



## **General Terms and Conditions**

### **Art. 1 Scope of the General Terms and Conditions and Amendments**

(1) The following General Terms and Conditions, as valid at the time of contract conclusion, shall apply to all contracts between the customers (hereinafter "Customers") and us, Leafworks GmbH (hereinafter "Provider"), regarding the non-gratuitous use of the various software products of Leafworks AddOns-API at <https://helpdeskapi.com> (hereinafter "Software"). For further information please see <https://leafworks.de/Zendesk-addons-api/>.

However, the provisions agreed between the Provider and the Customer in the respective contract and the service specifications shall, as a rule, prevail over these General Terms and Conditions.

(2) Any terms and conditions of the Customer that deviate from or collide with these General Terms and Conditions shall not be accepted by the Provider, unless the Provider has expressly consented to them. Performance of the services must not be deemed to constitute such consent.

(3) Any amendments to these General Terms and Conditions will be notified to the Customer by mail, telefax or email. Unless the Customer objects to such amendments within 4 weeks after receipt of the notification, the amendments shall be deemed accepted by the Customer. In the event of any amendments to these General Terms and Conditions, the Customer will be specially advised of their right to object and of the legal consequences of non-objection.

### **Art. 2 Contract Formation**

(1) We conclude contracts regarding the use of our Software exclusively with entrepreneurs as defined under Art. 14 BGB (German Civil Code).

(2) A contract regarding the use of the Software shall be formed exclusively upon Customer's unqualified written acceptance of a written offer submitted by the Provider. Any modified acceptance of the offer shall be regarded as a new offer from the Customer to the Provider that the latter may accept.

Should the Parties have started performing the contract upon mutual consent, although no written contract according to clause (1) has been concluded yet, you may not plead such defect of form.

(3) The following shall apply for orders of the Software via our online shop:

The Customer initiates the procedure for ordering the Software at <https://www.zendesk.de/apps/>. By completing the ordering procedure and clicking the "Buy now" button, the Customer submits a valid offer. We automatically accept this offer by installing the Software.

### **Art. 3 Subject of the Contract, Scope of Services**

(1) Provider shall make the Software available to the Customer for use via the Internet for the duration of the contract term. The Software shall be provided in the version current at the time,



with the functional scope of the respective capability package ordered by the Customer, if this version is in line with the tried and tested state of the art.

(2) The Software will be hosted and operated on servers of Amazon Web Services, Inc., a third-party provider contractually linked with the Provider, or of one of its subsidiaries.

(3) The Software is a body of multiple web-based applications that are attached to the individual Software products of the Zendesk suite (hereinafter "Zendesk") as add-ons by means of interfaces (APIs) in order to enhance and/or customize the functionality of these Software products for the Customer.

Zendesk is a support platform by the Zendesk Group of companies (cf. [www.zendesk.de](http://www.zendesk.de)) operated by the Customer in their own responsibility.

Customer will access and use the Software indirectly via Zendesk. More particularly, the Software operations will be initiated by Zendesk in automated processes in accordance with their respective configurations, and the results will be output directly to the Customer and their users via Zendesk.

The particular services made available to the Customer for use via the Software and its components ensue from the Provider's offer underlying the contract, from any service specifications incorporated into the contract and from the technical functions respectively available in the current version of the Software. In the case of online orders, this information can be gathered directly during the order procedure.

(4) By placing the order, the Customer confirms to have inspected the Software extensively and to have taken note of the available descriptions of the Software und its functional profile.

(5) If the Customer is permitted under the contract to allow further users to use the Software, the Provider shall not grant these third parties any independent claims against the Provider.

(6) Provider shall make user documentation available to the Customer.

(7) The Provider's performance obligations under this contract regarding the use of the Software shall not include any further services if such services go beyond the mere preservation of the Software and its usability (e.g. remedy of defects) and other contractual accessory duties.

(8) The Provider shall be released from its performance duties if and to the extent the use of the Software cannot be enabled or not properly enabled solely due to errors, disruptions or any other reasons within the Customer's Zendesk environment that are not due to the properties of the Software and its interfaces per se and/or to their configuration and connection to Zendesk. Such disruptions shall be within the technical and contractual responsibilities of the Customer and its Zendesk contract partners.

#### **Art. 4 Further Provider Services, Service Level**

(1) Provider shall provide the Customer with the computational capacity required for the unlimited contractual use and with the memory capacity needed for the data created by the Customer and its authorized users by using the Software and/or for the data required for using the Software. The Provider shall not accept any safekeeping and custody obligations, unless such obligations have been agreed between the Parties under other contracts.



(2) The delivery point for the Software and the application data shall be the router output of the Provider's data centre.

