

General Terms and Conditions

As of 06/2023

Preamble

Frisbii Media provides software in connection with access control, billing, user management, price and product management, and other functions commonly used for this purpose as software as a service. For this purpose, Frisbii Media has developed a software application (hereinafter: Frisbii Media) that can be used by the Customer on a web-based basis via interfaces developed by Frisbii Media and integrated directly into the Customer's website.

The registration, login and payment process is initiated and handled by the user via an area that is technically separate from the provider's content offering (hereinafter: checkout). Users of the customer's content offering pay using the payment options offered by the customer and made available via Frisbii Media. Frisbii Media itself does not accept any payments, but only handles the technical processing. Frisbii Media does not carry out any legal, technical or other checks on the content, its promotion, provision, backup or restoration.

A. Subject matter of the contract

The subject matter of this contract is the use of the SaaS platform "Frisbii Media", the interfaces provided by Frisbii Media and the associated services and functions.

B. Main performance obligations

1. Main obligations Frisbii Media

1.1. Frisbii Media undertakes to make the SaaS platform "Frisbii Media", interfaces and associated services and functions as software as a service for the duration of the contract and, in accordance with the following agreements, to make it accessible for use via remote data access via the Internet, to maintain it and to provide storage space for the storage of application data. In addition, Frisbii Media offers program libraries (SDKs, etc.) for use.

1.2. For this purpose, Frisbii Media stores the software on servers that are accessible to the customer via remote data access over the Internet. The servers are located in data centres within the EU. A transfer to servers outside the EU is only permitted with the prior consent of the customer. Frisbii Media ensures compliance with EU data protection regulations and will provide proof of this to the customer upon request.

Frisbii Media also undertakes to

- store customer data (data hosting) in accordance with C.7 below.
- providing a service hotline in accordance with the following C.8.

Frisbii Media undertakes to maintain the software on an ongoing basis in accordance with the following C.5.

1.3. Additional services requested by the customer – rights to additional services

If the customer also requests

- a. Support with the implementation of "Frisbii Media" by consulting and/or development services provided by "Frisbii Media"
- b. additional adjustments and/or enhancements by Frisbii Media
- c. Other consulting services by Frisbii Media

this requires the conclusion of a separate agreement and remuneration arrangement. Extensions to the Frisbii Media platform for the customer, even if these are commissioned individually, are not developed exclusively. Frisbii Media is entitled to use the developed software extensions as an integral part of the Frisbii Media platform for other commercial purposes at its own expense. Such use does not give rise to any payment claims by the customer against Frisbii Media. This does not apply to individual developments outside the platform.

2. Main performance obligations of the customer – remuneration, due date; use of payment service providers (PSPs)

2.1. Remuneration for the use of Frisbii Media software as a service The customer shall pay the remuneration for the price model selected by them plus statutory value added tax for the use of Frisbii Media Software as a Service. Frisbii Media is entitled to increase the remuneration agreed in accordance with sentence 1 in order to offset an increase in total costs (general price development). The total costs consist in particular of costs for maintenance and operation of the cloud/infrastructure, including material costs, wage and ancillary wage costs, costs for the service, costs for customer management (IT support) and general administration costs.

2.2. Remuneration for additional services requested by the customer For additional services requested by the customer in accordance with B.1.3 of this contract, the parties shall agree on a separate remuneration plus statutory value added tax.

2.3. Due date of remuneration

2.3.1. The monthly basic fees (fixed amount) shall be payable from the beginning of the term of this contract and shall be due for payment at the end of each month.

2.3.2. The variable fees are payable depending on the transactions carried out. Frisbii Media shall prepare and send the customer a monthly statement of services in text form and the corresponding invoice. Upon receipt of the statement of services and invoice in text form by the customer, the amount stated in the invoice plus VAT shall be due for payment.

2.4. Use of payment service providers (PSPs)

If the customer wishes to use payment service providers, they are obliged to conclude a separate contract with the respective payment service provider for the use of their services. The contractual terms and conditions and service level agreements of the respective providers shall then apply to the provision of the various payment methods

C. Contractual ancillary obligations

1. Availability

1.1 Principles

1.1.1. The parties understand availability to mean the technical usability of the software and application data for the intended use by the customer.

1.1.2. The restrictions listed in C.3. (Maintenance work) and C.4. (Third-party fault and acute threats) do not count as periods of unavailability within the meaning of C.1.1.1.

1.1.3. Current availability and historical data can be viewed at any time on a status page provided by Frisbii Media on the Internet.

