

cadis – the operational TMS

Software as a Service Conditions



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§ 1 Subject of the contract

1. Computer facilities supplied directly by CADIS GmbH or computer facilities rented by CADIS GmbH via the Internet.
2. The scope of services and software are listed in the offer, as well as the associated product descriptions.
3. CADIS GmbH shall not be liable for the availability of the data connection between the transition point at CADIS GmbH and the customer's system. The creation and maintenance of the technical requirements for the receipt and use of the software is the sole responsibility of the customer.

§ 2 Invoicing and payment

1. For services not dependent on data usage (cf. chapter 3.5.1 cadis Software as a Service - flat-rate usage fee), the customer undertakes to pay CADIS GmbH a monthly flat-rate usage fee. The payment dates found in clause 5.1 of the offer apply.
2. The following provisions apply to data usage-dependent services:
 - a. For data usage-dependent services (cf. Chapter 3.5.2 Initial Service Fee), the customer undertakes to pay CADIS GmbH a monthly initial service fee, the basis of which is the estimated monthly data usage.
 - b. The initial service charge paid will be adjusted according to actual data usage, billed and paid or credited by the customer (Preliminary Base Price).
 - c. For the following month, the provisional base price is calculated as an advance payment and is to be paid by the customer.
 - d. For the service period following the initial service period according to paragraph 4, the service charge will be billed according to the actual data usage (final price).
 - e. For the following service periods, the final price is calculated as a monthly advance payment and is to be paid by the customer. The final invoice shall be made in accordance with paragraph 5.
 - f. The payment dates found in clause 5.1 of the offer shall apply.
3. In the event of a default in payment, CADIS GmbH shall be at liberty to discontinue the service in full or in part, temporarily or permanently.

§ 3 Liability for defects / Warranty

1. Within the scope of this agreement and in accordance with clause 2.6 CADIS Software as a Service document, CADIS GmbH is obliged to maintain the functionality of the software.
2. In the event of malfunctions for which CADIS GmbH is solely responsible, CADIS GmbH will remedy the defect causing the malfunction as quickly as is possible at reasonable economic expense. The customer will actively support CADIS GmbH in rectifying the defect and take all measures suitable for accelerating the rectification of the defect by CADIS GmbH.

§ 4 Limitation of liability

1. CADIS GmbH shall be liable for damages in the event of intent and gross negligence in accordance with the statutory provisions. The same applies in the case of negligence resulting in damage or injury to life, limb or health. In the case of negligence resulting in damage to property and financial loss, CADIS GmbH is only liable in the event of a breach of an essential contractual obligation, but the amount is limited to the foreseeable and contractually typical damage at the time of conclusion of the contract. Material contractual obligations are those whose fulfilment is described in the contract and on which the customer may rely
2. To the extent permitted by law, CADIS GmbH's liability is limited in amount to a single year net contract value.

§ 5 Cooperation obligations of the customer

1. Unless otherwise agreed between the parties, the customer's cooperation required for the provision of the services is described in Chapter 4, Cooperation.
2. The customer will, however, also support CADIS GmbH in the provision of the services by means of reasonable cooperation, insofar as this is necessary.

§ 6 Documents, secrecy, analyses of samples and goods

1. CADIS GmbH reserves all rights to all documents (in particular calculations, technical records, etc.) and samples which are handed over to the customer within the framework of the contract negotiations and the conclusion of the contract, irrespective of the actual conclusion of the contract. This shall also apply to documents produced by the customer according to special specifications of CADIS GmbH. These documents and samples may not be used, reproduced or made available to third parties by the customer for purposes outside the contractual relationship with CADIS GmbH. At the request of CADIS GmbH, these must be surrendered together with all copies and/or reproductions. If a contract is not concluded, the customer must hand over all documents to CADIS GmbH without delay and without being asked to do so or, at CADIS GmbH's discretion and request, delete them and provide suitable evidence.
2. The customer is not entitled to disclose CADIS GmbH's business secrets (such as prices, technical procedures, etc.) to third parties without CADIS GmbH's prior written consent.

§ 7 Data protection, consents, indemnity

1. CADIS GmbH attaches great importance to compliance with data protection regulations, e.g. in accordance with the Federal Data Protection Act and the Basic Data Protection Regulation (DSGVO). The customer is advised that personal data must also be collected and stored by the customer's employees or agents in order to negotiate, conclude and process contracts. The customer shall ensure that its employees, freelancers or other agents expressly consent to the use and processing of their personal data (surname, first name, position in the company, telephone number and e-mail address, if applicable) for the purpose of contract negotiations, the conclusion of the contract, the performance of the contract and for the necessary communication within the framework of the business relationship with CADIS GmbH. The consent must be documented in writing or in text form. In terms of time, consent to data processing must in any case be given until the conclusion of the business relationship between the customer and CADIS GmbH. In the event of termination and/or permanent internal change of function of the employee or agent, the customer shall inform CADIS GmbH of this without delay. CADIS GmbH will then immediately delete the personal data of the person concerned

2. Upon request, the customer shall immediately provide CADIS GmbH with proof of the consent granted by the person concerned.
3. Should a claim be made against CADIS GmbH by third parties or authorities because the customer has culpably breached the data protection provisions of this agreement, the customer shall indemnify CADIS GmbH on first demand against all claims for damages, claims, costs (including lawyers' fees) or fines resulting from the breach. CADIS GmbH will inform the customer immediately of any claim and give the customer the opportunity to comment. The customer shall support CADIS GmbH in defending the claims and shall provide any information or documents required for this purpose without delay. Further claims by CADIS GmbH remain unaffected by this.
4. CADIS GmbH and the customer have concluded a commissioned processing agreement in accordance with Article 28 (3) of the Data Protection Regulation. The commissioned data processing agreement is attached to this contract as an annex and forms an essential part.

§ 8 Cancellation

1. The parties may terminate the agreement in accordance with paragraph 1 sentence 1 at any time for good cause (extraordinary termination). Good cause exists in particular if the customer is more than 30 days in arrears with his payments. CADIS GmbH reserves the right to assert claims that have arisen in connection with the circumstances giving rise to the extraordinary termination.
2. In the event of extraordinary termination by CADIS GmbH, CADIS GmbH shall decide at its own discretion whether it will continue to perform the agreed services after the termination date and/or assert termination-related claims for damages.

§ 9 Final clauses

1. Subject to individual agreements in accordance with § 305b of the German Civil Code (BGB), amendments and supplements to the contract and/or the terms of delivery as well as ancillary agreements must be made in writing or text form (e.g. e-mail). Insofar as the terms and conditions of service require the written form, the text form (e.g. e-mail) shall also be sufficient for compliance.
2. If any provision of this agreement is or becomes invalid or unenforceable in whole or in part, this shall not affect the validity of the remaining provisions. Rather, the parties are obliged to work towards replacing the invalid or unenforceable provision with a valid or enforceable provision that comes as close as possible to the economic result of the invalid or unenforceable provision. The same shall apply if the contract and/or these delivery commitments contain a loophole that needs to be supplemented.
3. The exclusive place of jurisdiction and performance for all disputes arising from the contractual relationship is Munich. CADIS GmbH is, however, entitled to sue the customer at his legal place of jurisdiction.
4. The law of the Federal Republic of Germany shall apply to the contractual relationship. The application of the Vienna UN Convention on Contracts for the International Sale of Goods (CISG) and German private international law is excluded.

