

(0) Subject Matter

(0.1) On the basis of an Order Form for Airlock SaaS-Services (hereinafter also: "SaaS Individual Contract" or "Individual Contract") as well as the present Airlock SaaS-Terms and Conditions (including their integral contractual components, collectively hereinafter "Agreement"), Ergon Informatik AG, Merkurstrasse 43, CH-8032 Zurich (hereinafter "Ergon") provides the Customer during the term of the Agreement and subject to its terms and conditions with the rights to use the SaaS-Software "Airlock" and/or, if applicable, additional or other software (hereinafter "SaaS-Software") with the associated Documentation on the server infrastructure of Ergon or the platform provider used by Ergon for use by the customer via remote access to the Internet, and provides the services agreed in the Agreement associated with this use of the SaaS-Software (such as the support and maintenance services) in the sense of a cloud service (hereinafter collectively referred to as "SaaS-Service").

(0.2) Third-party software or services included in the SaaS-Service may be subject to separate terms and conditions. These are listed in the SaaS Individual Contract, in the product-specific terms and conditions, or in the Documentation under Third-Party Licenses. The Customer accepts these additional terms and conditions by entering into the Agreement.

(0.3) The conditions of these SaaS-Terms and Conditions apply to all SaaS Individual Contracts agreed between Ergon and the Customer, unless otherwise expressly agreed in the SaaS Individual Contract. Terms and conditions of purchase or other general terms and conditions of the Customer - in particular general terms and conditions of the Customer - do not apply, even if Ergon does not expressly object to them.

(1) Rights of Use of Customer

(1.1) Ergon provides the Customer with the SaaS-Software specified in the Individual Contract to the agreed extent (e.g. number of users, installations/instances, applications, resources) in accordance with the Documentation for use via the Internet. For this purpose, Ergon stores the SaaS-Software on the server infrastructure of Ergon or the platform provider used by Ergon, which the customer can access via the Internet and thus use the SaaS-Software. The right of use granted to the Customer by Ergon is a non-exclusive, non-transferable, non-sublicensable and remunerated right of use the SaaS-Software to the extent and in accordance with the provisions of the Agreement, on condition of timely payment of the SaaS-Fee, for his own business purposes and those of his group companies. Group companies of the Customer are companies which control the Customer or which are controlled by the Customer, whereby control requires a capital or voting interest of more than 50%. No further rights to the SaaS-Software are associated with this granting of this rights of use. In particular, the Customer is expressly prohibited from downloading the SaaS-Service or parts it, installing it on his own servers, renting it and/or passing it on to third parties.

(1.2) Access data of Users of the SaaS-Service may not be used by the Customer more than once or by more than one person at the same time. However, they may be transferred from one person to another if the original User is definitely no longer authorized to use the SaaS-Service. The Customer shall be liable for acts and omissions of its Users and group companies as well as its service providers as for its own acts and omissions.

(1.3) Except as otherwise provided in the applicable product-specific terms and conditions, Ergon will maintain an average monthly system availability for the production system of the SaaS-Service as governed by the Service Level Agreement ("SLA") referenced in the SaaS Individual Contract. Ergon does not warrant any system availability of the SaaS-Service beyond this. If Ergon does not comply with this SLA, the Customer is entitled to a service level credit in the form of a contractual penalty ("Vertragsstrafe", Article 160 et seqq. Swiss Code of Obligations) as detailed in the SLA for system availability. As soon as the validity of the service level credit is confirmed by Ergon, the claim will be offset as a credit against a subsequent invoice amount for the SaaS-Service, or - if no future invoice is due - paid out as a refund at the Customer's request. Contractual penalties paid shall be offset against any Customer claims for damages.

(1.4) Ergon provides documentation of the SaaS-Service in the SaaS-Service. This documentation includes the entirety of the manuals and other documents (in electronic form) made generally available by Ergon to its customers with reference to the use of the SaaS-Service, which describe the SaaS-Service or its application as well as the requirements for use in accordance with the agreement (herein "Documentation").

(1.5) In order to be able to provide a standardized SaaS-Service to customers, which is further developed and uniform over time, Ergon is entitled to unilaterally adapt the SaaS-Service (including its functionalities, the support and maintenance as well as its (contractual) terms and conditions) (hereinafter "Modification"). Ergon informs the Customer about modifications of the SaaS-Service in advance, whereby this information can be provided by notifying the Customer via email or on Ergon's portal at <https://techzone.ergon.ch>. If, according to the assessment of Ergon, a Modification causes a significant restriction of the functionality of the SaaS-Service or of the interests of the customers, Ergon will inform the Customer of this in writing/by email with a notice period of six months in advance. If the Customer does not agree with such a significant Modification, the Customer is entitled to terminate the affected SaaS Individual Contract prematurely, provided he notifies Ergon of this termination in writing within three months of receipt of the notice of Ergon. In this case the termination becomes effective as of the date of the announced significant Modification.

