
1. Scope / Binding period

- 1.1 These General Terms and Conditions (hereinafter referred to as "**GTC**") apply to business relations of the company Froach Media GmbH, Friedenstraße 92, 10249 Berlin (hereinafter referred to as "**froach**") with its "**Customers**". Customers are usually companies which use the "**Services**" for their own purposes. However, Customers may also be companies which distribute the Services to their own customers (the "**End Customers**") on the basis of separate agreements with froach. In this case, the contractual partner of the End Customers shall not be froach, but the Customer. In this case of "**Distribution**", partly deviating regulations apply.
- 1.2 froach provides Services to Customers in connection with the provision of an online platform operated by froach and usable via the internet to the Customer with the aim to enable the Customer's employees (the "**Users**") to improve their health on their own responsibility. The online platform Offers the Users the possibility to retrieve animated exercise and relaxation exercises (the "**Content**") and to use further functionalities (the online platform including the Content will hereinafter be referred to as the "**froach Platform**"). The content of the contract in detail is always based on the Offer documents prepared by froach and accepted by the Customer ("**Offer**"). In case of contradictions between the Offer and the GTC, the Offer shall prevail.
- 1.3 General Terms and Conditions of the Customer shall become part of the contract instead of or in addition to these GTC only if froach expressly confirms this in writing to the Customer in the course of the conclusion of the contract.
- 1.4 froach may change these GTC at any time. The Customer will be made aware of the amendment in the context of the use of the froach Platform (Admin Dashboard). If the Customer does not object to the amendments within four (4) weeks after receipt of the notice, the amended provisions shall be deemed accepted by him. In case of Distribution, the Customer will inform its end customers accordingly.

Excluded from the right to make changes to these GTC in accordance with this Section shall be provisions that affect the main contractual obligations of the parties and thus significantly change the relationship between performance and consideration, as well as other fundamental changes to contractual obligations that would be equivalent to the conclusion of a new contract. Such changes require explicit contractual agreement.

- 1.5 froach is bound to a binding Offer for one month from the date of submission of the Offer, unless another period is mentioned in the Offer.

2. Services of froach

- 2.1 The Services provided by froach to the Customer as part of a business relationship usually consist of the following elements:
- 2.1.1 Provision of the froach Platform for use by Users of the Customer in the form of a temporary software provision including support of the Customer and its Users ("**SaaS Services**");
- 2.1.2 other services in the area of occupational health care, in particular training and education services ("**Training Services**").
- 2.2 Within the scope of the provision of the SaaS Services froach provides the following services to the Customer:
- 2.2.1 Provision of the froach Platform for use by the Customer and its users in a data center in Germany contracted by froach;
- 2.2.2 24x7 operation of froach Platform with an availability of 98.0% per month on working days (Monday-Friday). froach occasionally takes up maintenance windows for maintenance work of various kinds. These maintenance works are carried out - except for emergencies - in two-week intervals on working days starting at 6 pm. Maintenance times which meet these requirements are considered as times when the froach Platform is available.
- 2.2.3 Establishment of admin access for the Customer's contact person (Section 1.4)
- 2.2.4 Web-based support of the Customer's Users via the support area of froach (<https://support.froach.de>); personal support of the Customer's contact person (Section 1.4) during the setup and use of the froach Platform via e-mail, if agreed upon in the Offer.

- 2.3 Unless otherwise stated in the Offer, the licensing of the froach Platform is carried out for the number of employees (Users) working for the Customer, irrespective of whether they actively use the froach Platform. Deviating from this, the parties may also agree on a licensing depending on the number of active users at the Customer. Unless otherwise agreed, a User shall be deemed active as soon as he logs on to the froach Platform and inactive as soon as he does not do so for a period of more than three (3) months.
- 2.4 froach is an information provider and does not provide any health services. froach is in particular not responsible for the fact that Users do not correctly perform the exercises described in the froach Platform or perform them although their health condition does not allow it.
- 2.5 The functionality of the froach Platform is described in detail in the Offer. froach shall be entitled to extend the functionality of the froach Platform during the term of the contract. froach is free to design and customize the froach Platform and the content within the scope of the parties' objectives.
- 2.6 froach collects usage statistics to improve its Services and defines exercise updates and intervals at its own discretion.
- 2.7 froach uses carefully selected own employees or third parties as subcontractors with the respective required qualifications for the provision of Services. If an employee is prevented from providing services due to illness, vacation or other reasons for which froach is not responsible, froach may replace its employees with other suitable employees at any time.
- 2.8 The agreed remuneration covers only the scope of Services documented in the Offer. Additional services will be charged separately on the basis of the agreed or customary market rates, unless they are unremitting and commercially insignificant auxiliary services. As far as the service description in the Offer contains unintentional gaps or ambiguities, froach is entitled to adjust the service description accordingly at its reasonable discretion.

