

# GENERAL TERMS AND CONDITIONS OF LOBSTER DATA GMBH

Last revised: 21 May 2025

## A GENERAL PROVISIONS

### I General definitions

<u>Term</u>	<u>Definition</u>
Service Order	An individual contract which is concluded for the provision of Lobster Software or related services.
Customer	Lobster's contractual partner to which the Lobster Software is provided or which utilises services in connection with Lobster Software.
Lobster GTC	Lobster's General Terms and Conditions set out in this document relating to the provision of Lobster Software and related services.
Lobster	Lobster DATA GmbH, Bräuhäusstraße 1, 82327 Tutzing.
Lobster Software	The "Lobster Data World" connects systems, partners and processes, particularly in the supply chain. The "Data Platform" combines orchestration and integration functions in a user-friendly drag-and-drop interface. It is designed for self-service use and lets users create interfaces and automate workflows individually according to their company's requirements. The "Data Products" are pre-configured connections managed by Lobster to relevant supply chain partners and systems.
Confidential Information	All information, whether transmitted in writing or verbally, which (i) is confidential or should be treated as confidential due to the nature of the information, or (ii) which the contractual partner to whom the information is transmitted must already recognise as confidential or that it should be treated as confidential due to the external circumstances of the transmission. Confidential Information includes, in particular, product descriptions, specifications, prices and reports.
Affiliated Companies	Companies that are affiliated with Lobster or the Customer within the meaning of sections 15 ff. German Stock Corporation Act ( <i>AktG</i> ).
Customer Data	Data provided by the Customer in the context of the Service Order.

### II Scope of application, exclusion clause

- (1) These Lobster GTC apply to all business relationships between Lobster and the Customer if the Customer is an entrepreneur (section 14 German Civil Code (*BGB*)), a merchant within the meaning of the German Commercial Code (*HGB*), a legal entity under public law or a public fund under public law. The Lobster

GTC apply in particular to contracts for the provision of Lobster Software and related services.

- (2) The Lobster GTC apply exclusively. Any terms and conditions of the Customer which conflict with, differ from or supplement these GTC are hereby rejected and do not become an integral part of the contract unless Lobster has expressly agreed in writing that they apply. It does not constitute an agreement in the above sense, for example, if Lobster, with knowledge of the Customer's terms and conditions, accepts orders without reservation, provides services or directly or indirectly refers to letters, etc. containing the Customer's terms and conditions or third-party terms and conditions.

- (3) Unless otherwise agreed, the version of the Lobster GTC valid at the time of the Customer's order will also apply as a framework agreement (section 305 (3) German Civil Code (*BGB*)) to any subsequent Service Orders with the same Customer without Lobster having to refer to the Lobster GTC again.

### III Service Orders, offer and acceptance, scope of services

- (1) The scope of the specific services to be provided is set out in the relevant Service Order. The description of services and - where relevant - the period and deadlines for handing over the results must be stated in the Service Order.
- (2) Lobster's offers to place a Service Order are non-binding and subject to change without notice unless they are expressly marked as binding or they indicate a specific deadline by which the offer must be accepted. The Customer must notify Lobster of any obvious errors (in particular, obvious arithmetical errors, incorrect product specifications or omissions) in the offers from Lobster (and related documents) so that they can be corrected before the contract is entered into; otherwise the Service Order will be deemed not to have been placed.
- (3) Offer and acceptance are made by written declaration, whereby email is sufficient in each case.
- (4) The written Service Order and these GTC, which are an integral part of the Service Order, contain all of the agreements relating to the subject of the contract (subject to the following section). Any agreements made before the Service Order was agreed in writing or any commitments made by Lobster are not binding and are replaced in full by the written Service Order unless it is expressly stated in each case that they are to continue to apply and that they are binding.
- (5) Any individually negotiated terms, including those agreed verbally, will always take precedence over these GTC (section 305b German Civil Code (*BGB*)). If proof of their content is required, subject to proof to the contrary, any written arrangement, or, if there is no such written arrangement, any written confirmation from Lobster will be authoritative.
- (6) The following Lobster services may be the subject of Service Orders:
- Provision of the Data Platform as a subscription for a limited period of time (see Section B);
  - Provision of Data Products managed by Lobster to the Customer (see Section C);
  - Provision of other services in connection with the Lobster

Software (see Section D), in particular:

- Training the Customer in the use and application of the Lobster Software;
- Provision of support services for project planning, mapping and configuration.

- (7) Section A always applies; Sections B, C and D apply in addition in accordance with their respective scope of application.
- (8) The Service Order will take precedence in the event of any contradictions between the Service Order and the provisions of these Lobster GTC. Section A will take precedence in the event of any contradictions between this Section A and Sections B, C or D.

#### **IV Customer's duty to cooperate; provision of software, updates and services**

- (1) The Customer must - also in its own interest - ensure that all data processed by Lobster Software is protected and backed up, that redundant data backups and data processing systems are in place, that the Lobster Software is used correctly and that the work results created with Lobster Software are checked and monitored.
- (2) If Lobster provides updates and upgrades for the Lobster Software, the Customer is required to install the update/upgrade no later than twelve (12) months after it has been notified that they are available. After this period ends, any obligation that has been agreed for Lobster to provide (support) services for the previous version expires.
- (3) The Lobster Software is provided in its current form ("as is"). Lobster reserves the right to adapt rights of use to individual modules, functionalities or the specific design of the Lobster Software at any time, if and insofar as it is reasonable for Customer, taking into account the interests of both contractual parties. Such changes are deemed reasonable in particular if:
- a. they become necessary due to legal requirements;
  - b. they are due to technical innovations or further developments; or
  - c. an existing functionality is replaced by one of equal or higher value.
- (4) Any further cooperation duties will be indicated in the respective Service Order and, where applicable, the further provisions of these Lobster GTC. The Customer's duty to cooperate is a primary contractual obligation.
- (5) The Customer is solely responsible for the functionality of the infrastructure in which the Customer uses Lobster Software.

