JustOn
Terms of Use

§1 Scope, subject matter

(1) These Terms of Use govern the provision of the JustOn software between the JustOn GmbH as the provider of the JustOn software application (hereinafter "PROVIDER") and companies, i.e., natural or legal persons (hereinafter "CUSTOMER"). The PROVIDER only recognizes any provisions that contradict or deviate from these conditions if the PROVIDER has given express written consent to their application.

(2) By purchasing a software license, the CUSTOMER is provided the technical means and granted the right to telecommunication access to and the use of the JustOn software application under this agreement. The JustOn software application is hosted on servers that are controlled by salesforce.com or contractors of salesforce.com.

(3) The CUSTOMER may use a free version of JustOn for a period of 30 days once under the provisions in §3 of these Terms of Use (trial period). After the trial period, all data processed during this period as well as any adjustments made will be deleted, unless the CUSTOMER purchases a JustOn license or stores the data and adjustments on the CUSTOMER's own system.

OBLIGATIONS OF THE PROVIDER

§2 Services

(1) By installing JustOn and concluding the JustOn license agreement, the CUSTOMER is allowed to use the JustOn software in accordance with the provisions of the agreement and for the duration agreed upon in the agreement.

(2) The availability of JustOn is subject to the availability of the telecommunication services of salesforce.com, especially the telecommunication services and servers of salesforce.com. In that regard, the PROVIDER can only guarantee the permanent availability of JustOn dependent on the availability of the telecommunication services provided by salesforce.com.

(3) Furthermore, the continued availability of JustOn is excluded for:

  (a) Scheduled maintenance operations. In this case, the PROVIDER will notify the CUSTOMER at least 48 hours in advance.

  (b) Circumstances for which the PROVIDER is not responsible, in particular those circumstances that are caused by other applications the CUSTOMER's Salesforce instance.

(4) The PROVIDER expressly disclaims liability for the quality of Internet access.

§3 Warranty/Liability

(1) The PROVIDER is constantly striving to improve and expand the functionalities of JustOn and to eliminate defects of JustOn. For this purpose, the PROVIDER provides software additions and extensions (updates) at irregular intervals. These updates do not limit the scope of the previously existing functionalities of JustOn. Nevertheless, the CUSTOMER may refuse to install the updates. However, the PROVIDER points out that his warranty liability refers to the latest version of JustOn as a matter of principle. The CUSTOMER's warrant rights described below only apply if an error described by the CUSTOMER would also have occurred if the updates that the PROVIDER offers had always been installed. The PROVIDER guarantees the functions of JustOn as described at www.juston.com exclusively in accordance with the following provisions.

(2) In case the CUSTOMER reports a malfunction or defect, the PROVIDER is obliged as well as entitled to make up to three attempts to fix it within a reasonable timeframe. Subsequent improvements can take place in the context of telephone support, by means of remote access to the CUSTOMER's own IT system (with the CUSTOMER's consent) or by installing an update. The CUSTOMER can report malfunctions or defects during business hours from Monday to Friday from 09:00-18:00 by phone or e-mail. The PROVIDER will endeavor to respond within 48 hours, excluding weekends and holidays.

(3) If the malfunction or defect is actually caused by an error in the software application for which the PROVIDER is responsible and if after three attempts the PROVIDER has not been able to fix it, the CUSTOMER is entitled to reduce the agreed price proportionately. The reduction is calculated according to the number of wrong invoices that could not be fixed subsequently as a percentage of the price for the number of invoices actually generated during a contract year. (Reduction = annual price / actual number of generated documents x number of definitively wrong documents). The reduction thus calculated is credited to the CUSTOMER for the following year. If the CUSTOMER has terminated the license agreement within the prescribed period, the amount of reduction will be refunded into the CUSTOMER's designated account.

(4) Withdrawal from the agreement is excluded.

(5) The PROVIDER will only pay unlimited damages in the event of an intentional breach of duty. In the event of a negligent breach of a material contractual obligation, the PROVIDER will pay compensation in the amount of the foreseeable damage. For an isolated incident, liability is limited to the agreement value; in the case of ongoing payment, liability is limited to the amount of compensation per agreement year. For all other matters, claims for damages are excluded; furthermore, no-fault liability for damages for deficiencies existing at the time of concluding the agreement is excluded.

