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## GENERAL TERMS AND CONDITIONS (SAAS) POINT CLOUD TECHNOLOGY GMBH

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### 1. Scope of Application

- 1.1 These General Terms and Conditions (hereinafter "**GTC**") apply to the provision and use of the 3DPointHub-Software as Software-as-a-Service (SaaS) (hereinafter "**Software**", substantiated in section 3.3) by the Point Cloud Technology GmbH, August-Bebel-Str. 26-53, 14482 Potsdam (hereinafter "**Point Cloud Technology**"). The services offered by Point Cloud Technology are addressed exclusively to entrepreneurs within the meaning of § 14 German Civil Code (*Bürgerliches Gesetzbuch*, BGB) (hereinafter "**Customer**", together with Point Cloud Technology the "**Parties**").
- 1.2 Deviations from these GTC shall only be considered as agreed if they have expressly been confirmed in writing by Point Cloud Technology. In particular, the mere omission of an objection by Point Cloud Technology against any general terms and conditions of the Customer shall not cause such terms and conditions to be considered as agreed. This shall also apply if Point Cloud Technology performs services unconditionally upon knowledge of opposing terms and conditions of the Customer or terms and conditions diverging from these GTC.
- 1.3 For important reasons, in particular in the event of changes to statutory provisions, the supreme court jurisdiction, the Software or the market conditions Point Cloud Technology may notify the Customer of an amendment to these GTC by identifying the vital amendments. The amended GTC shall be deemed to have been agreed to if the Customer has not objected to the amendment within one month upon receipt of the notification and Point Cloud Technology has explicitly notified the Customer of this consequence while informing them about the amendments. Regardless of the foregoing regulations, amendments to the service content agreed on with the Customer require the express consent of the Customer.

### 2. Conclusion of Contract

In the course of the ordering process, the Customer accepts these GTC by checking the respective box. By clicking on the button "Create Account" the Customer accepts Point Cloud Technology's offer to conclude a contract (the "**Contract**") including these GTC. Within the online ordering process, a contract can only be concluded with the full inclusion of these GTC.

### 3. Scope of Services

- 3.1 The Software is used for the visualization, processing, analysis of and collaborative working on 3D Point Clouds (the „**Contract Purpose**“).
- 3.2 The Customer is aware that all results obtained by using the Software may also be based on the data fed into the Software by the Customer (the "**Customer Data**"), in particular the resolution of images and the quality of the Point Cloud data, as well as on data from third parties (the "**Third Party Data**"). Examples of such Third Party Data used in the Software are background images from OpenStreetMaps, which are fed into visualizations created by the Customer. The quality of the results is directly related to the quality of the Third Party Data. Point Cloud Technology has no influence on the quality or timeliness of the Third Party Data.
- 3.3 Point Cloud Technology offers different Service Packages of the Software, which differ in remuneration, functional scope, storage space and further details (the "**Service Packages**"). The scope of services of the Contract between the Customer and Point Cloud Technology depends on the service package (the "**Service Package**") selected (and described in the Price Sheet). The services owed by Point Cloud Technology according to the contractual scope of services shall hereinafter be called "**Services**"; the term "**Software**" shall only include those parts of the Software which are covered by the contractual scope of services.
- 3.4 The Customer may switch to a more comprehensive Software Service Package at any time; in this case, from the time of the switch the details concerning the scope of services, remuneration, etc. of the new Service Package stated in the Price Sheet shall apply. A switch to a cheaper Service Package is only permissible with Point Cloud Technology's consent or if the notice period specified in these GTC is observed.

#### **4. Use of the Software by the Customer**

- 4.1 The Customer may only use the access to the Software himself and for the contractually agreed purpose. The Customer undertakes to take appropriate security precautions to ensure that unauthorised persons do not use the access to the Software. In particular such security precautions include the use of a secure password.
- 4.2 The Software is used by means of telecommunications via the browser or another suitable application.

#### **5. Software Adaptation**

- 5.1 If agreed between the Parties, Point Cloud Technology shall, in addition to providing the Software, provide Services to adapt the Software to the individual needs and wishes of the Customer (the "**Individual Services**"). An agreement on this shall be reached by selecting the corresponding service contents in the course of the online ordering process.
- 5.2 Point Cloud Technology shall provide the Individual Services in accordance with the provisions of the Price Sheet and in return shall receive the remuneration provided for in the Price Sheet. If the Price Sheet does not contain any provisions on the time limit for the

provision of the Individual Services, the Parties shall enter into a separate agreement to this effect.

- 5.3 The Customer is obliged to provide all acts of cooperation necessary for the Individual Services (e.g. communication of technical information on the Customer's IT systems).