#### **V Remuneration, terms of payment, default**

- (1) Lobster receives the remuneration agreed in the Service Order for its services. It does not include any taxes to be taken into account in accordance with the statutory provisions (value added tax or similar taxes).
- (2) Invoices from Lobster must be paid within thirty (30) calendar days after the service has been provided and the invoice has been received.
- (3) All payments must be made without deductions and in euros (€) by bank transfer to the account specified in Lobster's invoice. The date on which the payment is credited to our account

determines whether the payment deadline has been met.

- (4) The Customer is automatically in default when the deadline for payment expires. During the period of default, interest will accrue on the remuneration at the statutory default interest rate. The standard statutory default fee is due as well. Lobster reserves the right to assert further losses incurred as a result of default and - in the case of merchants - statutory interest on arrears (sections 352, 353 German Commercial Code (*HGB*)).
- (5) The Customer is only entitled to offset and to assert rights of retention insofar as its counterclaim is either undisputed or has been declared final and absolute.

#### **VI Infringement of third-party rights (legal defects)**

- (1) The Customer will inform Lobster without undue delay of any alleged legal defects or infringements of property rights in connection with the provision of services within the scope of a Service Order and will provide reasonable support in defending against such claims.
- (2) Lobster will indemnify the Customer against all justified claims of third parties that relate to a culpable infringement of a patent or copyright or an infringement of other property rights and are based on a contractual use of the service provided under a Service Order (in particular the provision of Lobster Software). The indemnification covers all justified claims of third parties that arise from the use of a service and are asserted against the Customer. In order to be entitled to indemnification
- Lobster must be informed of the alleged claim immediately;
  - Lobster must be given full control of the defence or any settlement negotiations to the extent permissible and possible; and
  - the Customer must provide reasonable support and information to Lobster.

Lobster will cover the costs of reasonable support. Lobster's indemnification obligation is subject to the liability provisions set out in clause A.VII.

- (3) If Lobster's services provided under a Service Order become the subject of an action or measure relating to the infringement of property rights, Lobster will, at its discretion and taking into account the Customer's interests,
- procure the right to continue using the service at no additional cost to the Customer, or
  - replace or modify the service so that the property right infringement or the legal defect is eliminated.

If none of the above alternatives is economically viable, the Customer has the right to rescind the Service Order concerned. Lobster will reimburse the remuneration paid under the Service Order, where applicable pro rata. If the subject of the Service Order is a recurring obligation, the Customer will have a right of termination without notice for good cause instead of a right of rescission.

- (4) Further statutory claims of the Customer - within the scope of the limitation of liability set out in clause A.VII - remain unaffected.

## VII General limitation of liability

- (1) Unless otherwise set out in these Lobster GTC (including this Section A.VII), Lobster is liable for breaches of contractual or non-contractual obligations in accordance with the statutory provisions.
- (2) Lobster has unlimited liability – for any legal reason whatsoever – for compensation for losses caused by any intentional (*vorsätzlich*) or grossly negligent (*grob fahrlässig*) breach of duty by Lobster or by any of Lobster's legal representatives or vicarious agents.
- (3) In the event of a merely simple or slightly negligent breach of duty by Lobster or one of Lobster's legal representatives or vicarious agents (subject to a milder level of liability pursuant to statute, e.g. for diligence in one's own matters or for insignificant breaches of duty) Lobster is only liable
  - a. without limitation for resultant losses arising from injury to life, limb or health,
  - b. for losses arising from a breach of material contractual obligations. Material contractual obligations are those obligations which are essential for proper performance of the contract and on the fulfilment of which the Customer regularly relies and is entitled to rely. In these cases, however, Lobster's liability will be limited to losses that are typical for this type of contract and which were foreseeable at the time the contract was concluded. In the case of this lit. b, Lobster's liability is also limited to the remuneration paid by the Customer in the twelve (12) months prior to the loss event. In this case, Lobster is also not liable for indirect damage (loss of use, loss of production, loss of profit, etc.).
- (4) The liability limitations under (3) do not apply if Lobster has fraudulently concealed a defect, provided a guarantee of the condition or quality which entails liability for compensation or if Lobster has assumed a procurement risk. This has no effect on any mandatory statutory liability, including but not limited to, under the German Product Liability Act (*ProdHaftG*).
- (5) Where Lobster's liability is excluded or limited, the same will apply to any personal liability of Lobster's corporate bodies, legal representatives, employees, staff and vicarious agents.
- (6) The Customer is responsible for regular data backups, the appropriateness of which is determined by its individual risks. If Lobster is liable for data loss, the liability is limited to the costs incurred from duplicating the data backups and to the costs for data recovery that would have been incurred even if the data had been backed up appropriately.

## VIII Use of subcontractors, prohibition of assignment

- (1) Lobster may only use subcontractors if the Customer has been expressly informed in advance - at least in text form. The Customer has the right to object in accordance with Article 28 (2) GDPR. If subcontractors are used Lobster is still responsible for the provision of services in the same manner as when Lobster provides the services itself.
- (2) Unless otherwise provided for in the Service Order, these Lobster GTC or in mandatory statutory provisions, the Customer may not assign or otherwise transfer its rights arising from the Service Order to a third party in whole or in part without Lobster's prior written consent.