Beyond their own communication network, the Provider is unable to exert any influence over data traffic and shall not owe the forwarding of information.

Provider shall not accept any responsibility for the success of the respective access to the Software, unless exclusive use is made of the network that is operated by the Provider, including the interfaces with third-party networks.

The Provider shall not be responsible for the quality of the hardware and software required for use by the Customer and for the telecommunication connection between the Customer and the Provider up to the delivery point.

(3) The servers und hence the access to the Software shall be continuously operational 24 hours, seven days a week at 99% monthly average availability. Excluded therefrom is downtime due to maintenance work and Software updates and due to disruptions of server availability via the Internet resulting from technical or other issues that are not within the Provider's control (force majeure, network congestion, third-party faults etc.).

(4) The minimum availability specified in Clause 4.3 may be changed on the part of the host provider and may fall below the minimum availability required in accordance with the respectively prevailing legal opinion, without the Provider being able to exert any impeding influence. The Provider is objectively technically unable to guarantee the Customer higher availabilities than the host provider. Customer shall acknowledge this fact and refrain from asserting any claims and rights towards the Provider on grounds of insufficient minimum availability, unless this minimum availability is below the respective current minimum availability of the host provider.

(5) Customer may, at any time, request the Provider to deliver a complete copy of the Customer's configuration data via remote data transmission. If Customer requests such data delivery more than once per month, they shall pay an expense allowance of €200 to the Provider.

## **Art. 5 Commencement, Term and Termination of the User Relationship**

(1) The user relationship shall commence upon conclusion of the contract and shall continue for an unlimited period. The contract may be properly terminated by either Party towards the end of the following month upon giving one months' notice. If the contract is not terminated in due time, it shall be renewed for a further one-month period. This shall not affect the right to terminate for cause or any special termination rights existing under this contract or by law.

(2) Termination must be in text form (e.g. fax/email) to be effective.

## **Art. 6 Remuneration**

(1) The monthly usage fees shall be paid in advance within 10 days after receipt of the invoice on a monthly basis. Usage-based fees shall be invoiced subsequently at the beginning of each following month.



(2) The monthly usage fee is a lump sum to be billed for each month throughout the term of the contract. The usage-based fee will be charged on the server side for each customer on the basis of API requests (HTTP requests) authenticated by user name and password.

(3) Provider reserves the right to increase the monthly usage fee at their reasonable discretion (Art. 315 German Civil Code), but by no more than 10%, after the lapse of two contract years. Fees may not be further increased before the lapse of two years after the last increase. The intended increase shall be notified to the Customer by observing a four-month period until such increase becomes effective. The above increase of fees is justifiable only if the costs of performing the services have increased for the Provider, including but not limited to an increase of the costs charged by the host-provider.

(4) In accordance with Art. 286 para. 2 German Civil Code, Customer shall be in default of payment without additional reminder upon the lapse of 4 weeks after receipt of invoice. In this case, Provider shall have the right to retain contract performance until the invoice has been settled. The right to block access shall exist as a milder remedy, even if the Provider has a right of extraordinary termination. The provision of Art. 320 para. 2 German Civil Code and the assertion of any further claims related to such default shall not be affected.

(5) No set-off shall be allowed to the Customer except with undisputed or legally established counterclaims. The previous clause shall not apply if set-off against such remuneration claim is made using a claim that arises from a defective performance by the Provider.

The Customer may not assert any right of retention unless such claim is based on the same contract relationship.

## **Art. 7 Customer's Duties and Obligations**

(1) The Provider shall enable the Customer to access administration of the Software using a suitable authentication method (e.g. user name and password).

The credentials provided to the Customer and their authorized users shall be changed, without undue delay, into names and passwords that are known to them alone. The credentials must be kept confidential and must be protected against third-party access. Access to the Software shall be allowed solely to the Customer and the other users authorized under this contract. Provider must be notified immediately if there is reason to fear that any unauthorized third parties have gained or will gain knowledge of the credentials. Customer shall be liable for any unauthorized third-party use as regulated under legal provisions.

If the Customer is provided with additional credentials for use by third parties as allowed under this contract, Customer shall advise users of the above duties and shall use reasonable efforts to ensure observance of these duties.

(2) Customer shall be solely and entirely responsible for the contents of the data transmitted to the Software via Zendesk by themselves and/or by the further authorized users and/or of the data created by the Software. Therefore Provider shall not perform any validation of this data.

Customer shall be liable for making sure that the Software is not used for any purposes that are racist, discriminatory, pornographic, harmful to minors, politically extremist, infringing on third-party rights or otherwise unlawful or non-compliant with official regulations or requirements, and that no such data, including but not limited to application data, is created and/or saved on the server(s).