2. Agreed availability

Frisbii Media undertakes to take all technical precautions necessary to ensure that the SaaS platform "Frisbii Media" has a monthly average availability of at least 99.9%. Only data centres that have contractually guaranteed a monthly average availability of 99.9% or an annual average availability of 99.95% are commissioned.

3. Maintenance

3.1. Frisbii Media is entitled to maintain and service the software and/or servers and to perform data backups or other work (planned unavailability). The platform will not be available during maintenance work.

3.2. The customer will be notified of this maintenance work 7 calendar days in advance and, where possible, it will be carried out between 1 a.m. and 5 a.m. German time. Maintenance work should not exceed a period of 4 hours per quarter.

3.3. If longer temporary service interruptions or restrictions are necessary, Frisbii Media shall inform the customer of the nature, extent and duration of the disruption 14 calendar days in advance, insofar as this is objectively possible under the circumstances and the notification would not delay the elimination of interruptions that have already occurred.

4. Third-party fault and acute threats

4.1. Periods during which availability is impaired due to technical or other problems beyond Frisbii Media's control (including force majeure, third-party fault, etc.) do not count as periods of unavailability. Frisbii Media shall ensure that the precautions taken to prevent damage in the event of third-party fault are in line with the current state of the art.

4.2. Periods during which Frisbii Media restricts access to individual products due to an acute threat to its data, hardware and/or software infrastructure or to the data, hardware and/or software infrastructure of its customers as a result of external dangers (e.g. viruses, Trojan horses) or due to a significant threat to the security of network operation or network integrity shall also not be considered periods of unavailability. products and/or services due to an acute threat to its data, hardware and/or software infrastructure or or blocks access to products and/or services.

In making such a decision, Frisbii Media shall take the legitimate interests of the customer into account as far as possible, inform the customer immediately in writing of the measures taken, and make every reasonable effort to lift the access restriction or block immediately.

5. Maintenance of the software

5.1. Frisbii Media continuously monitors the functionality of the software and eliminates software errors.

5.2. Whether an error exists is determined in accordance with the statutory provisions. An error exists in particular if the software does not provide the functions specified in the function overview, delivers incorrect results or aborts the run in an uncontrolled manner, so that the use of the software for the contractual purpose is impossible or restricted.

6. Software updates; third-party software

6.1. If legal regulations or standards relevant to the functionality of the platform with regard to its basic functions change, Frisbii Media shall make appropriate adjustments to the software without delay as soon as Frisbii Media becomes aware of the changes with due diligence. The choice of the type of adjustment is at Frisbii Media's discretion. Frisbii Media shall inform the customer of this in writing without delay.

6.2. If and to the extent that the adjustment involves not only insignificant changes to functionalities, supported workflows of the customer and/or restrictions in the usability of previously generated data, Frisbii Media shall notify the customer in writing at least four weeks (28 calendar days) before such a change takes effect.

6.3. Frisbii Media is not responsible for the quality of the necessary hardware and software on the customer's side or for the telecommunications connection between the customer and Frisbii Media up to the transfer point.

7. Processing and use of data

7.1.1. The regulations governing the processing of personal data are set out in a separate agreement on data protection and data security in data processing on behalf of others in accordance with Art. 28 (3) GDPR.

7.1.2. The customer may view the user data at any time or save it for further use.

7.1.3. Frisbii Media may use this data exclusively for the purposes of this contract.

7.1.4. In particular, Frisbii Media is not entitled to sell the data of the contractual partner and its customers collected in connection with this contract, to use it for advertising purposes or to transfer it to third parties for this purpose.

7.1.5. For the purpose of supporting payment transactions, Frisbii Media stores only the bank details (IBAN and BIC) of users, if these are provided. The storage of further data (including credit cards) is the responsibility of the customer or their contractual partner.

8. Service hotline and customer service

8.1. Frisbii Media provides a central email address (support@Frisbii Media.com) for receiving fault reports and support requests.

8.2. When reporting a fault or making a support request, the customer shall specify which persons are available as contact persons for this matter at the customer's premises and how these contact persons can be reached by telephone and email during the customer's business hours.

9. Faults – response times

9.1. Principles

In order to guarantee the availability of the services under this contract, Frisbii Media uses 24/7 monitoring. At Frisbii Media, qualified personnel (system administrators and developers) are available 24 hours a day, 365 days a year to troubleshoot problems.

9.1.1. To minimise the risk of data loss, all Frisbii Media data systems are synchronised in real time with a backup instance (hot standby). In addition, further asynchronous duplication is carried out. Furthermore, a backup of all Frisbii Media system data is performed once a day. This backup is stored on an internal system and encrypted on an external system.