## IX Reservation of rights, confidentiality, reference customer

- (1) Lobster reserves all property rights, copyrights and industrial property rights in all documents, materials and other items (essentially offers, catalogues, price lists, cost estimates, product specifications, manuals and other physical and/or electronic documents or information) that Lobster provides to the Customer and in the Lobster Software itself.
- (2) Neither of the contractual partners may disclose Confidential Information of the other contractual partner to third parties without written consent. Both contractual partners agree to only use Confidential Information for the contractually agreed purpose. Both contractual partners must take at least the same protective measures that they take with regard to their own Confidential Information; the measures must at least be appropriate and customary protective measures. Both contractual partners must also prohibit the unauthorised disclosure or use of Confidential Information by their customers, employees, subcontractors or legal representatives. The contractual partners will inform one another in writing if Confidential Information is misused.
- (3) Confidential Information does not include information which
  - was already generally known or generally available to the public at the time it was disclosed;
  - becomes generally known and generally available to the public after disclosure without an action or omission on the part of the recipient;
  - was already in the possession of the recipient at the time of disclosure without any obligation to maintain confidentiality;
  - the recipient receives from a third party without an obligation to maintain confidentiality and knows or ought to know that this was done in breach of a contractual confidentiality obligation or legal confidentiality obligation; or
  - was discovered, developed or created independently by the recipient, i.e. without using or referring to the contractual partner's Confidential Information.
- (4) The Customer may not observe, examine, test, reconstruct, dismantle, decompile or reverse engineer (prohibition on reverse engineering) any prototype, software (in particular Lobster Software) or other tangible item of Lobster provided to the Customer which contains Lobster's Confidential Information.
- (5) The Customer grants Lobster the right to name it as a reference customer on Lobster's website or in its other marketing materials

## X Personal data/data protection

- (1) The contractual partners will comply with the data protection provisions applicable to them, in particular the German Federal Data Protection Act (*BDSG*) and the General Data Protection Regulation (GDPR). A contractual partner will only collect, store, process and use personal data of the other contractual partner if, insofar and as long as it is necessary to create, perform or terminate a Service Order. **Any further collection, processing or use of personal data of the other contractual partner will only be done if it is required or permitted by law or if the other contractual partner has expressly consented to it.**
- (2) It cannot be ruled out that personal Customer Data will be processed in the context of the Service Order. In this case, this clause A.X.(2) sets out the rights and obligations of the contractual

partners with regard to processing in accordance with Article 28 GDPR. Unless otherwise stated, all data protection terms mentioned below are defined in the GDPR.

- a. Lobster is the processor and the Customer is the controller of the personal Customer Data. Lobster may only process the personal Customer Data in accordance with the Customer's instructions.
  - b. Lobster supports the Customer in its obligation to respond to requests from data subjects to exercise their rights referred to in Chapter 3 of the GDPR. Taking into account the type of processing and the information available to Lobster, Lobster will support the Customer in fulfilling the Customer's obligations pursuant to Articles 32 to 36 GDPR. Lobster will notify the Customer without undue delay of any breaches of personal data and any control measures or measures taken by the supervisory authority, insofar as they relate to the Service Order.
  - c. Lobster takes appropriate technical and organisational measures ("**TOMs**") so that the processing of the personal Customer Data is carried out in accordance with the requirements of the GDPR and ensures the protection of the rights of the data subject. TOMs are subject to technical progress and Lobster reserves the right to change TOMs at any time.
  - d. Lobster will ensure that the Customer can verify compliance with the obligations under Article 28 GDPR. Lobster agrees to provide the Customer with the necessary information upon request and, in particular, to provide proof of implementation of the TOMs. Upon request, Lobster will provide the proof as is reasonably necessary to document compliance with these rights and obligations. If this proof is not sufficient for the purpose of verification, the Customer may carry out an on-site inspection after giving proper advance notice.
  - e. Lobster will only use employees for the Service Order if they are required to observe confidentiality and are familiar with the relevant data protection provisions.
  - f. The Customer agrees that Lobster may use subprocessors or change subprocessors provided that Lobster informs the Customer before using new subprocessors or changing subprocessors and the Customer does not object by the deadline set in the advance notice. Lobster will ensure that the provisions of Articles 28 (2), (3) and (4) GDPR are also imposed on the subprocessor. A subprocessor outside the EU/EEA may only be used if the requirements of Article 44 ff. GDPR are met. The Customer agrees to use of the subprocessors listed in the Schedule.
  - g. After completion of the Service Order or earlier upon request by the Customer, Lobster must return all of the personal Customer Data processed on behalf of the Customer to the Customer or, with the Customer's prior consent, delete it or destroy it in accordance with data protection regulations. Lobster may continue to store the personal Customer Data if there is a legal obligation to do so.
- (3) If Lobster and the Customer have entered into a separate data processing agreement ("**DPA**"), the DPA takes precedence over the provisions of this clause A.X.

## **XI Rights to (non-personal) Customer Data**

- (1) Non-personal Customer Data is also generated when the Customer uses the Lobster Software for business operations. The non-personal Customer Data includes, in particular, statistical data and analysis data on function requests and reference data. The Customer is entitled to all rights to the Customer Data. Accordingly, the Customer has the sole right to decide on the use, processing, amendment, transfer and publication of the non-personal Customer Data.
- (2) The Customer grants Lobster a non-transferable and non-sublicensable right free of charge, limited in time to the duration of the contract, to use the non-personal Customer Data - which is not company data of the Customer, but purely statistical data and analysis data of the modules and Configs used - for the following purposes:
  - a. to make the Lobster Software available to the Customer and provide the services owed by Lobster to the Customer under the contract;
  - b. to develop the Lobster Software further in order to optimise support processes and for the purpose of designing and developing applications in the areas of data management, data integration and process optimisation;
  - c. to input the non-personal Customer Data into databases and/or other data carriers in order to analyse the Customer Data, derive formulas, (mathematical) models, methods or other conclusions ("**Derived Data**");
  - d. to utilise non-personal Customer Data for development and training purposes (including in the area of machine learning);
  - e. to develop, test and/or train algorithms, formulae, (mathematical) models and methods, including such methods and models in the field of artificial intelligence.
- (3) Lobster is permitted to merge the non-personal Customer Data with its own data and data from third parties and to create new, independent data sets from it. Lobster is permitted to grant third parties access to the Customer's non-personal data or to pass on the non-personal data to third parties.

## **XII Rights to Derived Data**

- (1) Lobster has the sole and exclusive right to the Derived Data (except for Customer Data as such) that Lobster receives during an activity. In particular, Lobster is entitled to all rights to the algorithms, instructions, databases and data collections, inventions, discoveries, expertise, formulae, ideas, methods, (mathematical) models, processes, specifications, (also) technical improvements and proposals thereto, regardless of whether they are protectable (in particular as trade secrets, under copyright or related rights or patent law), which arise from or are closely related to Lobster's activities.
- (2) Lobster is required to treat the non-personal Customer Data confidentially in accordance with the regulations and to hand it over or delete it after the contract ends. This does not apply to Lobster's Derived Data, which remain the sole property of Lobster even after the contract ends.

