.
- 16.10.** Compensation claims for damage caused by injury to life, body or health fall under the statute of limitations in accordance with statutory regulations. Compensation claims for intentionally caused damage fall under the statute of limitations one year after onset of the statutory period of limitations.

## **17. Force Majeure**

- 17.1.** Habitusnet is exempt from its obligation to perform in cases of force majeure. Force majeure means unforeseeable events and those events, whose effects are not caused by any Client to Contract fulfilment. These events include, in particular, lawful labour dispute actions, also third party operations as well as governmental actions.

## **18. Final Provisions**

- 18.1.** The Contract, modifications, additions, and subsidiary agreements of any kind must be produced in text form if no stricter form is required by law. The form requirements are also valid for changes to or the cancellation of this form clause.
- 18.2.** In the event that one regulation in these Terms and Conditions is or becomes invalid or if a loophole is discovered then this will not affect the validity of the remaining regulations. In this case, the client and Habitusnet undertake to strive to agree a replacement regulation to achieve the intended purpose.

## **19. Applicable Law and Place of Jurisdiction**

- 19.1.** The contractual relationship is governed exclusively by Swiss law. The sole jurisdiction is the Canton of Zurich in Switzerland. The UN sales convention does not apply.