

# General Terms and Conditions of nurago GmbH

## §1 Scope

(1) These Terms and Conditions in their currently valid version apply to all services by nurago GmbH, Kurt-Schumacher-Str. 24, 30159 Hannover (hereinafter referred to as “nurago” or “the provider”), regardless of the content or legal nature thereof. They are valid in their latest applicable version respectively to future contracts between nurago and the customer, even when they are no longer mentioned in subsequent agreements or services. We hereby contradict the customer’s deviating conditions and offers of contract.

(2) These Terms and Conditions only apply to business contractors, legal persons under public law and special funds under public law.

## §2 Conclusion of contract and modifications

(1) Offers by nurago are non-binding and without obligation. The conclusion of a contract with nurago only takes place through the confirmation of an order, in writing or electronically, by nurago.

(2) nurago shall owe the services agreed with the customer in each case. Unless agreed otherwise, nurago is not obligated to attain any particular economic success whatsoever.

(3) Changes in the agreed services shall only be valid with the consent of nurago and an agreement in writing (e-mail, fax, letter).

(4) Insofar as fulfillment of a request for change by the customer affects the terms and conditions of service, nurago may insist on an appropriate adjustment of the amount of remuneration and the postponement of any agreed deadlines.

(5) nurago shall provide its services for the customer. Unless expressly agreed otherwise, nurago shall not assume any liability to third parties.

## §3 Special Terms and Conditions for consulting services

(1) The regulations of §3 apply to the provision of consulting services by nurago. Consulting services shall include advising and supporting the customer in developing and implement measures, particularly in the area of market research.

(2) Consulting services shall be provided exclusively on the basis of the information made available by the customer. If third parties are used for consulting services and the collection of necessary data, the use of these third parties shall take place in the name of and on behalf of the customer unless otherwise agreed.

(3) nurago is held to professional performance of the consulting services, while taking the requirements given in connection with commissioning under §2 of these Terms and Conditions and not any particular outcome of the consulting. After ordering, requirements may only be incorporated in connection with a modification of the agreement

## §4 Special Terms and Conditions for the Development of Software

(1) The regulations of §4 apply to the development of software for the customer by nurago.

(2) nurago shall name a project manager; the customer shall name a responsible contact partner. These may take decisions or obtain these without delay. The project manager shall record decisions in writing. The contact partner shall be available to nurago to provide any necessary information and coordination.

(3) Unless agreed separately otherwise, nurago is not obliged to analyse the customer’s existing data, hardware and software or other system environment and inasmuch shall be dependent on being informed completely by the customer. nurago shall take into account the preconditions existing at the customer’s premises, insofar as these become a written part of the specification of services.

(4) Insofar as the customer’s requirements do not already result from the task specified in the contract and a sufficient specification of services cannot be drawn up as a result, nurago shall define the details of the service

requirements with the customer’s support, draw up a corresponding specification and submit this to the customer for approval. The customer shall grant its written approval within 14 days if this is in conformity with the contract. The specification shall be binding for all further work.

(5) The customer shall inform nurago of any requests for change concerning software services. nurago shall support the customer upon its request in exchange for remuneration when formulating the change request. nurago shall be entitled to adequate remuneration for considering requests for change in accordance with the remuneration rates agreed with the customer; if no relevant agreement exists, this remuneration shall be in accordance with nurago’s usual rates applicable in each case.

(6) nurago shall not owe the installation or implementation of the software, unless this is agreed with the customer. The customer shall ensure that specialist staff is made available for the use of the software no later than at the time of the installation. If no fixed time of delivery is agreed, nurago shall announce the provision of the work result by giving appropriate notice (at least one week’s notice).

(7) nurago shall only owe the delivery or depositing of the source code or its consent to the depositing if and insofar as this is agreed in writing.

## §5 Settlement

(1) Insofar as services are settled on the basis of outlay, nurago shall submit monthly invoices.

(2) nurago’s accounts receivable shall be due on issuing the invoice for payment within 14 days without any deductions. If the customer defaults in payment, nurago shall be entitled to suspend the service until all open accounts receivable have been paid completely. This shall not affect nurago’s further legal claims and rights.

(3) Until all current and future accounts receivable arising from the business relationship with the customer have been paid completely, nurago reserves the right of ownership to the supplied work result.

(4) The customer shall only be entitled to settle up against accounts receivable if its counterclaims have been acknowledged by nurago or recognised by declaratory judgment. The customer shall only be entitled to exercise a right of retention insofar as its counterclaim is based on the same contractual relationship.