(3) Customer shall not retrieve any information or data without authorization nor interfere with or allow interference with any programmes operated by the Provider and the host provider, respectively, nor enter data networks of the Provider or the host provider without authorization nor facilitate such entering.

(4) Customer shall check all data and information for viruses before feeding it into the Software and shall deploy state-of-the-art antivirus programmes.

(5) Customer shall indemnify Provider against any third-party claims arising from unlawful use of the Software as defined in Art. 7.1-7.4 by the Customer, or resulting from any other disputes caused by the Customer in connection with the use of the Software. This includes indemnification against or reimbursement of the costs incurred by the Provider for any legal defence needed against third-party claims.

(6) If Customer breaches any of the duties under Art. 7.1-7.4., Provider may block Customer's access to the Software or the application data if such blocking can be proven to stop such breach.

(7) Customer shall notify the Provider of any defects in the goods and services owed by the Provider under this contract without undue delay.

If the Provider has been unable to remedy the defect due to Customer's failure to notify or notify in good time, Customer shall not be entitled to reduce the rental fees fully or partially, to request compensation of the damage caused by the defect or to terminate the contract for cause without notice.

Customer must demonstrate that they cannot be held responsible for the failure to notify the defects.

(8.) If Customer violates Art. 7.2. in an unlawful manner, Provider shall have the right to delete the data and application data affected by such violation. In the event of unlawful violation by other users, Customer shall, upon the Provider's request, provide the latter with information needed for asserting the resulting claims against the user without undue delay, such information including, without limitation, the user's name and address.

(9) The right of extraordinary termination for any breach of duty by the Customer shall not be affected by the foregoing.

(10) Customer shall be forbidden to make the Software provided to them available to further users against payment.

(11) Customer shall not have the right to assign any claims and/or transfer any rights under this contract without Provider's express written approval of such assignment or transfer.

## **Art. 8 Special Cooperation Obligation**

Customer shall be obliged, for the term of the contract, to operate a functional Zendesk environment in such a manner that the Software ordered from the Provider can be installed, set up and continuously used to the full extent.



## **Art. 9 Usage Rights in the Software, Rights in Application Data and Media Content**

(1) Customer shall be granted a simple (non-sublicensable and non-transferable) usage right in the Software, such right being limited in time to the term of the contract and being subject to the provisions below. No physical delivery of the Software shall take place.

(2) Customer may use the Software for their own business activities only and for no other purposes except the applications arising from the Software capabilities.

Customer shall not be entitled to any rights not expressly granted hereunder. In particular, Customer shall not have the right to use, or allow third parties to use, the Software beyond the agreed use or to make the Software accessible to third parties. In particular, no reproduction, disposition, emulation or surrender of the Software for a limited time, in particular hiring out or lending, shall be permitted.

(3) For each instance of the Customer culpably enabling the usage of the Software by unauthorized third parties, Customer shall pay a contract penalty in the amount of the monthly usage fee for every month or part thereof of the third-party usage, the penalty being payable immediately. Assertion of any claims for damages shall be reserved; in the event of such assertion, the contract penalty will be set off against the claim for damages.

(4) Customer shall grant the Provider the right to reproduce the data to be stored for the Customer, if and to the extent such reproduction is required for providing the goods and services owed under this contract. Provider shall also have the right to maintain the data at a backup data centre. For the purposes of removing any faults, Provider shall also have the right to modify the structure of the data or the data format.

(5) Customer shall grant the Provider those usage rights in other content and media uploaded into the Software or associated therewith that are needed for contract performance, to the extent such contents and media are subject to any statutory property rights. Customer confirms to be authorized, on the basis of their own rights, to grant these usage rights to this extent. In the event that any claims are brought against the Provider by third parties for alleged infringement of property rights in this content, Customer shall indemnify the Provider against such claims, including the necessary legal fees.

(6) If one or more databases or one or more database works are created during the term of the contract on the Provider's server(s) with AWS by Customer activities as permitted under this contract, including but limited to compilation of application data, all rights therein shall accrue to the Customer.

Customer shall remain the owner of such databases and database works even after the end of the contract.

## **Art. 10 Liability for Defects, Liability for Customer Contents**

(1) Provider shall provide the Software to the hirer in a condition fit for contractual use and maintain it in that condition throughout the hire period. Any defects shall be remedied through free subsequent improvement by the Provider.



(2) Customer shall notify the Provider of any defects without undue delay, cf. Art. 7 (7). Any claims for defects shall become time-barred after one year.