## 6. Availability

- 6.1 Point Cloud Technology shall not be responsible for establishing and maintaining the data link between the Customer's IT systems and the Transfer Point. „**Transfer Point**“ shall mean the router exit of the Point Cloud Technology data centre or its subcontractor's data centre through whose server the Software is operated. Point Cloud Technology is not responsible for malfunctions beyond the Transfer Point. The Customer himself is responsible for the procurement and maintenance of the needed hardware and connections to public telecommunications networks. The costs of setting up the online connection and maintaining it on the Customer's side shall be borne by the Customer. Point Cloud Technology is not liable for the security, confidentiality or integrity of the data communication which is conducted via third party communication networks. Point Cloud Technology is also not liable for disturbances in the data transmission that are caused by technical errors or configuration problems on the part of the Customer.
- 6.2 The Software availability owed by Point Cloud Technology depends on the Service Package chosen by the Customer and is specified in the Price Sheet. If the Price Sheet does not contain any regulations to this effect, the following applies: If the Customer has chosen a free Service Package, Point Cloud Technology does not owe availability. If the Customer has chosen a payable Service Package, Point Cloud Technology shall owe an availability of at least 99% in the Contract's yearly average.
- 6.3 The Customer is not entitled to a continuous, uninterrupted, complete or trouble-free usability of the Software. Point Cloud Technology only owes the suitability of the Software for the contractually agreed use within the scope of availability as set out in section 6.2. „**Availability**“ to the Parties means the substantial technical usability and accessibility of the Software's features. Times during which the Software is not available due to an error or other reasons are considered „**Downtime**“.
- 6.4 For determining the Availability such Downtime is not taken into account,
- a) in which the Software cannot be reached due to technical or other problems for which Point Cloud Technology is not responsible (force majeure, third-party fault, errors in the IT systems of the Customer or the third party service providers acting on his behalf, etc.);
  - b) which is due to a breach of the Customer's obligation to cooperate, in particular to a delayed or incomplete transmission of an error message; or
  - c) which arises from normal maintenance work of up to five hours a month.

## 7. Software Operation and Changes

- 7.1 Point Cloud Technology makes every effort to ensure that the Software always corresponds to the state of the art. Point Cloud Technology shall be entitled to regularly carry out or introduce updates, new versions or upgrades of the Software (hereinafter uniformly referred to as "**Updates**") in order to adapt the Software to new technical or commercial requirements, to implement new features, or to make changes to existing features.
- 7.2 If and insofar as the Customer's use of the Software for the Contract Purpose is materially impaired by an Update (such an Update is referred to hereinafter as "**Material Change**"), Point Cloud Technology shall inform the Customer in writing of the introduction of the Material Change at least four (4) weeks prior to it becoming effective (a "**Change Notice**"). If the Customer does not object to the Material Change within a period of two (2) weeks after receipt of the written Change Notice (the "**Objection Notice**"), the Material Change shall become an integral component of the Contract concluded with the Customer. With each Change Notice, Point Cloud Technology shall inform the Customer of his rights pursuant to section 7.2, in particular: (i) the objection right, (ii) the period foreseen for objection and (iii) the legal consequences of not declaring an objection to the Material Change in time.
- 7.3 If the Customer objects to the Material Change, Point Cloud Technology shall continue to make the Software available to the Customer for use without the Material Change unless this is impossible for technical or organizational reasons or Point Cloud Technology cannot reasonably be expected to do so. In this case, the Customer has the right to terminate the Contract extraordinarily for good cause within a period of four weeks (the "**Exercise Period**"). If the Customer does not make use of his termination right, the Material Change shall become an integral component of the Contract. The Exercise Period shall commence as soon as Point Cloud Technology has informed the Customer in writing of (i) the non-continuability of the Contract without the Material Change, (ii) the extraordinary termination right and (iii) the legal consequences of the expiry of the Exercise Period.

## 8. Remuneration and Terms of Payment

- 8.1 The remuneration for the use of the Software by the Customer and the respective terms of payment shall be based on the Price Sheet available under [www.3dpointhub.com/#pricing](http://www.3dpointhub.com/#pricing). The Contract is based on the current version of the Price Sheet at the time the Contract is concluded, including any changes permitted under these GTC (in the applicable version the "**Price Sheet**").
- 8.2 All fees and prices indicated by Point Cloud Technology are net prices plus statutory VAT. The remuneration is to be paid monthly in advance, unless otherwise agreed.
- 8.3 Point Cloud Technology shall be entitled to adjust the agreed remuneration annually by an appropriate amount for future payment periods to compensate for personnel and other

cost increases. Point Cloud Technology shall notify the Customer in writing of these price adjustments and the date on which the price adjustment becomes effective no later than four (4) weeks before it takes effect. If the price increase amounts to more than 5% of the previous remuneration, the Customer may object to this price increase within a period of two (2) weeks from receipt of the written notification. If the Customer objects to a change within the meaning of this section 8.3 in due form and time, the contractual relationship shall be continued under the previous conditions. In this case, Point Cloud Technology reserves the right to terminate the contractual relationship extraordinarily with one month's notice to the end of the month.