## §6 Customer’s duty to cooperate

(1) The customer must inform nurago of all information essential to the respective order and promptly notify nurago in the event of any problems or change requests. nurago may take the customer’s information to be correct, and is under no obligation to make any inquiries. Nonetheless, in the event of any recognised errors, nurago shall draw the customer’s attention to this state of affairs. The customer’s instructions must be issued in sufficient time so that a reasonable deadline for implementation remains.

(2) The customer shall only transfer to nurago such templates and work equipment whose usage by nurago as specified in the order does not infringe third-party rights. Inasmuch, the customer shall indemnify nurago from any third-party claims and rights. The exemption shall also include the costs of an adequate legal defence within the limits of the law.

(3) The customer is obliged to maintain in his business domain all prerequisites necessary for proper execution of an order. This especially concerns the hardware and software required for the implementation of the service, unless this is expressly to be provided by nurago. Insofar as nurago is to be employed at the customer’s premises according to an agreement, the customer shall make available sufficient work stations and the working equipment not to be provided by nurago according to the agreement, without charge.

(4) The customer shall be liable for his cooperation; in particular he must inspect data carriers for viruses and other malware with a current virus protection program corresponding to the state-of-the-art before their delivery to nurago.

(5) The customer shall allow nurago to name him as a customer to third parties. In particular, nurago may name the customer as its customer on its website.

(6) The customer undertakes to back up data before a transfer to nurago or processing by nurago, without being asked.

## §7 Acceptance

(1) The customer undertakes to check the conformity with the contract of the deliveries and services as well as the preliminary and provisional products in any case without delay after receipt and declare acceptances without delay. nurago is entitled to demand an interim acceptance upon the completion of individual stages of work. The acceptance of a service shall be considered to be declared unless this is refused by the customer, stating meaningful grounds, within 21 days of the transfer or if the customer uses the work result. In the event of previous interim acceptances, only the conformity with the contract of the final part of the service transferred and the interaction of all partial deliveries shall be the subject matter of the acceptance tests of the final partial delivery.

(2) Acceptances must be declared in writing at the request of nurago.

(3) In the event of any refusal of acceptance, the impediments to delivery must be described in detail. Insignificant defects shall not impede the acceptance and must be remedied within a reasonable period by nurago. A defect shall be significant if its existence eliminates the suitability of the service for the intended purpose or impairs this to such a degree that this leads to an imperceptible additional outlay for the customer.

(4) nurago is prepared to support the customer during acceptance tests in exchange for separate remuneration.

## §8 Confidentiality

nurago undertakes to treat all business and corporate secrets and all other information marked as confidential made known to it in connection with the implementation of the contract with absolute confidentiality.

## §9 Disturbances in Performance

(1) The date of delivery / provision of the services or period of delivery/provision of services - hereinafter always simply referred to as "the delivery date" - is agreed according to the respective capacities of nurago, without commitment, and subject to timely deliveries by its own suppliers and circumstances for which nurago is not responsible, in particular failure to deliver, incorrect delivery or untimely delivery by its suppliers through no fault of its own. Such occurrences shall extend the delivery date accordingly and namely even if they arise during an already existing delay. A period of grace which may be set by the customer in this case shall also be extended by the period of the unforeseen occurrence. If such occurrences lead to a delay in performance of more than one month, then both the customer as well as nurago - irrespective of other rights of rescission - may withdraw from the contract if they are not responsible for the delay in delivery / service.

(2) If the outlay is increased for reasons for which the customer is responsible, nurago may also insist on remuneration for its additional outlay.

(3) nurago shall only default based on the receipt of a written reminder sent by the customer, unless a fixed-term transaction has been agreed. The agreement of binding delivery dates must be recorded in writing.

(4) If the customer withdraws from the contract in addition to asserting claims for default damages or asserts claims for damages instead of the performance, he must have set nurago a reasonable period of grace after the expiry of the period specified for the provision of services. Liability by nurago shall be excluded however if the damage would also have occurred in the event of compliance with the delivery date.

(5) Guarantees in the legal sense by nurago shall only exist in the event of a written guarantee agreement using the designation "Guarantee".

(6) The customer's claims based on defects shall become time-barred within one year of the date of the passing of risk. This shall not apply if longer periods are mandatory by law or in cases of injury to life, limb or health, in the event of an intentional or grossly negligent breach of duty by nurago or in the event of fraudulent concealment of a defect. The period shall begin at the time of the passing of risk. This shall not affect the legal provisions regarding suspension of expiry, suspension and recommencement of limitation periods.