(1.6) The Agreement with its contractual components limits the use of the SaaS-Service functionally, technically and contractually. Any circumvented technical and/or contractual limitations (e.g., circumvention use of reverse proxy) must be relicensed for the entire period of insufficient licensing.

(1.7) If the Agreement includes the reporting of certain quantity parameters of the use of the SaaS-Service, the Customer is obliged to report these parameters in due time accordingly. Furthermore, the Customer grants Ergon the right to assess the actual use of the SaaS-Service by the Customer (in particular the determination of the quantity parameters relevant for the SaaS-Fee) on the platform itself.

(1.8) Ergon has the right to assess the Customer's compliance with the contractual use of the SaaS-Service while protecting the Customer's business and trade secrets. In the event of a determined usage of the SaaS-Service by the Customer that is not compliant with the Agreement, Ergon can invoice the Customer for the corresponding excess usage according to currently valid prices. Further rights of Ergon remain reserved.

(1.9) If Ergon allows the Customer to use the SaaS-Service during a test period for testing purposes, the Customer's authorization to use the SaaS-Service is limited to such actions that serve to determine the functionality and suitability of the SaaS-Service for the Customer's purposes. Any productive use of the SaaS-Service during a test period is prohibited. The provisions of the SLA shall not apply.

(1.10) The SaaS-Service may, in accordance with separate product-specific terms and conditions, include software components that can be downloaded by the Customer and installed on Customer's own computers or on devices of Customer's users (so-called "on-premises software"). The SaaS-Service SLA (i.e. the provision on monthly system availability) does not apply to such on-premises software, and in the absence of an express agreement to the contrary in the SaaS Individual Contract or in accordance with the separate product-specific terms and conditions, the use of these on-premises software by the Customer is only permitted during the term of the Agreement.

(2) Responsibility for Content and Lawful Use

(2.1) The Customer is entitled and obliged to use the SaaS-Service in accordance with the Agreement and its intended purpose. In particular, the Customer is responsible for the content of the information and data (language, images, sounds, computer programs, databases, audio/video files, etc.) which he himself (and third parties communicating with him) transmits or has processed, distributed or made available for retrieval by Ergon.

(2.2) The Customer undertakes to process only permissible content with the SaaS-Service. Not permissible is in particular (i) content that violates the rights of Ergon or third parties, as for example intellectual property rights (e.g. copyrights or trademark rights or personal rights), provisions of the law against unfair competition or the business reputation, and (ii) content that violates criminal law (namely in the areas of pornography, depiction of violence, racism, trade secrets, defamation and fraud) or any other applicable law (hereinafter "Inadmissible Content").

(2.3) The Customer is prohibited from (i) using the SaaS-Service in a extraordinarily resource-intensive manner, i.e., usages that impair or may impair the normal function or security of Ergon's server infrastructure as well as the use of the server infrastructure by other customers; (ii) copying, translating, disassembling, decompiling, reverse engineering or otherwise modifying the SaaS-Service or Documentation (except as permitted by mandatory law) in whole or in part or creating derivative works thereof, or (iii) jeopardizing or circumventing the operation or security of the SaaS-Service (hereinafter "Inadmissible Use").

(2.4) If and insofar as there is sufficient probability that further use of the SaaS-Service in breach of the Agreement due to Inadmissible Content or Inadmissible Use by the Customer, Users or third parties may lead to a significant impairment of the SaaS-Service, its users, other Ergon customers or the rights of third parties in such a way that immediate action is required to avert damage, Ergon may temporarily limit or suspend the use of the SaaS-Service by the Customer. Ergon will notify the Customer immediately of such limitation or suspension. Ergon will restrict the limitation or suspension with regard to the period and scope as it is justifiable under the circumstances of the individual case.

(3) Obligations of Customer to Cooperate

(3.1) The Customer shall be responsible for the selection, configuration and for the purposes intended by the use of the SaaS-Service.

(3.2) The contractual and technical requirements defined in the Agreement, in particular in the product-specific terms and conditions and the Documentation, must be met by the Customer in order to use the SaaS-Service.