3. Duties of the Customer

- 3.1 The Customer acknowledges his duties to cooperate as a prerequisite for the provision of services by froach and thus as his contractual duty.
- 3.2 The provision of the froach Platform is linked to certain requirements regarding the technical infrastructure used at the Customer. The Customer will inform himself about the essential functional features of the froach Platform and its technical requirements (e.g. with regard to browser, client hardware and network connection) and observe them. He bears the risk whether the froach Platform meets his requirements and circumstances.
- 3.3 Technical requirements and specifications according to Section 3.2 may change from time to time, especially in connection with updates of the froach Platform. froach will inform the Customer in due time before a change of the requirements and specifications. The Customer will implement current requirements and specifications without delay.
- 3.4 The Customer shall designate in writing a contact person for froach and an address and e-mail address at which the contact person can be reached. The contact person must be able to make the necessary decisions for the Customer or to bring them about without delay. He also acts as the Customer's technical administrator and manages the Customer's access to the froach Platform via the admin dashboard. He shall be sufficiently authorized by the Customer to take the necessary actions in the Admin Dashboard (including license management and approval of GTC changes according to Section 1.4).
- 3.5 The Customer shall fulfill its duties in connection with the performance and execution of this Agreement. He shall in particular
- 3.5.1 name its intended Users or its intended group of Users (in case of release of an entire domain). Furthermore, the Customer shall immediately inform froach about any change in the assignment of the Users caused by organizational changes, change of employees or similar, as far as this is relevant for the provision of Services by froach;
- 3.5.2 oblige the Users authorized by him according to Section 3.1 to comply on their part with the provisions listed for the use of the software. froach is entitled to require from each user the electronic consent to an end user agreement integrated into the software, which is a prerequisite for his use of the software.

- 3.6 The Customer shall manage its Users in the Admin Dashboard through its contact person (Section 3.4). In the Admin Dashboard, he is in particular able to send invitation links to authorized users and/or to name a domain whose associated users are authorized to log in. Outside the froach Platform he may not (anymore) request authorized Users to cancel accesses.
- 3.7 If there is an infringement of the Customer's rights of use, the Customer shall cooperate to the best of its ability in the clarification of infringing acts and their scope, in particular by informing froach about the corresponding infringing act.
- 3.8 If the Customer does not fulfill a duty or obligation, does not do so properly, or does so late, and if froach is therefore unable to provide its Services in accordance with the contract, the agreed deadlines for performance will be extended in accordance with the delay plus a reasonable period for resuming the work. The additional expenses caused by this, in particular for extended provision of the personnel or material resources used, will be additionally charged by froach to the Customer at the agreed rates.
- 3.9 In the case of Distribution, the provisions in these GTC regarding duties of the Customer shall be understood to mean that the Customer shall ensure that its End Customers fulfill these duties. In this case, the Customer shall have the duty to enter into agreements with its End Customers that impose at least the same obligations on the End Customer as apply to the "Customer" under these GTC. The Customer will agree with froach in advance on any deviations in the content of the agreements with its End Customers compared to these GTC, unless it is merely a matter of editorial and/or commercial changes (such as in particular related to prices and terms of payment).