## **XIII Applicable law, place of jurisdiction**

- (1) These Lobster GTC and the contractual relationship between Lobster and the Customer are governed exclusively by German law. The UN Convention on Contracts for the International Sale of Goods (CISG) and other international uniform laws do not apply.

Any claims of a non-contractual nature in connection with these Lobster GTC or the contractual relationship are also governed exclusively by German law.

- (2) The exclusive place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is Munich, Germany.



## B DATA PLATFORM SUBSCRIPTION

### I Special definitions of this Section B

<u>Term</u>	<u>Definition</u>
Configs	Configs are technically defined and parametrisable configuration modules in the Lobster Software. They can include profiles, ETL pipelines, portals, custom overviews or input forms. Profiles and ETL pipelines describe configurations, parameters and processes for data transfer, data manipulation and data transformation in the integration module of the "Data Platform". Portals, user-defined overviews and input forms, on the other hand, are definitions within the orchestration module of the "Data Platform".
Customising	Configuration of the Lobster Software in accordance with the agreed specification.
Documentation	Operating instructions (i.e. user Documentation and installation instructions for the Lobster Software) that Lobster provides to its Customers. The Documentation is provided exclusively in electronic, printable form and is not customised.
Object Code	Lobster Software in binary form, i.e. the form of expression of a computer program that is not readable by humans and therefore not used to understand the program logic, but which is suitable to run on a computer.
Material Defects	Reproducible program error(s) or malfunction(s) that result(s) in the Lobster Software not having the agreed quality as described in the relevant Documentation.

### II Lobster licence models, further developments

- (1) The licence models on the basis of which Lobster provides the Lobster Software are set out in the respective Service Order. The Service Orders generally specify the maximum number of Configs with which the Customer may use the Lobster Software.
- (2) Lobster continuously develops the Lobster Software with the aim of improving it (e.g. by providing new functionalities). Patches and updates to improve the contract software are installed or made available on a regular basis during term of the contract. Patches and updates are provided to the Customer free of charge during the term of the contract. With regard to upgrades (which usually introduce new functionalities or significantly improve existing functionalities), Lobster may make the provision of them subject to an additional fee to be agreed between the parties in advance.

### III Functional descriptions of the Lobster Software

A functional description of Lobster Software can be found in the Documentation provided to the Customer. The functional description there forms an integral part of the Service Order, as an agreement regarding condition or quality of the object or work. Technical data, specifications and performance details in public statements, in particular in advertising material, are not to be deemed such an agreement regarding condition or quality of the object or work.

### IV Scope of delivery and rights of use for provision on premise or in a private cloud

The following applies if Lobster and the Customer have agreed in the Service Order that the Lobster Software be provided as an on premise solution or in a private cloud:

- (1) Lobster will deliver the Lobster Software in Object Code and the related Documentation in the form and version described in the respective Service Order. Unless otherwise agreed, Lobster will install and set up the Lobster Software. The Lobster Software contains a mechanism to verify the licence which is implemented via a solution in the Lobster Cloud (cloud licence verification against the licence server) or as a dongle.
- (2) Lobster Software can be delivered by sending an electronic data carrier or by download. If the Lobster Software is made available by download, Lobster will provide the Customer with the information required to carry out the download and operate the Lobster Software, such as a password or licence key.
- (3) In return for payment of the licence fee agreed in the Service Order Lobster grants the Customer a simple, non-exclusive, non-transferable, non-sublicensable right for the duration of the contract to use the Lobster Software for its internal business purposes within the scope of the licence model described in the respective Service Order in the version provided by Lobster for the scope of functions activated for the Customer. The Customer has no further rights to the Lobster Software. The Customer may not use the Lobster Software beyond this, in particular it may not offer services to third parties on the basis of the Lobster Software (in particular data centre services, application service providing, software as a service, Managed Services, business process outsourcing, etc.). The Customer must ensure that the use does not exceed the rights granted or the agreed scope of functions. The Lobster Software may not be sublicensed or sublet.

### V Scope of delivery and rights of use for provision as an Integrated Platform as a Service "iPaaS solution" in the Lobster Cloud

The following applies if Lobster and the Customer have agreed in the Service Order that the Lobster Software be provided as an iPaaS solution to be accessed in the Lobster Cloud:

- (1) Lobster makes the Lobster Software available to the Customer for use via the internet in the Lobster Cloud for the duration of the contract. Lobster is responsible for providing and operating the necessary cloud infrastructure. The Customer will not receive a physical copy of the Lobster Software. The point where the Lobster Software (including the stored data) is provided is the transfer point of the data centre ("Cloud") used by Lobster where the Lobster Software is stored. Lobster is not responsible for the systems used after the transfer point or their availability (e.g. the failure of the internet infrastructure can lead to the Lobster Software being (temporarily) unavailable. One example of this is an interruption in the Customer's internet connection due to an error at the

Customer's provider).

- (2) If the Customer requires them for the use of the Lobster Software, Lobster will provide the Customer with the information required for the agreed use, such as access information and passwords.
- (3) In return for payment of the licence fee agreed in the Service Order Lobster grants the Customer a simple, non-exclusive, non-transferable, non-sublicensable right limited to the duration of the contract to use the Lobster Software in the Lobster Cloud for its internal business purposes within the scope of the licence model described in the respective Service Order in the version provided by Lobster for the scope of functions activated for the Customer. The Customer has no further rights to the Lobster Software. The Customer may not use the Lobster Software beyond this, in particular it may not offer services to third parties on the basis of the Lobster Software (in particular data centre services, application service providing, software as a service, business process outsourcing, etc.). The Customer must ensure that the use does exceed the rights granted or the agreed scope of functions. The Lobster Software may not be sublicensed or sublet.