(3) Any Provider liability independent of fault as set forth in Art. 536a para.1 1<sup>st</sup> alt. German Civil Code for defects that existed at the time of contract formation shall be excluded. The same shall apply to any defects in subsequent patches, upgrades and updates to the Software, if these defects existed at the time of installation.

(4) Termination by the Customer in accordance with Art. 543 para.2 cl. 1 lit.1 German Civil Code for failure to grant contractual use shall not be allowed until the Provider has been given adequate opportunity to remedy the defects and the remedy has failed. Failure to remedy the defect shall be assumed only if such remedy is refused by the Provider or delayed in an unreasonable manner, if there is justified doubt as to its chances of success or if it is unreasonable for the Customer for any other reason.

(5) Provider shall not be responsible for the contents and data uploaded into the Software by the Customer or other authorised third parties or created by the Software. In particular, Provider shall not be obliged to check the contents for possible infringement without any specific reason.

#### **Art. 11 Limitation of Liability**

(1) In accordance with statutory provisions, Provider shall be liable without limitation for any damage or loss or injury to life, limb or health resulting from an intentional or negligent breach of duty or an intentional or negligent breach of duty of their vicarious agents.

(2) In addition, Provider shall be liable without limitation in accordance with statutory provisions for other damage or loss, if such damage or loss results from a breach of an essential contractual obligation. This shall be the case if the breach of duty relates to a duty the fulfilment of which is essential for the proper performance of the contract, the breach of which endangers the achievement of the purpose of the contract and the observance of which the Customer could normally rely on. In the event of a breach of an essential contractual obligation, however, liability shall be limited to the foreseeable, typically occurring damage.

(3) The Provider shall also be liable to an unlimited extent for the absence or omission of a warranted characteristic or for non-compliance with a guarantee, as well as for claims under the German Product Liability Act (Produkthaftungsgesetz).

(4) In case of any other breaches of duty, Provider shall be liable only in the event of intent and gross negligence. This shall apply without exception to all claims for damages, regardless of their legal nature, as well as to claims for reimbursement of expenses asserted in lieu of a claim for damages.

(5) The Provider shall not be liable for the loss of data and/or programmes to the extent that the damage is due to Customer's failure to perform data backups and thereby ensure that lost data can be restored with reasonable effort.





(6) To the extent liability for damages is excluded or limited in accordance with the above provisions, this shall also apply with regard to the personal liability for damages of the Provider's employees, workers, staff, representatives and vicarious agents.

#### **Art. 12 Data Security, Data Protection, Contract Data Processing, Secrecy**

(1) The Parties shall observe the applicable provisions of data protection law, in particular those valid in Germany, and shall oblige their employees deployed in connection with the contract and its execution to observe data secrecy, unless they are already under a general obligation to do so.

(2) The Provider shall collect, process and use personal data of third parties only on behalf of the Customer if the Customer enters this data into the software and IT systems of the Provider. The Customer, as the orderer, shall be responsible for compliance with data protection regulations in accordance with Art. 28 GDPR. Customer shall commission the Provider by separate written order to perform contract data processing in accordance with the provisions of Art. 28 (3) GDPR. In the event of any conflicts between this contract and the agreement on contract data processing, the latter shall take precedence over the contract.

(3) Customer shall indemnify the Provider against third-party claims if these are based on a violation of data protection regulations the observance of which the Customer is responsible for as the orderer within the meaning of the above regulation.

(4) If any instructions issued by the Customer in the context of contract data processing collide with the main or secondary duties of the Parties under this contract and, as a result, the Provider is unable to provide their goods and services or is only able to do so to a limited extent, or if the Provider suffers economic disadvantages as a result, this shall be at the Customer's expense.

(5) The Contracting Parties shall maintain secrecy with regard to any information to be treated confidentially which has come to their knowledge within the framework of this contractual relationship or shall not disclose such information towards third parties for any purpose whatsoever without the prior written consent of the other party. Apart from information expressly designated as confidential, information to be treated confidentially shall also include information the confidentiality of which arises from the circumstances. In particular, the application data maintained by the Customer shall be deemed to be confidential in this sense.

#### **Art. 13 Miscellaneous Provisions**

(1) The law of the Federal Republic of Germany is agreed as the applicable law under exclusion of the UN Convention on Contracts for the International Sale of Goods.

(2) The exclusive place of jurisdiction and place of performance shall be the Provider's place of business in Norderstedt.

(3) There are no ancillary provisions outside this contract and its annexes.





Any amendments and supplements to this contract, any warranties of quality and any guarantees must always be made in writing to be effective. The same applies to the waiver of the requirement of the written form.

(4) Should any provision of this contract or a part thereof be or become invalid or contain a regulatory gap, the validity of the remaining contract provisions shall not be affected thereby.

**End of the General Terms and Conditions**