(3.3) The Customer is responsible for the information and data it enters into the SaaS Service and processes with the SaaS Service. The Customer grants Ergon a non-exclusive right to use and process the Customer's information and data for the purpose of providing and supporting or maintaining the SaaS-Service (including in particular the creation of backup copies).

(3.4) The Customer maintains appropriate security standards for his own infrastructure used for the use of the SaaS-Service. In particular, the Customer must use up-to-date security software to prevent the spread of viruses or malware, etc., and will notify Ergon without delay of any breaches of information security that may have an impact on Ergon's SaaS-Service. The Customer will not perform or automate penetration tests in the SaaS-Service without Ergon's prior approval.

(3.5) The Customer is furthermore obligated to cooperate in the provision of the SaaS-Service and the support and maintenance services by Ergon to the required extent free of charge, in particular by having necessary infrastructure and telecommunication facilities in place to access the SaaS-Service. The provision of the cooperation duties is a prerequisite for the proper provision of services by Ergon. The Customer bears any disadvantages and additional costs resulting from the breach of his obligations.

(4) Support and Maintenance

(4.1) Ergon will provide the support and maintenance services agreed in the Agreement beginning with the provision of the SaaS-Service and during the Term of the Agreement.

(4.2) The content of the support and maintenance services is set forth - in accordance with the support level agreed in the SaaS Individual Contract - in the Service Level Agreement ("SLA") referred to in the SaaS Individual Contract.

(4.3) If Ergon provides the Customer with a free SaaS-Service and/or test (non-productive) use of the SaaS-Service, Ergon is not obliged to provide any support or maintenance for this SaaS-Service, and no SLA applies to it. Ergon may discontinue a free SaaS-Service at any time. This section (4.3) has priority over deviating, conflicting conditions of these SaaS-Terms and Conditions.

(5) Fees, Payment Terms

(5.1) The fee to be paid by the Customer for the usage of the SaaS-Service including the support level agreed ("SaaS-Fee") and any other fees (such as an initial one-time fee) are agreed in the respective SaaS Individual Contract.

(5.2) Ergon may at its discretion increase the SaaS-Fee with effect from the beginning of any Renewal Term by giving three (3) months' written notice of the fee adjustment to the Customer according to the following conditions: Ergon may increase the SaaS-Fee to the extent that the Swiss Wage Index for the sectors "JC 62 – 63 Information Technology and Information Services" on the basis of 2015 = 100 (NOGA 08), published by the Swiss Federal Statistical Office (BfS), has increased (hereinafter "Increase Frame"). For the first increase under a SaaS Individual Contract, the Increase Frame is determined by the change of the index between the index published at the time of the contract start date and the index last published at the time of the notice of the fee adjustment by Ergon. If the SaaS-Fee has already been adjusted during the Term of an Individual Contract, the Increase Frame is determined by the change of the index between the index last published at the time of the last notice of the fee adjustment and the index at the time of the new notice of the fee adjustment by Ergon. In addition, Ergon reserves the right to demand an increase of the SaaS-Fee in accordance with section (1.8) in case of an excess usage by the Customer.

(5.3) The SaaS-Fee and any other fees agreed in the SaaS Individual Contract (such as one-time fees, lump sums, etc.) shall be owed by the Customer in advance for the respective contract period, unless otherwise agreed.

(5.4) All fees and prices are subject to statutory value-added tax. Invoices are to be paid within 30 days from date of invoice). No discounts will be granted. Invoices that are not objected to in writing within the payment period shall be deemed accepted.

(5.5) Upon expiry of the payment period, the Customer is in default and Ergon can demand default interest in the amount of the respective applicable statutory default interest rate. Ergon may temporarily suspend the usage of the SaaS-Service by the Customer if the Customer is in default of payment and does not pay within an additional grace period (usually 14 days). Ergon will inform the Customer in advance about the suspension. Ergon reserves the right to terminate the Agreement in accordance with section (8.2) due to default of payment. The Customer may only offset against undisputed claims or claims finally determined by the court.

(6) Rights to the SaaS-Service, Confidentiality

(6.1) The Customer shall only have the rights to use the SaaS-Service as granted under these SaaS-Terms and Conditions for the Term of the Individual Contract. All other rights, in particular ownership, copyright and property rights to the SaaS-Service (and in particular to the SaaS-Software) and all rights of use not expressly granted to the Customer remain with Ergon or the owner of the property rights.