(7) The Parties are aware of, and agree, that according to the state-of-the-art it is impossible to exclude software failures under all application conditions. The customer shall only have warranty claims concerning software if reported defects are reproducible or can be shown through machine-generated outputs.

(8) If the service by nurago shows a defect in quality, nurago must be given two opportunities to remedy the defect within a reasonable period, unless nurago has definitely refused to remedy the defect. nurago shall have the right to choose between the ways of remedying the defect. The remedy of the defect shall take place at the customer's or nurago's premises, at the choice of nurago.

(9) The customer must support nurago as far as possible during the remedy of defects, in particular at the request of nurago to send a data carrier with the program concerned and make available working equipment. The customer must report defects in a comprehensive form, stating the information necessary to detect the defect.

(10) The warranty shall expire for the work results that the customer has altered, unless the customer furnishes documentary proof that the change has not caused the defect in connection with the report of the defect.

(11) nurago may demand remuneration for its outlay for inspecting the defects, if a claim based on defects by the customer proves to be unjustified.

## §10 Rights granted

(1) All rights to drafts, proposals, tender documents and interim results shall remain with nurago, unless agreed otherwise.

(2) nurago grants to the customer rights to use the work results required for the intended purpose agreed in each case (final result). Unless agreed in writing otherwise, the remuneration shall only constitute the settlement of the grant of simple non-exclusive rights of use for the intended purpose, form of use and period of use in accordance with the original order. Each further use especially in or on not expressly included media, in a deviating geographical area, in a processed form (unless the processing is required for the contractual use) and/or in a deviating period shall require an express additional grant of rights. The transfer of rights of use as well as sublicensing shall require nurago's written consent.

(3) In the event of unjustified use, the customer is entitled to remunerate this use adequately; this shall not affect any further claims and rights of nurago.

(4) All rights granted shall be subject to the condition precedent of the complete payment of the compensation owed for the overall service. No partial rights shall be granted in the event of part payment. Rights granted shall be invalid as long as the customer is in default with regular remuneration for the respective work result.

(5) nurago shall also assert third-party rights (third-party licence material, digital images etc.) if necessary for the services. The customer may only use this third-party licence material in connection with and within the scope of the agreed use of nurago's services. The customer shall indemnify nurago from any third-party rights and claims for infringements of rights of use for which he is responsible.

(6) If the collection and/or processing of data in the area of usage analysis and/or market research and/or polls belongs to nurago's services furnished to the customer, nurago is entitled to store and to process the collected or processed data in anonymous form of statistical and other own purposes. The anonymous data admit no conclusion on certain persons or the customer. The anonymization is carried out by nurago by order and on behalf of the customer. The anonymous data are not deemed confidential.

## §11 Third-party rights

(1) nurago shall affirm upon the delivery of the work result that according to nurago's knowledge this is not encumbered with third-party rights conflicting with the performance of the contract by nurago. Otherwise, nurago shall draw the customer's attention to any third-party rights known to nurago.

(2) nurago shall not be liable for the admissibility of service results under competition law and furthermore not for their suitability for obtaining industrial or other property rights. nurago is not liable for service results provided by nurago and especially their use in the customer's business domain not infringing any third-party industrial property rights (in particular trade marks, patterns, samples, patents). nurago shall not owe a search for conflicts with third-party rights, unless this has been agreed separately in writing.

(3) If a third-party asserts vis-à-vis the customer that a service by nurago would infringe its rights, the customer must inform nurago in writing without delay. He shall leave it up to nurago to defend the asserted claims at its own expense. nurago shall indemnify the customer from justified third-party claims.

(4) If third-party rights are infringed by any service by nurago, nurago shall proceed as follows at its own choice and own expense:

- » acquire the right to use the service for the customer, or
- » structure the service so that it does not infringe third-party rights
- » take back the service at the invoice price (less adequate compensation for use).

### §12 Third-party services

Third-party services are services or parts of services, which do not have to be provided by nurago. If nurago contracts out third-party services on its own behalf and at its own expense, the customer shall indemnify nurago from any resulting liabilities. nurago's liability for third-party services (comprising the selection and direction of the party owing the service) shall be excluded, unless agreed otherwise in writing with the customer.