9.1.2. In the event of integration problems on the customer's side, Frisbii Media is not responsible for rectifying the fault if it is not attributable to errors in the program libraries provided by Frisbii Media.

9.1.3. The customer shall take all reasonable measures to identify, isolate and document the malfunctions. In the event of a malfunction, the customer shall provide Frisbii Media with all available information necessary to remedy the malfunction and shall assist in resolving the problem. The customer shall transmit error messages in the original text.

9.1.4. Restoration may initially also be achieved by means of a workaround. A workaround may eliminate or mitigate the actual fault, but is not a permanent solution.

9.2 Fault reports

9.2.1. Upon receipt of the fault report, a trained system administrator/developer will contact the customer to resolve the problem. Work to rectify the fault will be carried out within the scope of Frisbii Media's capabilities and in accordance with its contractual obligations.

9.2.2. Both parties will keep each other regularly informed about the status of the troubleshooting.

9.2.3. For failures of individual payment methods or payment providers, the provisions agreed directly between the customer and the payment provider shall apply.

9.2.4. In the event of failures of the SaaS service caused by the customer within their sphere of influence, the customer undertakes to inform Frisbii Media immediately and to notify Frisbii Media of the cause of the failure.

10. Customer authorisations and permissions – Deactivation of the service/content – Information and notification obligations

10.1. The customer warrants that, upon conclusion of the contract and throughout the entire term of the contract, they have the necessary permissions and authorisations for the operation, use and distribution of the content they offer.

10.2. The principle applies that, before deactivating the entire service, it must always first be checked whether the intended goal cannot already be achieved by deactivating content.

10.3. If there is reasonable suspicion that content violates legal requirements, Frisbii Media must immediately inform the customer in writing. In such cases, the customer shall send Frisbii Media a list of contact persons.

10.4. Frisbii Media is entitled to deactivate the service or individual content immediately if this is required by official order or court decision. The customer must be informed of this immediately in writing.

10.5. If the deactivation of the service or content is requested as part of a cease-and-desist declaration, the customer must be informed immediately in writing. The further procedure for handling the cease-and-desist declaration will be agreed with the customer. If no agreement can be reached with the customer on how to proceed, Frisbii Media is entitled to deactivate the service/content.

11. Obligations and liability regarding value added tax

11.1. The customer shall immediately inform Frisbii Media of the applicable VAT rate and category in accordance with the applicable EU directive for transactions with users of the customer's content offering. The same applies to changes in the VAT rate and categories.

11.2. Frisbii Media shall show the value added tax to buyers in accordance with the customer's categorisation and the current value added tax rates in the European Union.

11.3. The customer is obliged to check the sales tax rates for accuracy and to notify Frisbii Media immediately of any changes.

11.4. If the customer changes the tax rates specified in the software's tax table using the function provided for this purpose in the software, they shall be solely responsible for maintaining the tax rates from that point onwards. From the time of the change made by the customer, updates to the software shall no longer include the information in the tax table. The maintenance and adjustment of tax rates shall then be the sole responsibility of the customer. If, due to changes to the tax rates made by the customer themselves, further changes to the software become necessary, such as database corrections, etc., this work is no longer covered by this contract. If Frisbii Media is to be commissioned to make these necessary changes, a new order subject to a fee is required.

11.5. Frisbii Media shall only be liable for damages in connection with the calculation and payment of value added tax in the event of gross negligence or intentional action on the part of Frisbii Media.

12. Third-party property rights

12.1. Frisbii Media declares that it has all the necessary rights to the licensed software and the associated documentation. This applies in particular to copyrights, patents, trademark rights and other property rights.

12.2. The customer and Frisbii Media shall immediately inform each other of any legal defects or infringements of property rights asserted by third parties. In such cases, both contracting parties shall provide the other contracting party with appropriate support in defending against such claims.

12.3. If third-party property rights are infringed, Frisbii Media shall be liable within the scope of the statutory provisions.

13. Force majeure

13.1. Neither party shall be obliged to fulfil its contractual obligations in the event of and for the duration of force majeure. In particular, the following circumstances shall be considered force majeure in this sense:

- fire/explosion/flooding for which the party is not responsible,
- War, mutiny, blockade, embargo, pandemic
- labour disputes lasting more than 6 weeks and not caused by the party at fault,
- technical problems with the Internet that cannot be influenced or avoided by either party

13.2. Each party must immediately notify the other in writing of the occurrence of a force majeure event

D. Limitations of liability – upper limits for damages

Liability for damages in connection with the calculation and payment of value added tax is regulated in Section C.11.5. of the contract. The following provisions apply to all other statutory and contractual claims for damages and reimbursement of expenses by the customer:

1. Liability

1.1. Frisbii Media shall be liable

- in cases of intent or gross negligence,
- for injury to life, limb or health.