(6.2) The SaaS-Service contains information, ideas, data structures, database models, libraries, tools, concepts, designs, methods and procedures that are business and trade secrets of Ergon or its suppliers. This includes, but is not limited to, filter-pattern within deny rules, ML hyperparameters, REST API specifications and OpenAPI specifications. Accordingly, the Customer undertakes (i) to treat the SaaS-Service with the same care and confidentiality as his own business and trade secrets, (ii) to use it only for the intended use agreed in these SaaS-Terms and Conditions and (iii) not to make it accessible to third parties in any way or form, neither in whole nor in part, nor to publish it, without the prior written authorization by Ergon.

(6.3) These confidentiality obligations remain in force even after termination of the contractual relationship, as long as Ergon has a justified interest in maintaining confidentiality, no longer than 5 years.

(7) Warranty, Liability

(7.1) Ergon warrants that the SaaS-Service will meet the essential specifications expressly agreed or described in the Documentation during the Term of the Agreement. Ergon does not owe a quality of the SaaS-Service that goes beyond these warranted specifications. In particular, the Customer cannot derive such an obligation from descriptions of the SaaS-Service in public statements or in advertising by Ergon.

(7.2) A defect of the SaaS-Service that is subject to warranty shall only exist if the SaaS-Service, when used by the Customer as agreed, deviates from the properties specified in section (7.1) to such an extent that its suitability for the agreed use is impossible or significantly reduced.

(7.3) In particular, Ergon has no warranty obligations for errors, malfunctions or damages that are due to improper operation, configuration, parameterization or abnormal operating conditions (e.g. hardware or software errors on the part of the Customer), third-party software used by the Customer or changes made to the SaaS-Service by the Customer. For services provided to the Customer by Ergon for which there is no warranty, Ergon may demand appropriate remuneration based on the then current rates and compensation.

(7.4) Defects of the SaaS-Service covered by the warranty of Ergon will be remedied by Ergon within the scope of the agreed support and maintenance services according to section (4). At Ergon's discretion, such defects will be remedied by providing a bug-fix or a corrected version of the SaaS-Software or by demonstrating a solution for circumventing or suppressing the defect.

(7.5) If the remedy of such a defect fails definitively even after the Customer has set two written deadlines to Ergon, the Customer shall be entitled to terminate the SaaS-Service affected extraordinarily in accordance with section (8.2). Compensation for damages within the limits of section (7.9) remains reserved.

(7.6) Ergon warrants that the use of the SaaS-Service by the Customer in accordance with the Agreement does not infringe the intellectual property rights of third parties. If claims are made against the Customer for infringement of intellectual property rights of third parties due to the use of the SaaS-Service, Ergon will assume at its own expense the defense and any costs and compensation imposed on the Customer by a final court judgment, if the Customer notifies Ergon of the facts without delay and leaves all negotiations to Ergon. The Customer is not authorized to make any declarations of acknowledgement in this respect.

(7.7) If justified claims are asserted according to section (7.6), Ergon will take the necessary precautions and if necessary, acquire the rights or deliver equivalent parts and components. If this is not possible with reasonable and appropriate efforts and if the claims have been established by a legally binding judgment, the Customer is entitled to terminate the SaaS-Service affected extraordinarily in accordance with section (8.2). Compensation for damages within the limits of section (7.9) remains reserved.

(7.8) The aforementioned warranty provisions exclusively govern the warranty provided by Ergon and any further warranty by Ergon is expressly excluded.

(7.9) Ergon is liable for damages insofar as Ergon or its employees can be proven to have acted with intent or gross negligence. Liability for slight negligence is limited to a total amount of CHF 100,000 for the duration of the contractual relationship. Compensation for consequential and indirect damages, such as loss of profit or loss of data, is excluded.

(8) Conclusion of Contract, Term and Termination

(8.1) The Agreement shall come into effect upon signature of the SaaS Individual Contract by both Parties and shall be concluded for the term agreed in the SaaS Individual Contract or, in the absence of a corresponding provision, for one year ("Initial Term"). The Agreement shall be automatically renewed for one additional year at a time (each a "Renewal Term"), unless it is terminated in writing by either Party with 90 days' notice to the end of the then current Term.

(8.2) For good cause, either Party has the right to terminate the Agreement extraordinarily – i.e. without observing the notice period according to section (8.1) - in writing. Good cause entitling Ergon to extraordinary termination exists in particular if (i) the Customer is in default of payment even after expiry of an appropriate grace period set (usually 14 days) including the threat of termination, or (ii) the Customer fails to comply with provisions regarding the use of the SaaS-Service (sections (1) to (3)), or regarding the rights to the SaaS-Service or confidentiality (section (6)) despite a written warning setting a reasonable deadline for the restoration of the conditions in accordance with Agreement. Further special rights of termination contained in the Agreement remain reserved.