§4 Data protection and data safety

(1) Both parties will comply with the applicable data protection regulations, especially the ones that prevail in Germany. They shall impose an obligation on their employees in contact with the agreement to comply with the data privacy regulations in accordance with §5 BDSG (German Data Protection Act), unless this obligation has already been generally imposed on them.

(2) The JustOn software application is made available in a data center controlled by salesforce.com or contractors of salesforce.com. If the CUSTOMER has concluded a separate agreement with salesforce.com for the use of these computing and storage

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capacities, the following paragraph (3) applies. Insofar as the CUSTOMER has not entered into a separate contractual relationship with salesforce.com for use of the computer and storage provided by salesforce.com and accordingly, had to sign the SFDC Service Terms of Use when entering into the Terms of Use for JustOn, then clauses (4) to (8) shall apply.

(3) The PROVIDER does not collect or process any personal data that the CUSTOMER collects or processes in the context of using JustOn. The storage of such personal data is done on servers by salesforce.com, to which the PROVIDER does not have access. The CUSTOMER is therefore bound to ensure the compliance with the data protection regulations in relation to salesforce.com as the CUSTOMER's contractual partner and provider of the storage and server capacity.

(4) If the CUSTOMER collects, processes or uses personal data, the CUSTOMER is responsible for ensuring that the CUSTOMER is entitled to do so under the applicable regulations, in particular the data protection regulations. In the event of a breach, the CUSTOMER shall indemnify the PROVIDER against claims by third-parties.

(5) The PROVIDER expressly points out that the CUSTOMER remains "master of the data" both generally on the basis of the license agreement as well as in the meaning of the data protection regulations. With regard to the right of disposal and ownership of all CUSTOMER-specific data (entered data, processed data, stored data, output data), the CUSTOMER is the sole authorized party. The PROVIDER does not carry out any controls of the data and content stored on behalf of the CUSTOMER with respect to the legal admissibility of their collection, processing and use; this responsibility lies exclusively with the CUSTOMER.

(6) The PROVIDER is only entitled to process or use CUSTOMER-specific data exclusively upon the CUSTOMER's instruction (e.g., obligations to comply with requests for deletion and blocking) and in the context of this agreement. This applies notably to CUSTOMER's requests in the context of customer support matters, where the CUSTOMER grants the PROVIDER access to their data for the purpose of preventing or addressing service or technical problems.

(7) The PROVIDER must not disclose CUSTOMER-specific data in any manner to third parties, unless with the prior written consent of the CUSTOMER. This also applies if and when there is a change or addition to CUSTOMER-specific data.

(8) The PROVIDER applies the technical and organizational security precautions and measures as governed by the Appendix to §9 BDSG (German Data Protection Act).

(9) As a matter of principle, the CUSTOMER is not entitled to demand access to the premises housing the JustOn software application. This does not affect the access rights of the CUSTOMER's data protection officer to check - after written notification - the compliance with the requirements in Appendix to §9 BDSG (German Data Protection Act) and other legal and contractual requirements for handling personal data in the context of the operation of JustOn under this agreement.

RESPONSIBILITIES OF THE CUSTOMER

§5 Usage right

(1) The CUSTOMER is granted the non-exclusive, temporary right to access JustOn via telecommunications and use the functionalities associated with JustOn by means of a

browser for the term of this agreement. The actual scope of the functionality is described on the POVIDER's website at www.juston.com. Any further rights, especially related to JustOn, the software application or the operating software, are expressly excluded.

(2) The CUSTOMER is not entitled to use JustOn in a manner other than that permitted under this agreement, to allow third parties to use JustOn, or to make it accessible to third parties. Third parties within the meaning of this provision do not include persons who access JustOn on behalf of the CUSTOMER and for purposes of the CUSTOMER, such as tax consultants, external accountancy services, lawyers, accountants or tax authorities. In particular, the CUSTOMER is not allowed to copy, sell or permit the temporary use of JustOn or parts thereof, especially not to rent or lend it.

(3) In case the CUSTOMER culpably enables a third party to temporarily use JustOn, the CUSTOMER must pay a compensation equal to the price that would have been payable for concluding a twelve months agreement in the highest fee tier for an individual user.