#### **VI Licence verification and measuring**

- (1) The Customer is not authorised to remove or circumvent the licence verification mechanisms contained in the Lobster Software. If Lobster provides the Customer with a dongle, the Customer must treat it with the necessary care and protect it from being lost.
- (2) All rights of use granted under a Service Order will immediately become invalid and revert to Lobster automatically if the Customer violates any of the above provisions. In this case, the Customer must stop using the Lobster Software completely without undue delay and delete all copies of the Lobster Software installed on its systems.
- (3) The number of Configs available depends on the scope of the licence ("package" ordered) and is agreed in the Service Order. A "soft limit" is used for the Configs. In this respect, the Customer is allowed to (temporarily) exceed the agreed number of Configs by up to 10 % without the use of the Lobster Software being restricted. Lobster reserves the right to contact the Customer and make an offer to expand the licence if this occurs. If an agreement cannot be reached to expand the licence, Lobster reserves the right to reduce the usability of the Lobster Software to the originally agreed number of Configs.

#### **VII Subsequent restriction of functionalities**

- (1) Lobster is authorised to subsequently restrict the existing functionalities of the Lobster Software provided that there are valid grounds for doing so and the Customer's interest in retaining the original scope of functions does not outweigh this. Valid grounds are deemed to exist, in particular, in the following cases:
  - a. the change in the scope of functions determines the compatibility of the Lobster Software with the applicable law, especially if the legal situation has changed;
  - b. the change results from a court decision or an official order;
  - c. the change is necessary to close security gaps or eliminate risks to Lobster's technical infrastructure; or
  - d. the change is of a purely technical nature and has no noticeable impact for the Customer.

- (2) Lobster will give the Customer reasonable advance notice of any noticeable changes to the functional scope of the Lobster Software.

#### **VIII Price adjustments**

The agreed licence fees are fixed for the Initial Term (see clause B.XII (1)). Lobster may adjust the licence fees by written notification to the Customer ("**Notification of Increase**") no later than eight (8) weeks before the start of the Subsequent Term (see clause B.XII (2)) with effect from when the Subsequent Term begins. If the licence fees are increased by more than ten percent, the Customer has an extraordinary right of termination which it may exercise within four (4) weeks of receipt of the Notification of Increase with a notice period of six (6) months to the end of the month. Termination must be in writing. In the event of termination pursuant to this clause B.VIII the previous prices remain in force (not increased) until the end of the contract.

#### **IX Material Defects in the Lobster Software**

- (1) Lobster's strict liability (section 536a German Civil Code (*BGB*)) for defects of a contractual nature that already existed at the time the contract was concluded is excluded.
- (2) The Lobster Software must be provided to the Customer and maintained in a defect-free condition for the duration of the contract. The owed quality of the Lobster Software is defined in the Documentation. If the Lobster Software is provided as an iPaaS solution in the cloud, Lobster guarantees a defined availability of the cloud environment and access to the data stored in the contractual software in the cloud to the extent specified in the respective description of services.
- (3) During the term of the Service Order the Customer is required to describe any Material Defects that occur in a comprehensible manner and, where possible, report them to Lobster in writing without undue delay when they are discovered.
- (4) If the Customer reports a Material Defect to Lobster in accordance with (3), Lobster will provide subsequent performance free of charge. Lobster will take the severity of the Material Defect and its effects on the Customer into account when providing subsequent performance. Lobster chooses the manner of subsequent performance; defects are usually remedied by delivery (for on-premise) or by direct installation (if iPaaS provision via the cloud) of an update (or service pack).
- (5) To the extent reasonable for the Customer, subsequent performance may also take the form of instructions that the Customer can implement itself to remedy a Material Defect. Such instructions may be provided particular if the Customer can remedy the Material Defect with minimal effort or if noticeable effects of the Material Defect can be avoided by implementing the instructions directly. A temporary workaround is deemed to be a remedy if use of Lobster Software is not significantly restricted as a result and the workaround is reasonable for the Customer.
- (6) The details of the support services and response times owed are based on the parameters specified in the description of services.
- (7) If the subsequent performance fails despite a reasonable deadline having been set in writing (which may not be less than the response and rectification time owed), in addition to the reduction in price, the Customer may also claim compensation under the statutory conditions and within the limits of the limitation of liability in clause A.VII.

- (8) Defects which have been reported will be deemed to have been remedied insofar as they (i) no longer occur as reproducible defects under identical circumstances; or (ii) no longer occur for up to three (3) months as non-reproducible defects in three (3) processing operations. If the defect occurs again afterwards, it is considered a new defect.

## **X Restrictions on Use**

- (1) The following Restrictions on Use ("**Restrictions on Use**") apply to the use of Lobster Software:

- a. it is prohibited to provide the Lobster Software or access to it to third parties (in any form whatsoever); in particular, it is prohibited to offer the Lobster Software to third parties as a service provider in the form of outsourcing services;
- b. it is prohibited to reproduce or sell the Lobster Software or to transfer, distribute, make it available or lease it to third parties for a limited period of time (whether for a fee or free of charge);
- c. it is prohibited to copy the Lobster Software or its parts, features, functions or user interfaces or to develop derivative works from it;
- d. it is prohibited to make changes or modifications to the Lobster Software. This does not apply if and insofar as a change is required to correct an error and Lobster is in default in correcting the error or refuses to correct the error and/or if the change is permitted within the scope of the provision under the clause below;
- e. except to the extent permitted by applicable law, it is prohibited to disassemble or decompile the Lobster Software;
- f. it is prohibited to use the Lobster Software in an unlawful manner and/or in violation of the Documentation (e.g. by using undocumented functionalities).

- (2) The Customer is responsible for compliance with the Restrictions on Use. The Customer will take appropriate measures to prevent unauthorised use of the Lobster Software and will inform Lobster without undue delay if there are any indications of a breach of the Restrictions on Use.

- (3) If the Customer does not comply with the Restrictions on Use and the availability, security and/or integrity of the Lobster Software is compromised as a result, Lobster is authorised to temporarily deactivate the Lobster Software or restrict its availability (e.g. by deactivating access).