### §13 Other liability

(1) nurago shall be liable for wilful misconduct and gross negligence in accordance with the statutory provisions. In all other cases, the licensor is only liable to the licensee for breaches of material contractual obligations ("cardinal obligations") or damages resulting from an injury to life, limb or health. Material contractual obligations are such obligations whose fulfilment is necessary for achieving the purpose of the contract as well as such obligations on whose compliance the customer as a contractual partner may rely as a matter of course. In the case of slightly negligent breach of cardinal obligations, the liability for any one case shall be limited to the losses foreseeable and typical for this type of contract, but not more than one half of the amount of the overall remuneration for the order on the occasion of which that ground for the liability exists, but no less than € 50,000. There is no liability for lost profits.

(2) Any claims for contractual damages of the customer on nurago shall become time-barred within one year of the claim arising, unless shorter statutory limitation periods exist.

(3) The restrictions of (1) and (2) above also apply for the benefit of nurago's legal representatives, organs and vicarious agents if claims are asserted directly against these and by analogy also to the customer's claims for the reimbursement of expenses.

(4) This shall not affect the regulations of the German Product Liability Act [Produkthaftungsgesetz].

### §14 Final provisions

(1) nurago shall save and process, where applicable, the customer's personal data, if this is necessary for the fulfilment of the contract and for fulfilling nurago's contractual obligations to the customer.

(2) This agreement is governed by German law. Insofar as foreign customers would be subject to the United Nations Convention on Contracts for the International Sale of Goods adopted into German law, this is precluded. For the interpretation of the contractual obligations, the German version of these Terms shall prevail.

(3) If individual provisions of these Terms and Conditions should be or become invalid, this shall not affect the validity of the remaining clauses.

(4) The legal venue with respect to merchants, legal persons under public law and special funds under public law shall be Hamburg.

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## Special Terms and Conditions: Hosting and ASP

### §1 Scope

(1) These Terms and Conditions in their currently valid version apply in addition to the General Terms and Conditions of nurago GmbH, Kurt-Schumacher-Str. 24, 30159 Hannover (hereinafter referred to as "nurago" or "provider"), as amended from time to time to services by nurago in the area of hosting and as Application Service Provider (ASP). They are valid in their latest applicable version respectively to future contracts between nurago and the customer, even where they are no longer mentioned in subsequent agreements or services. We hereby contradict the customer's deviating terms and conditions and offers of contract.

(2) These Terms and Conditions only apply to business contractors, legal persons under public law and special funds under public law.

### §2 Definitions

"ASP Service" shall be any service that nurago provides through nurago using software for the customer on hardware provided by nurago or nurago's partners. "Hosting" shall mean the provision of storage space on hardware provided by nurago or nurago's partners. "Services" within the meaning of these Terms and Conditions shall be ASP and/or hosting services.

### §3 Conclusion of contract

The contract about hosting and / or ASP services shall come into existence through a declaration of acceptance by nurago. The services agreed in each case shall be owed. Special specifications, service levels, availabilities or other particular forms of the service shall only be owed by nurago insofar as this is provided for in the General Terms and Conditions or expressly agreed with the customer.

### §4 Subject matter of the service

(1) The Parties agree that, unless expressly agreed otherwise, no specific spatially-delimited storage space or dedicated hardware shall be made available to the customer or used by nurago for providing the hosting or ASP services. However, nurago is obliged to make available on a permanent basis storage space and other hardware capacity to the agreed extent to the user for his use.

(2) nurago must ensure the contractual connection of the services to an internet or other network interface. nurago shall endeavour to make available on a permanent basis the services obtained by the customer. nurago shall not owe the successful retrieval by the customer in a particular case. nurago

warrants an average availability of the services of 98% per calendar quarter. Unless otherwise agreed, nurago is entitled to interrupt these services for the purpose of maintenance and shall inform the customer of the interruption within an appropriate period. nurago shall endeavour to coordinate set dates in order to avoid or reduce impacts on the customer's operation. nurago may carry out urgent measures (e.g. in the event of the occurrence or rather the probability of critical security problems or for warranting the system stability) without delay, whereby nurago must inform the customer as soon as possible about the interruption of operations. Furthermore, nurago is entitled to carry out maintenance work for a period of up to 3 hours two times in the calendar month ("maintenance window") nurago must inform the customer of the scheduling of the maintenance window at least one week beforehand and respond to the customer's scheduling requests where operational conditions allow. Maintenance windows shall not be to the detriment of agreed availabilities.

(3) nurago is entitled to commission third-parties to provide parts or all of the scope of services. This shall not affect nurago's responsibility for legal or contractual obligations.

(4) nurago reserves the right to change the technologies used (server, operating systems) within the scope of recognised technical standards and its contractual obligations. In this regard, nurago must pay due regard to the customer's justified interests. nurago must inform the customer in writing about the change at the latest two weeks before it becomes effective and call upon him to inform it of any objections to the planned change, which ensue for the accessibility of the website.