(8.3) Upon termination of the Agreement, the Customer's right to use the SaaS-Service shall expire.

(8.4) Ergon will delete the Customer's data stored on the server infrastructure of Ergon or the platform provider used by Ergon at the earliest one month and at the latest three months after termination of the Agreement, or anonymize if deletion is not technically possible, unless legal requirements oppose deletion/anonymization. The Customer is obliged to export and save its data on his own responsibility in due time before termination of the Agreement or expiration of the aforementioned period after termination. At the Customer's request, Ergon will support the Customer in this against separate remuneration and commissioning.

(9) Data Privacy

(9.1) The Parties are aware that the conclusion and performance of the Agreement may result in the processing of personal data relating to the Parties, their employees and subcontractors, etc.. In such cases, the disclosing party shall take appropriate organizational, technical and contractual measures to ensure data protection.

(9.2) Insofar as Ergon processes personal data of the Customer within the scope of the provision of the SaaS-Service as a processor, Ergon will process such personal data on behalf of and according to the instructions of the Customer. For this commissioned processing, the parties agree, in addition to the provisions of the SaaS Individual Contract and these SaaS-Terms and Conditions, on the conclusion of a corresponding Data Processing Agreement.

(10) Final Provisions

(10.1) The SaaS Individual Contract and these SaaS-Terms and Conditions (including any integrated contractual components) shall govern the relationship between the Parties in relation to the subject matter in its entirety and shall replace any negotiations and correspondence made prior to the conclusion of the Agreement. In the event of contradictions, the following order of precedence shall apply: SaaS Individual Contract, product-specific terms and conditions, these SaaS-Terms and Conditions, further annexes to the SaaS Individual Contract (in the event of several annexes, the most recent provisions of the annexes which have come into force shall take precedence over the contradictory provisions in a previous annex).

(10.2) The conclusion of the SaaS Individual Contract, its amendment as well as declarations on exercising of rights, in particular notices of termination, reminders or setting of deadlines, shall require the written form. This shall also apply to the waiver of the written form requirement. The written form requirement provided here and elsewhere in these SaaS-Terms and Conditions can also be met with by exchange of letters or (apart from notices of termination) with a electronically transmitted signature (or electronic contract conclusion procedures provided on behalf of Ergon, e.g. by means of Skribble).

(10.3) If individual provisions or parts of this Agreement prove to be void or ineffective, the validity of the remaining parts of the Agreement shall not be affected. In such a case, the Parties shall amend the Agreement in such way that the purpose of the void or ineffective part is achieved as best as possible.

(10.4) The Parties are released from the obligation to perform under this Agreement as long as and to the extent that the non-performance of services is due to the occurrence of circumstances of force majeure. The performance of the obligation of the Party affected by force majeure shall be suspended and postponed for the duration of the force majeure; the obligations shall come into force again after the force majeure ceases to exist and deadlines shall be extended appropriately. Notwithstanding other provisions in this section, force majeure does not apply to the Customer's obligation to make contractual payments to Ergon. Cases of force majeure shall be events or circumstances of any kind beyond the reasonable control of the Party invoking force majeure and for which it is not responsible, such as natural events of particular intensity, warlike events, riots, (threatened) terrorist attacks, travel warnings, strikes, cyber-attacks, embargoes, governmental restrictions, power failures, fires, epidemics, pandemics and quarantines, breakdown of supply chains, etc., regardless of whether they occur at the Party itself or at its subcontractors. Each Party shall inform the other Party immediately and in writing of the occurrence of a case of force majeure.

(10.5) The Customer is aware that the SaaS-Service may be subject to the export laws of different countries and undertakes not to export the SaaS-Service to countries or to natural or legal persons or to allow access by persons who are subject to an export ban under the relevant laws. Ergon is also entitled to restrict, suspend or terminate Customer's access to the SaaS-Service or to terminate for good cause the Agreement by reason of any trade sanctions or embargoes provisions applicable to it.

(10.6) These SaaS-Terms and Conditions and the Agreement shall be governed by Swiss law, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods dated April 11, 1980 and to the exclusion of conflict of law provisions.

(10.7) Both Parties shall attempt in good faith to reach an amicable solution to any disputes relating to this Agreement. If the Parties fail to resolve differences amicably despite reasonable efforts, the competent court in Zurich-1, Switzerland, shall have exclusive jurisdiction over any disputes arising from or in connection with this Agreement