## **XI Customer's duty to cooperate**

- (1) The Customer will provide Lobster with the support and cooperation required for the provision of services or ensure that this is done ("**Cooperation Duties**"). Unless otherwise agreed in the Service Order and/or Documentation, the Customer will, in particular:

- a. ensure that the system requirements specified by Lobster (as published in the Documentation) for the use of the Lobster Software are available at the Customer's premises;
- b. report defects and technical issues to Lobster without undue delay, in particular, the type, scope and effects of the defects must be described as specifically as possible. The report must be made using the ticket system provided to the Customer by Lobster to report issues;

- c. provide sufficiently trained staff as contact persons;
- d. inform Lobster in good time if circumstances arise that may trigger a need for changes to the Lobster Software (e.g. a change in the Customer's requirements) and respond immediately to Lobster's offers to implement changes.

- (2) If Lobster is prevented from providing the contractual services as a result of failure to comply with the contractual Cooperation Duties, Lobster is not responsible for any service disruptions which may result. If the Customer is in default in fulfilling the Cooperation Duties, Lobster's obligation to provide services which cannot be provided if the Cooperation Duty is not fulfilled or which can only be provided with disproportionate additional effort, will be suspended for the period of default.

## **XII Term and termination**

- (1) The term for the subscription to Lobster Software is agreed in the Service Order ("**Initial term**").
- (2) Unless the subscription is terminated with three (3) months' notice to the end of the term, it is automatically extended for a further year ("**Subsequent Term**").
- (3) The right of both contractual partners to terminate without notice for good cause is unaffected. As a rule, termination without notice for good cause may only be made if the contractual partner was given a reasonable period of time to remedy the situation before termination was issued and this period has elapsed without the situation having been remedied.

A period of time to remedy the situation does not have to be set if

- a. the contractual partner seriously and definitively refuses the performance which is owed;
- b. after assessing the interests of both parties, there are special circumstances which justify immediate termination;

- (4) Termination must always be made in writing, irrespective of the grounds for termination.

- (5) When the subscription ends, the Customer must stop using the Lobster Software and return to Lobster the Lobster Software and all copies, Documentation, materials and other documents provided. The Customer will bear the costs of returning them. If Lobster has made the Lobster Software available to the Customer by download, Lobster may choose not to have it returned, but to instead demand that the Lobster Software and other copies of the program be deleted and that the Documentation, materials and other documents which were provided be destroyed. The Customer is also required to completely and permanently delete all copies of the programs that have been installed and any Documentation that has been saved from all of its servers. The Lobster Software may not be used in any manner after the subscription has ended.



## C DATA PRODUCTS SUBSCRIPTION

### I Special definitions of this Section C

<u>Term</u>	<u>Definition</u>
Data Product	A Data Product is designed as a Managed Service, is operated within the Lobster Data Network and offers plug-and-play functionality. It includes pre-defined integrations managed by Lobster that ensure seamless connectivity to business partners and other software solutions in the supply chain context.
Managed Services	Managed Services are IT services in which Lobster assumes responsibility for the operation, maintenance and further development of certain digital processes or systems.

### II Scope of services

- (1) The Service Order specifies the scope of the Data Products to be provided (in particular the use case, type of processing and data volume included in the transfer per month with which the Customer can use Lobster's Managed Services).
- (2) Lobster may use third-party providers or networks and frameworks (e.g. Peppol) to perform the contract. Lobster continuously develops the Data Products with the aim of improving them (e.g. by providing new functionalities). Patches and updates to improve the Data Products are installed or made available on a regular basis during the term of the contract.
- (3) Lobster is authorised to change the functionality and design of the Data Products at any time, unless it is unreasonable for the Customer, taking into account the interests of both contractual partners. Changes will be deemed reasonable for the Customer in particular if
  - a. they are necessary due to legal requirements;
  - b. they are due to technical innovations or further developments; or
  - c. the functions are replaced by equivalent or higher quality functions.

### III Use of Data Products by the Customer

- (1) The Customer agrees to only use the Data Products for the purposes described in the Service Order (including the product description specified in the Service Order, where applicable). The Customer may not use the Data Products for activities that constitute a violation of the law or infringe the rights of third parties.
- (2) The following actions and forms of use are prohibited (this list is not exclusive):
  - a. the use of robots, spiders or other automatic mechanisms or manual procedures to check or access the content and interfaces, unless they are made available by Lobster for contractual use;
  - b. the publication or distribution of material about the use cases if it is unlawful, in particular if it incites a violation of the law, gives rise to civil liability, is threatening, offensive, defamatory, obscene, indecent or pornographic;

- c. the use of the Data Products or access to them via the defined interfaces in such a way that the performance or function of the Data Products is negatively affected. The Customer may not, in particular, take any measures which may result in an unreasonable or excessive burden being placed on Lobster's infrastructure.
- d. the use of the Data Products to use viruses, Trojans, worms, time bombs or other programs and procedures to interrupt or interfere with Lobster's internet pages and systems or those of its customers and network participants, or to take any other measures that impair the rights of Lobster or third parties.

### IV Diligence in the use of Managed Services

- (1) If the Customer receives access data (user name and password) in connection with using Data Products, the Customer is required to treat the access data confidentially and protect it against misuse by unauthorised parties. The Customer is responsible for all consequences arising from the unauthorised use of access data and unauthorised use.
- (2) In particular, the password may not be written down or stored on an end device in an unprotected manner. Lobster recommends that Customers change their passwords regularly.
- (3) If an interface to Lobster is set up in a Customer's operating system, the Customer is responsible for ensuring that unauthorised parties do not have access to the interface or the data transmitted through it.
- (4) The Customer is responsible for the completeness and accuracy of the data entered, transmitted and made available to Lobster or a third-party partner. Lobster is not required to check the accuracy of the data provided or transmitted by the Customer. Lobster is not responsible for any damage resulting from incorrect or incomplete data, for example due to delays or incorrect calculations, whether caused by the Customer itself or by unauthorised use of the Customer's access. The Customer is liable as the originator and provider of the data.