### §5 Independence

Insofar as nurago provides the development or adaptation of software and / or consulting services and hosting and / or ASP services beyond development / adaptation / consulting services, unless expressly agreed otherwise, these shall relate to separate contractual relationships. The customer acknowledges that a withdrawal or a termination of the contract regarding hosting and / or ASP services shall not affect the continued existence of the contact regarding the development or adaptation of the respective software or related consulting services.

## §6 Customer's general duties

(1) Customers shall be solely responsible for the data saved, published or otherwise processed by them or by nurago for the customer regarding the hosting and/or ASP services.

(2) When using nurago's services, customers may not infringe applicable legal regulations, contract provisions or third-party rights.

(3) Customers must keep confidential data, especially passwords, secret. In the case of an abuse or suspicion of abuse, nurago must be informed without delay.

(4) Customers may not misuse the services made available by nurago. It is especially prohibited to:

- » Disseminate damage-causing software e.g. viruses, worms, or Trojans;
- » Attempt to secretly or improperly collect or process data;
- » Use the services to send spam e-mails, chain letters or other unrequested contents;
- » Advertise without authorisation (e.g. for prohibited services);
- » Publish third-party personal data, especially names, addresses, telephone or fax numbers or e-mail addresses without their prior consent or collect this for the purpose of improper use;
- » Advertising for services in which a different contractual purpose is veiled.

(5) The customer shall indemnify nurago from all damage that nurago incurs through infringements for which the customer is responsible. The indemnity from liability shall also comprise the costs of the legal defence to an appropriate, but legally admissible extent.

(6) Subject to further claims and rights, nurago reserves the right to block or delete contents which infringe against these Terms and Conditions or legal regulations, without prior notice. Furthermore, nurago is entitled to block contents until the factual situation and legal circumstances have been clarified if third-parties allege an infringement against nurago or nurago obtains knowledge of the suspicion of an infringement in this way.

(7) The customer shall grant to nurago the non-exclusive, non-transferable right, limited territorially to the location of the server used and in terms of time to the term of this contract to reproduce the data and contents without any restriction in connection with the fulfilment of the contractual obligations to perform for any copyrighted data and contents that are saved by nurago. In addition, nurago may prepare back-up copies whose scope shall be limited to the required extent.

(8) nurago is entitled to draw attention to the customer's responsibility for the content of publicly-accessible services by taking suitable measures. The customer is obliged to make available a provider identification marker corresponding to the legal requirements for retrievable services operated for him by nurago.

## §7 Content

(1) With the exception of the contractual use in accordance with the agreement reached with nurago, the copying, downloading, spreading and marketing as well as the saving of contents of the hosting and ASP services is not permitted without the consent of nurago.

(2) The customer may only transfer rights and duties arising from or in connection with the contract about hosting or ASP services to third parties with the written consent of the licensor.

(3) Hosting or ASP services from nurago may only be used by the customer for third parties with the consent of nurago. The customer must prevent access not for the use of authorized third parties. The redistribution of the services of nurago shall require the written consent of nurago.

## §8 termination

(1) The termination of hosting or ASP services must be recorded in writing.

(2) Unless agreed otherwise in writing, nurago is entitled to delete the data collected by means of the services upon the termination of the usage relationship. At the customer's request, nurago shall make available to the customer the data as well as the software operated with the customer in a suitable format insofar as the customer has been granted continuous rights of use to the data or the software.

## §9 Prices and terms of payment

(1) The customer is obligated to pay the agreed remuneration in each case

(2) The customer shall bear the costs he has incurred, such as e.g. the costs for the access to the internet or for the transfer of data by himself

(3) In the event of a delay in payment, nurago is entitled to block or interrupt

the customer's contents or the hosting or ASP services until all claims have been settled.

## §10 Data protection and data security

nurago shall comply with the applicable data protection provisions. Personal data shall be used exclusively to the required extent for providing the services obtained by the customer as well as their settlement. nurago shall obtain the customer's consent for a different use beforehand. This shall not apply insofar as nurago is obliged to publish data for legal reasons. If nurago processes data on behalf of the customer, this shall take place exclusively in accordance with the customer's instructions.

## §11 Liability

(1) nurago shall not be liable for equipment or services outside of the sphere of responsibility of nurago, especially not for the non-availability of the services due to disruptions of the internet or services or equipment used for the internet or the provision of access to the internet.

(2) The rules on liability of the General Terms and Conditions of nurago shall apply.

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