4. Rights of Use to the froach Platform

- 4.1 froach grants the number of users of the Customer specified in the Offer, upon payment of the fees owed, the simple, non-sublicensable, non-transferable right, which is revocable at any time and limited in time and content to the term of the contract in accordance with the following provisions, to access the froach Platform by means of telecommunication and to use the functionalities associated with froach Platform by means of a browser in accordance with this agreement. The Customer shall not receive any further rights, in particular to the froach Platform or the software application on which the froach Platform is based.
- 4.2 The Customer shall not be entitled to use the froach Platform beyond the use permitted in accordance with this Agreement or to have it used by third parties or to make it accessible to third parties. In particular, the Customer is not permitted to reproduce, sell or temporarily transfer the froach Platform or parts thereof, especially not to rent or lend it.
- 4.3 The rights of use always refer only to the latest provided version of the froach Platform and/or the Content; with updating the Rights of Use of previously provided versions expire for the future.
- 4.4 In the event of Distribution, the Customer's rights of use shall be limited to sublicensing to End Customers and their Users named in concrete terms in separate agreements and the Customer's own acts of use required for this purpose. The preceding paragraphs of this Section 4 shall apply mutatis mutandis to the rights of use of the End Customer.

5. Prices and Terms of Payment

- 5.1 The prices stated in the Offer are in Euros, plus the statutory value-added tax applicable at the time of performance and without deductions.
- 5.2 Invoices shall be due for payment 14 days after receipt of the invoice. In case of doubt, invoices shall be deemed received three working days after the invoice date.
- 5.3 froach shall be entitled to adjust the remuneration for the Services at any time. As far as this adjustment concerns remuneration to be paid on a regular basis, froach will notify the Customer in writing at least four (4) months (in case of annual licenses, see Section 8.1) or at least six (6) weeks (in case of monthly licenses, see Section 8.1) before the respective end of the term. Customer's right of termination pursuant to Section 8 shall remain unaffected.
- 5.4 If the froach Platform is used by more users than the maximum number of Users agreed upon in the Offer, froach shall be entitled to charge the prices stated in the Offer additionally pro rata temporis and proportionally per additional user.

6. Liability

- 6.1 froach shall be liable without limitation for damages caused by gross negligence or intentionally by froach, its legal representatives or vicarious agents. froach shall also be liable without limitation for damages resulting from culpable injury to life, body or health.
- 6.2 Only in case of violation of essential contractual obligations, the violation of which endangers the purpose of the contract and the fulfillment of which the Customer could particularly rely on (so-called cardinal obligations), froach shall also be liable in cases of slight negligence. This liability shall be limited to the compensation of damages which were typically foreseeable at the time of the conclusion of the contract. A further limitation of liability for all cases of slight negligence to the respective project volume may be agreed individually in the Offer. Furthermore
- 6.2.1 in cases of the provision of SaaS Services, the liability pursuant to § 536a German Civil Code – "Bürgerliches Gesetzbuch /BGB" and
- 6.2.2 in cases where the software is provided to the Customer free of charge for testing purposes, froach's liability for cases of slight negligence shall be excluded.
- 6.3 In cases of slightly negligent liability, froach's liability for loss of profit, loss of savings and damage to goodwill shall be excluded in any case.
- 6.4 The aforementioned limitations of liability shall also be effective in favor of froach's legal representatives and employees and shall also be applicable in case of pre-contractual or tortious liability.
- 6.5 The liability of froach for damages according to the German Product Liability Act ("Produkthaftungsgesetz") shall remain unaffected.

7. Secrecy and Data Protection

- 7.1 The parties shall keep secret all information of the other party which comes to their knowledge within the scope of the cooperation and which is subject to secrecy, i.e. protect it with due diligence against disclosure to unauthorized persons. Unauthorized persons in the sense of this regulation are not the subcontractors used according to the contract as well as employees of froach. The parties undertake to involve only such employees or third parties in the cooperation who they have previously committed to secrecy in a comparable form.
- 7.2 All information of a party - irrespective of its form - which is marked in writing as confidential or whose confidentiality clearly results from its nature, in particular business and trade secrets, is subject to secrecy. This also includes the conditions of the respective contract as well as froach IP, which the Customer receives from froach.
- 7.3 Non-classified information is information that the receiving party can demonstrate either (i) is or was generally available, (ii) was already in the party's possession without an obligation of confidentiality, (iii) was independently developed by another party without the use of classified information, or (iv) lawfully acquired the information from a third party that was not under an obligation of confidentiality.
- 7.4 Both parties will comply with the applicable data protection regulations, in particular those valid in Germany, and will oblige their employees employed in connection with the contract to maintain data secrecy, unless they are already under a general obligation to do so. As far as froach processes personal data in the context of the provision of its services according to this agreement, froach will act as the Controller under data protection law and not on the instructions of the Customer.
- 7.5 The confidentiality obligations shall remain in force beyond the end of the respective contract.