### V Availability of Data Products

- (1) Lobster ensures that the Data Products are available in accordance with the usual technical standards. Details on availability can be found in the respective description of services.
- (2) The Customer is aware that it is not possible to create a system that is completely free of errors according to the state of the art and that it is therefore possible that the Data Products may temporarily be unavailable through no fault of Lobster. In particular, impairments may occur in the form of transmission errors, technical defects, faults, unlawful interference with network equipment, network overload, wilful overloading of electronic access by third parties, as well as interruptions or other inadequacies on the part of the network operators.
- (3) The computers and networks of the Customer and/or partners are outside of Lobster's sphere of influence. Lobster is therefore not liable for the functionality of these computers and networks.
- (4) Lobster is not liable if the Data Products fail or crash as a result of the following causes (this list is not exhaustive):
  - a. use of unsuitable display software and/or hardware (e.g. browser) by the Customer;
  - b. interference with the communication networks of other operators;

- c. computer failure at the internet provider or online service provider;
  - d. incomplete and/or non-updated offers on proxy servers (caching) or incorrectly configured VPN and firewall settings of the Customer.
- (5) If security risks have been ascertained, Lobster reserves the right to interrupt the Data Products at any time until they have been rectified in order to protect Customers.
- (6) If the Data Products are not available or there are system failures or malfunctions, Lobster will take all reasonable measures to restore the availability of the Data Products as quickly as possible.
- (7) The Data Products are defective if they do not have the characteristics agreed in the product description. The Customer is required to report any defects without undue delay, at least in text form. Lobster will remedy the defects in a reasonable time.
- (8) Lobster does not assume any liability for the accuracy or appropriateness of the information provided by Customers or third parties and in no way guarantees the fulfilment of the contracts concluded between Customers and/or between Customers and third parties via the Data Products.

## **VI Intangible property rights**

- (1) All copyrights, rights of use and other industrial property rights relating to the Data Products and the metadata for setting parameters and interface data, including the HTML code, text, photographs or other images that are displayed on any portals or websites of the use cases are either owned by Lobster or are licensed to Lobster by the owner.
- (2) No copyrights, rights of use or other industrial property rights are acquired by the Customer from accessing, using or commissioning services via any self-on-boarding platforms or portals of Lobster.

## **VII Term of contract and termination**

- (1) The term for the provision of the Data Products is agreed in the Service Order ("**Initial term**").
- (2) Unless provision of the Data Products is terminated with three (3) months' notice to the end of the term, it is automatically extended for another year ("**Subsequent Term**").
- (3) The right of both contractual partners to terminate without notice for good cause is unaffected. As a rule, termination without notice for good cause may only be made if the contractual partner was given a reasonable period of time to remedy the situation before termination was issued and this period has elapsed without the situation having been remedied.

A period of time to remedy the situation does not have to be set if

- a. the contractual partner seriously and definitively refuses the performance which is owed;
  - b. after assessing the interests of both parties, there are special circumstances which justify immediate termination;
- (4) Termination must always be made in writing, irrespective of the grounds for termination.
- (5) When the Service Order ends, the Customer must stop using the Data Products. The Data Products may not be used in any manner after the Service Order has ended.

## **VIII Price adjustments**

The agreed prices for Data Products are fixed for the Initial Term (see clause C.VII (1)). Lobster may adjust the prices by written notification to the Customer ("**Notification of Increase**") no later than eight (8) weeks before the start of the Subsequent Term (see clause C.VII (2)) with effect from when the Subsequent Term begins. If the prices are increased by more than ten percent, the Customer will have an extraordinary right of termination which it may exercise within four (4) weeks of receipt of the Notification of Increase with a notice period of six (6) months to the end of the month. Termination must be in writing. In the event of termination pursuant to this clause C.VIII the previous prices remain in force (not increased) until the end of the contract.

## D CONDITIONS FOR PROVISION OF SERVICES

### I Special definitions of this Section D

<u>Term</u>	<u>Definition</u>
Installation Services	Activities required to install Lobster Software on the Customer's IT systems.
Configuration	The process of creating solutions using Lobster Software.
Services	All Services provided by Lobster in connection with Lobster Software which do not relate to the licensing of the Lobster Software itself, as well as additional customer-specific services in connection with the provision of Managed Services.
Mapping	Process that maps data elements between different data models.
Support Services	Services to provide technical support.
Material Defects	Deviation of the actual quality of a Service from the contractually agreed quality.

### II Scope of services

- (1) The following services in particular may be the subject of a Service Order:
  - a. configuration of a customised solution in the Lobster Software;
  - b. advice on independent configuration by the Customer;
  - c. requirements analysis and creation of specifications;
  - d. advice on mapping;
  - e. project support;
  - f. training courses.
- (2) The specific services to be provided by Lobster are set out in the respective Service Order.

### III Cooperation by and tasks of the Customer

- (1) Unless otherwise agreed, the Customer must perform the following Cooperation Duties:
  - d. designate a contact person;
  - e. transfer the necessary data and information for the installation of Lobster Software;
  - f. provide the infrastructure required for the use of Lobster Software;
  - g. report Material Defects;
  - h. carry out tests.
- (2) If the Customer does not perform the agreed Cooperation Duties or does not perform them on time, the dates agreed for the provision of Services by Lobster will be delayed accordingly. Lobster will inform the Customer of such adjustments and delays and will indicate the specific Cooperation Duty that has not been performed.

## IV Specifications

- (1) If stipulated in the respective Service Order, Lobster will prepare the specifications based on the requirements defined by the Customer and submit them to the Customer for review and approval in several stages, where necessary. The Customer will review submitted versions of the specifications within the agreed timeframes and provide Lobster with any feedback.
- (2) Lobster then incorporates the feedback and submits revised versions of the specifications for final approval. The Customer must approve it if the specifications fully reflect the requirements which have been determined. With its approval, the Customer confirms that the specifications are consistent and correct in terms of content and that they are suitable as a basis for the customised configuration.