(4) The CUSTOMER retains the right to prove that no losses or significantly lower losses have been incurred. The PROVIDER reserves the right to claim further damages.

(5) In the event of unauthorized surrender of use, the CUSTOMER must provide the PROVIDER with all information required for the assertion of claims against the unauthorized user immediately upon request, in particular the unauthorized user's name and address.

(6) If the contractual use of JustOn is impaired by the rights of third parties without any fault on the part of the PROVIDER, the PROVIDER reserve the right to refuse the services thereby affected. The PROVIDER will inform the CUSTOMER of this immediately and allow the CUSTOMER access to the CUSTOMER's own data in an appropriate manner. In this event, the CUSTOMER is not obliged to pay. Other claims or rights of the CUSTOMER remain unaffected. In this case, both parties are entitled to extraordinary termination without notice.

§6 Contractual use

The CUSTOMER will fulfill their obligations concerning the service provision and execution in the context of this agreement. The CUSTOMER will in particular:

(1) pay the agreed prices on time;

(2) protect the user and login passwords assigned to the CUSTOMER as well as the identification and authentication means against unauthorized access by third parties and not disclose them to unauthorized third parties;

(3) obtain the required consent from the relevant data subject, insofar as the CUSTOMER collects, processes or uses personal data in the context of using JustOn, in the event that legal permission is not required;

(4) not misuse JustOn or allow it to be misused;

(5) refrain from attempts for its own part or by an unauthorized third party to illegally retrieve information or data; furthermore, refrain from intervening or arranging for interventions in programs that are operated by the PROVIDER and refrain from accessing the PROVIDER's computer networks without authorization;

(6) indemnify the PROVIDER against all third-party claims that are based on an unlawful use of JustOn by the CUSTOMER or with the CUSTOMER's consent, or, in particular, that result from data protection, copyright or other legal disputes associated with the use of JustOn.

If the CUSTOMER realizes or can be expected to realize that a violation of this type is about to occur, they shall notify the PROVIDER without undue delay;

(7) take regular and risk-appropriate measures to back up the data transmitted to salesforce.com or contractors of salesforce.com and create own backup copies to ensure the reconstruction of data and information in the event of their loss;

(8) impose the obligation on authorized users (pursuant to §1) to comply with the relevant provisions for the use of JustOn;

(9) save the CUSTOMER's own data in the system storage until the termination of the agreement.

§7 Non-contractual use of JustOn

(1) In the event of the CUSTOMER violating one of the essential obligations laid down in this agreement, the PROVIDER is entitled to block access to JustOn, particularly if there is a breach of the obligations mentioned in §§5 (5) and 5 (6). The PROVIDER restore the access only after the violation of the relevant essential obligation is permanently eliminated and the PROVIDER is assured that there is no risk of recurrence by submission of a cease-and-desist declaration that makes provision for reasonable penalties. In this case, the CUSTOMER is still obliged to pay the monthly charges.

(2) If the number of records generated by JustOn (especially the number of invoices) exceeds the quota that has been contractually agreed with the CUSTOMER by more than 10%, the PROVIDER is entitled to make a charge for this difference according to the currently valid price list.

§8 Terms of payment

(1) Unless otherwise agreed, the monthly prices, beginning from the month in which the contract starts as designated in the agreement, shall fall due in advance on the 1st day of each calendar month.

(2) If no direct debit has been agreed, the invoice amount must be credited to the account indicated on the invoice within 10 working days of receipt of the invoice.

§9 Default

(1) If the CUSTOMER defaults in paying a monthly invoice, and after sending a reminder, setting a deadline and indicating in writing that the access to JustOn may be blocked if the CUSTOMER has not paid the outstanding invoice despite reminder and deadline, the PROVIDER is entitled to block the access to JustOn. In this case, the CUSTOMER is still obliged to pay the agreed price.

(2) If the CUSTOMER is in default

   (a) with payment of the charges over a period of two consecutive months or

   (b) with payment of the charges amounting to two months' charges over a period that exceeds two months,

the PROVIDER is entitled to terminate the agreement without notice and to demand an immediately payable amount of compensation equal to one third of the monthly fees payable until the next possible termination date.

(3) The amount of compensation can be set at a higher or lower level, if the PROVIDER can prove a higher loss or the CUSTOMER can prove a lower loss. The PROVIDER reserve the right to assert further claims arising from delay in payment.