8. Termination

- 8.1 Unless otherwise stipulated in the Offer, contracts for SaaS Services shall have a minimum term of twelve (12) months as "**Annual Licenses**". Annual Licenses may be terminated by either party with three (3) months' notice to the end of the term. If no notice of termination is given, the term shall be extended by twelve (12) additional months in each case. Contracts for SaaS Services provided as "**Monthly Licenses**" a minimum term of one (1) month. Monthly Licenses may be terminated by either party with one (1) week's notice to the end of the term. If no notice of termination is given, the term shall be extended by one (1) additional month in each case.

- 8.2 The Customer's right to extraordinarily terminate the contract without notice if the contractual use of the froach Platform is not granted to him or is withdrawn from him in whole or in part in due time is excluded (Section 543 (2) (1) German Civil Code – "Bürgerliches Gesetzbuch / BGB").
- 8.3 The right of both parties to terminate a contract for cause shall remain unaffected. If the reason for termination is a breach of a contractual obligation, the terminating party shall, prior to termination, set a reasonable period of time for the other party to remedy the reason for termination. All circumstances which make further cooperation with the other party unreasonable, in particular also default in payment of substantial amounts, a cessation of business by froach or repeated or persistent serious deficiencies in the performance of services or cooperation, shall be deemed to be good cause for termination.
- 8.4 Terminations must be made in writing.
- 8.5 In case of termination of the contract, no matter in which way and for which reason, the Customer will immediately remove any existing links to the froach Platform and/or the Content from his online Offer and delete any other Work Results provided by froach as well as any existing copies of the Content.

9. General provisions

- 9.1 froach shall be entitled to use the Customer or its brand/logo as a reference for the purpose of presentation on the company website or in brochures after the Customer's consent. A possible use beyond this, e.g. as a showcase or best practice example, will also only take place after corresponding inquiry and consent of the Customer.
- 9.2 The assignment of rights or duties of the Customer arising from the contract - in particular assignments and pledges - to third parties is excluded without prior written consent of froach.
- 9.3 Offsetting by the Customer shall only be possible with an undisputed or legally established counterclaim.
- 9.4 Amendments and supplements to this contract must be made in writing. This shall also apply to any cancellation or waiver of the written form requirement. The parties agree that the written form requirement shall also be satisfied by sending signed declarations by fax to the fax numbers notified by the parties for communication under this Agreement. Unless otherwise agreed, all other communications in connection with the performance of this Agreement may be transferred by e-mail (to the e-mail addresses notified by the Parties for such purposes). Verbal agreements and transfers by telephone, on the other hand, shall not be sufficient.
- 9.5 The legal relationship between the parties shall be governed exclusively by German law to the exclusion of the UN Convention on Contracts for the International Sale of Goods.
- 9.6 The exclusive place of jurisdiction shall be Berlin.

Froach Media GmbH
Friedenstrasse 92
10249 Berlin
Germany

Status of these GTC: July 2021

Change history:

Datum	Changes
04.02.2019	<ul style="list-style-type: none">• "Streamlining" of the GTCs by limiting them to froach's essential services: provision of the SaaS service; corresponding deletion of inappropriate provisions on services and works;• Adjustment of data protection regulations due to the change in classification away from Processor to Controller.
01.05.2021	<ul style="list-style-type: none">• Further "streamlining" and restructuring of the GTCs by deleting unsuitable or no longer used regulations;• Further adjustment of some regulations (especially regarding the customer's duty to cooperate) due to froach's status as a controller in terms of the GDPR;• Adjustment of remuneration and termination regulations due to adjustments in the licence model (annual/monthly licences);• adjusted regulations on user administration via admin dashboard.
16.07.2021	<ul style="list-style-type: none">• Adjustment of clause 1.4 regarding the right to change the GTCs at any time; no more right to unlimited changes of GTC.