## V Changes

- (1) Both contractual partners may submit proposals for changes during the term of a Service Order. The contractual partners will each follow the procedure set out in this clause D.V (2).
- (2) The following provisions apply to the procedure for changes
  - a. If a contractual partner wishes to change the agreed Service, they will submit a written change proposal to the other contractual partner.
  - b. The request must contain the actual specification of the change and a justification in functional and technical terms.
  - c. If the change request is from the Customer, Lobster will analyse the proposed change in terms of its impact on functionality, effort, deadlines and costs and inform the Customer of the result.
  - d. The project managers will discuss each proposed change together based on this information. If Lobster and the Customer agree on a change, a written amendment to the Service Order will be made without undue delay.
  - e. If an agreement is not reached, Lobster will provide the Service as originally agreed, unless the decision on the change is mandatory to continue the Service Order. The same applies for the period until an agreement is reached on a change, if such an agreement is reached.

## VI Acceptance of Services

- (1) The contractual partners may agree in the project plan to carry out (partial) acceptances of Services. The following provisions on acceptance tests apply to both partial acceptance and to acceptance.
- (2) Lobster provides the Services that are the subject of acceptance or partial acceptance as agreed in the project plan in order to perform the acceptance test. An acceptance test consists of tests agreed between the contractual partners (usually functional and integration tests). The Customer carries out the acceptance tests within the time periods specified in the project plan. Lobster supports the Customer with the acceptance test, if necessary. During an acceptance test, a report is kept which is signed by both project managers.
- (3) If the Services essentially meet the requirements of the approved specifications, the Customer will declare (partial) acceptance. The Customer may not refuse to declare acceptance if the acceptance test only reveals insignificant Material Defects or insignificant deviations from the specifications. Such insignificant deviations or Material Defects must be recorded in the report and will be

rectified by Lobster within the scope of its liability for Material Defects.

- (4) The Customer must notify Lobster of any Material Defects that occur during the acceptance test. Notification of a defect must contain all information that is necessary and appropriate to identify, localise and make the Material Defect traceable (e.g. the circumstances under which the Material Defect occurred, error messages, screenshots, log files). The Customer will help Lobster comprehend and trace a Material Defect if necessary. Material Defects which cannot be traced or reproduced usually cannot be rectified.
- (5) If the acceptance test is not successful, the Customer is entitled to refuse to confirm acceptance. The Customer may also set a reasonable grace period for Lobster to remedy existing Material Defects. After expiry of the grace period, the acceptance test is repeated on the basis of the same procedure ("first repeat test"). If the first repeat test again shows Material Defects that prevent acceptance, a second repeat test will be carried out using the same procedure and, if necessary, a third repeat test. The Customer is entitled to rescind the respective Service Order if the third repeat test also fails.

#### **VII Dates**

- (1) The Service Order may indicate dates for provision of the Services. If dates are not binding, they are expressly marked as non-binding by Lobster.
- (2) Adjusting dates
  - a. If Lobster becomes aware of circumstances that could lead to a delay in the provision of Services, Lobster will inform the Customer accordingly. The contractual partners will negotiate as in a cooperative manner without undue delay to resolve this amicably in the interests of both contractual partners.
  - b. Lobster is not responsible for delays in the provision of its own Services that result in a delay or failure by the Customer to fulfil its Cooperation Duties.
- (3) If Lobster is in default with the Services owed, the Customer will set Lobster a reasonable grace period to provide the services, unless a grace period is unreasonable for the Customer. If it is unreasonable for the Customer to set a grace period or if a reasonable grace period has been set and expired, the Customer is entitled to termination and claims for compensation.

#### **VIII Granting of rights**

The Customer receives non-exclusive, non-transferable rights to all work results of the Services created under a Service Order concluded under these terms for use exclusively within the company. The Customer is not authorised to edit or distribute work results unless it is expressly agreed in the Service Order.

#### **IX Material Defects**

- (1) The following claims due to Material Defects in the Services become time-barred within twelve (12) months after the Services have been provided in full. The statutory provisions on the statute of limitations apply in the event of intent or fraudulent intent.
- (2) The Customer is required to describe any Material Defects that occur in a comprehensible manner and, where possible, report them to Lobster in writing without undue delay after they are discovered.
- (3) If the Customer informs Lobster of a Material Defect in the Services, Lobster will provide subsequent performance free of charge, at its discretion, through subsequent delivery or subsequent improvement. To the extent reasonable for the Customer, subsequent performance may take the form of instructions that the Customer can implement itself to remedy a Material Defect. Such instructions may be provided particular if the Customer can remedy the Material Defect with minimal effort or if noticeable effects of the Material Defect can be avoided by implementing the instructions directly. A temporary workaround is deemed to be a remedy if use of Lobster Software is not significantly restricted as a result and the workaround is reasonable for the Customer.

#### **X Remuneration and terms of payment**

- (1) The Customer pays for Lobster's Services either on the basis of time and materials or on the basis of a fixed price. The amount and type of remuneration are set out in the respective Service Order.
- (2) The hourly or daily rates agreed in the Service Order apply for remuneration based on time and materials. Lobster issues an invoice for the Services provided according to the actual amount incurred on the basis of a record of performance. Invoices are due for payment within thirty (30) calendar days of the invoice date.
- (3) Unless otherwise agreed in a Service Order, the Customer will reimburse travelling expenses and travelling time (from Lobster's registered office) as follows:
  - Flights: Economy
  - Train: 2nd class
  - Car: EUR 0.70 per kilometre
  - Travel time: EUR 60.00 per hour
  - Accommodation: according to receipt.

**Schedule: List of subprocessors**

Subcontractor	Address/country	Service
Bitpoint AG	Kunstmühlstraße 12a 83026 Rosenheim Germany	Data centre operator for Lobster's own and customer systems
Public Cloud Group GmbH	Blumenstraße 33/1 71106 Magstadt Germany	Cloud Managed Services
Amazon Web Services EMEA SARL	38 Avenue John F. Kennedy L-1855 Luxembourg	Cloud Service Provider

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