(4) If the PROVIDER is in default with the operational provision of the services, §3 (5) applies. The CUSTOMER is entitled to withdraw from the agreement only in the event that the PROVIDER does not comply with a reasonable deadline that has been set by the CUSTOMER.

§10 Force majeure

(1) The PROVIDER is exempt from performing the service under this agreement, if and when the non-performance is due to the occurrence of circumstances of force majeure after concluding the agreement.

(2) Circumstances of force majeure include, for example, wars, strikes, riots, expropriations, substantial law changes, storms, floods or other natural disasters, administrative or judicial decisions and any other circumstances beyond the control of the PROVIDER.

(3) Each party shall immediately and in writing notify the other party of the occurrence of a case of force majeure.

§11 Start of the agreement, duration and termination

(1) The minimum term for JustOn is 12 months and begins on the date specified in the agreement.

(2) The contractual relationship can be terminated by either party at sixty (60) days notice to the end of the year of the agreement, but at the earliest upon the expiration of the minimum term.

(3) The right of termination without notice for good cause remains unaffected.

(4) All notices of termination under this agreement must be made at least in writing.

§12 Source code deposit

In order to cover the risks listed in the following section (1), the PROVIDER shall, at the CUSTOMER's request, deposit the source code of JustOn with an escrow service provider so that if the risk materializes, the source code can be furnished to the CUSTOMER.

For depositing the source code and the associated claim on a copy of the source code in the event of the conditions identified below and defined in the escrow framework agreement, the following priority applies:

(1) the individual agreements,

(2) this §12,

(3) the conditions defined in the escrow framework agreement and

(4) these Terms of Use.

If the CUSTOMER opts for the deposit of the source code of JustOn in the CUSTOMER's favor, the following applies:

(1) Once the application to join the Escrow Framework Agreement has been signed, once the escrow joining fee has been received, once the filing fee for the first year of the agreement has been paid and once the escrow service provider has given written confirmation of joining, the CUSTOMER acquires the immediate right to request that the escrow provider hands over a copy of the currently deposited version of the JustOn source code under the following circumstances:

  (a) The PROVIDER has terminated these Terms of Use despite contract compliance, solvency, willingness to pay and declared willingness of the CUSTOMER to continue the Terms of Use;

  (b) The operation of JustOn ceases permanently. Operation of JustOn shall be deemed terminated if despite a written reminder and a reasonable deadline, the CUSTOMER is unable to use JustOn as from the date of the deadline. A reasonable deadline is deemed to be a period of at least one week. Issuing the reminder and setting the deadline must be in writing and by registered mail for reasons of proof.

  (c) The conditions for depositing the source code, as defined in the escrow agreement signed between the PROVIDER and the escrow service provider, have been met.

(2) Depositing the source code refers in all instances only to the current version of the JustOn source code, excluding any custom extensions and/or configurations. The CUSTOMER should therefore regularly create backups of their individual, current configuration of the customized version or application environment of JustOn.

(3) The costs for depositing the source code (acquisition costs and filing fees) are due at the time the invoice is issued and are payable on the due date in accordance with the payment terms agreed between the PROVIDER and the CUSTOMER.

§13 Final provisions

(1) The CUSTOMER may only transfer the rights and obligations under this agreement to third parties with the POVIDER's prior written consent. The PROVIDER is entitled to transfer the rights and obligations under this agreement to an affiliated company within the meaning of §15 of the German Stock Corporation Act. In this case, the PROVIDER will inform the CUSTOMER in writing. In this case, the CUSTOMER is entitled to terminate the agreement extraordinarily.

(2) The parties undertake to keep confidential operational and business information that they or their agents may have acquired in the context of the contractual negotiations or execution. These obligations do not apply to information, knowledge and experience that

  (a) are demonstrably available in the public domain without breach of this confidentiality obligation,

  (b) were already verifiably known to the parties before obtaining such information, knowledge and experience,

  (c) have been obtained from a third party that was not under an obligation of confidentiality or

    (d) have been verifiably acquired independently.

(3) The contractual relationship is governed by German law. The place of jurisdiction is the court at the registered office of the PROVIDER. The PROVIDER reserves the right to sue the CUSTOMER at the CUSTOMER's place of business.