1.2. In the event of normal negligence or slight negligence in breach of an obligation that results in damage, Frisbii Media shall only be liable if the obligation is essential for achieving the purpose of the contract (cardinal obligation). Otherwise, Frisbii Media shall not be liable for normal negligence or slight negligence leading to a breach of duty.

1.3. Any further liability on the part of Frisbii Media is excluded.

1.4. Claims arising from lost profits are excluded.

2. Damage limits

2.1. If, despite the limitations of liability listed above under D.1.2., a claim for damages arises, the following upper limits shall apply:

- In the event of a merely negligent or slightly negligent breach of duty leading to damage, Frisbii Media's liability shall be limited to the damage that is foreseeable and typical for the type of transaction in question.
- Furthermore, Frisbii Media's liability for a breach of duty due to ordinary negligence or slight negligence leading to damage is limited to the amount of 30,000 euros (in words: thirty thousand).
- Liability for delay caused by normal negligence or slight negligence is limited to a total of

50% of the above-mentioned liability limit.

2.2. In the event of data loss, Frisbii Media shall only be liable for the expense that would have been necessary to restore the data if the customer had carried out proper and regular data backups. This limitation shall not apply if and to the extent that data backup is part of the services to be provided by Frisbii Media.

3. Liability of Frisbii Media's employees, representatives and organs

The above limitations of liability and upper limits also apply to the personal liability of Frisbii Media's employees, representatives and organs

E. Contract term – termination of the contractual relationship

1. Contract term and termination

1.1. This contract shall commence upon activation of the Frisbii Media account by Frisbii Media. The obligation to pay the agreed fees begins when the customer accepts a Frisbii Media pricing model. The term of the contract is based on the Frisbii Media pricing model selected by the customer. The same applies to any agreed automatic renewal of the contract.

1.2. The contract may be terminated by either party with six months' notice to the end of the original term or to the end of the respective renewal period.

1.3. The right of termination for good cause (§ 314 BGB) remains unaffected.

1.4. Good cause for termination of this contract shall be deemed to exist in particular if

- the customer or Frisbii Media persistently violates its obligations under this contract.
- the customer fails to meet their obligation to pay the remuneration despite a reminder and the setting of a deadline.
- insolvency proceedings have been opened against the assets of a contracting party, or the opening of insolvency proceedings has been applied for, or if the opening of insolvency proceedings against the assets of the contracting party is rejected due to lack of assets.

1.5. Termination must be in writing. The written form is constitutive.

2. Obligations during and after termination of the contract

2.1. Until the end of the contract term, the customer has the option of downloading the data stored by the customer free of charge at any time via the interfaces provided by Frisbii Media.

2.2. In addition, Frisbii Media is obliged, at the customer's request, to make all data stored by the customer available to a third party designated by the customer on a standard data carrier or by means of remote data transmission in the file format generated by the software. The customer is obliged to reimburse Frisbii Media for the expenses incurred in accordance with the evidence provided and to reimburse any necessary and proven costs incurred. Remuneration shall be paid in accordance with B.2.2.

2.3. Frisbii Media is obliged to store the customer's data within the statutory retention periods and to delete it no later than two weeks after transfer, unless there is a longer retention obligation under law, unless the contractual partner instructs Frisbii Media within the framework of the order data processing relationship in accordance with Art. 28 GDPR to delete the data of the contractual partner's customers accordingly.

This also applies to data from backups and documentation. If the customer does not delete data themselves using the Frisbii Media system, deletion instructions must be provided by the customer in writing.

3. Customer rights in the event of Frisbii Media GmbH ceasing business operations

3.1. If Frisbii Media GmbH or a legal successor ceases business operations (e.g. dissolution of the company without a legal successor, cessation of business, etc.), the customer shall receive a copy of the software last used by Frisbii Media for the customer, which is necessary for the continuation of the customer's business in accordance with the content of this contract.

3.2. The customer is entitled to continue using the Frisbii Media software in the cases specified in E.3.1 even after the end of the contract in order to maintain their business operations.

F. Applicable law, place of jurisdiction

1. The law of the Federal Republic of Germany shall apply.
2. Insofar as this contract does not contain any provisions, the statutory provisions shall apply.
3. The exclusive place of jurisdiction for all disputes arising from or in connection with this contract is Kempten