## 9. Warranty for Material and Legal Defects

- 9.1 Point Cloud Technology warrants that the Software corresponds to the agreed scope of services when used in accordance with the Contract and that it is not encumbered with material or legal defects (“**Defects**”) which more than insignificantly impair the suitability of the Software for the Contract Purpose. Immaterial impairments shall not be considered as Defects.
- 9.2 The Customer shall be obliged to communicate any Defects to Point Cloud Technology immediately upon appearance. Point Cloud Technology shall remedy any duly notified Defects appearing in the Software within a reasonable period of time.
- 9.3 Defects in Customer Data and Defects in Third Party Data which are not the fault of Point Cloud Technology shall not be covered by Point Cloud Technology's warranty obligation pursuant to section 9.1.
- 9.4 Point Cloud Technology does not guarantee the objective accuracy of the results obtained by using the Software. The Software can only produce approximate values which the Customer must supplement with his own preferences when making decisions. This does not affect the warranty contained in section 9.1.

## 10. Liability

- 10.1 The strict liability pursuant to § 536 a para. 1 German Civil Code for Defects in the Software already existing at the time of the conclusion of the contract shall be excluded, unless the Defect relates to a feature of the Software essential for the Contract Purpose.
- 10.2 Point Cloud Technology warrants for damages if arising from (i) willful misconduct or gross negligence of Point Cloud Technology or its legal representatives or agents (*gesetzlicher Vertreter oder Erfüllungsgehilfe*), (ii) negligent violation of a material contractual duty (*Kardinalpflichten*) by Point Cloud Technology or its legal representatives or agents, however, limited to typical damages which were foreseeable at the time of the conclusion of the Contract or (iii) negligence of Point Cloud Technology or its legal representatives or agents which causes injury to life, body or health, (iv) or any compulsory statutory liability of Point Cloud Technology or its legal representatives or agents.

- 10.3 Any contributory negligence on the part of the Customer shall be taken into account. In particular, Point Cloud Technology shall only be liable for the recovery of data if the Customer has taken all necessary and reasonable data backup precautions and has ensured that the data can be recovered with reasonable effort from data material kept ready in machine-readable form. Point Cloud Technology expressly advises the Customer to regularly make complete backup copies of the Customer Data.
- 10.4 This liability provision is conclusive. It shall apply with respect to all damage compensation claims, irrespective of their legal ground, particularly also with respect to pre-contractual claims or collateral contractual claims. It shall also apply in favor of legal representatives and agents of Point Cloud Technology if claims are asserted directly against them.
- 10.5 The Customer is obliged to immediately notify Point Cloud Technology in writing of any damage within the meaning of the above liability provisions or to have such damage documented by Point Cloud Technology, so that Point Cloud Technology is informed as early as possible and can possibly still mitigate the damage together with the Customer.

## **11. Non-Contractual Use, Damages**

- 11.1 For each case in which a contractual service is made use of unauthorisedly within the area of responsibility of the Customer, the Customer shall pay damages in the amount of the remuneration that would have been incurred for the contractual use within the framework of the minimum contract period applicable to this Service. The Customer reserves the right to prove that the Customer is not responsible for the unauthorised use or that there is no damage or considerably less damage.
- 11.2 Point Cloud Technology remains entitled to claim further damages.

## **12. Statute of Limitations**

- 12.1 Claims of the Customer based on the breach of any duty not consisting of a Defect come under the statute of limitations - except in the event of intention or gross negligence - within one year from the beginning of the limitation period. This does not apply if the damage to the Customer in question is personal injury. Claims arising from personal injury become statute-barred within the statutory limitation period.
- 12.2 Any rescission of contract or reduction of payments shall be invalid if the claim to the performance or subsequent performance of the Customer comes under the statute of limitations.

## **13. Rights of Use**

- 13.1 The Software is protected by copyright. Point Cloud Technology is the sole holder of all intellectual and commercial property rights. Point Cloud Technology guarantees that the general operation of the Software is legally permissible, does not violate any laws,

regulations or directives and, in particular, does not infringe on any third party rights. Point Cloud Technology undertakes to indemnify the Customer against legitimate third party claims due to the operation of the Software and to compensate the Customer for any damage incurred in this context (including reasonable costs of legal defense) in accordance with section 10.

- 13.2 The Customer shall be granted the non-transferable, non-exclusive right, temporally restricted to the term of the Contract, to use the Software in the contractual scope of services (if applicable including a Software adaptation carried out in accordance with section 5) via the Internet for the contractual use agreed under the Contract. The Customer shall not obtain any rights beyond this.
- 13.3 The Customer is obliged to comply with any licensing conditions and naming obligations with regard to Third Party Data when integrating and presenting the Software in the Customer's own offers (provided that the Software includes or offers such a feature). Information on the Third Party Data used in the context of the Software is available under [www.3dpointhub.com/attribution](http://www.3dpointhub.com/attribution) Point Cloud Technology does not guarantee the completeness of the list of Third Party Data.

#### **14. Set-off, Retention; Reduction**

- 14.1 The Customer shall only have a right to set-off, reduction and/or a right of retention against Point Cloud Technology if his respective counterclaim has been legally established, undisputed or acknowledged by Point Cloud Technology.
- 14.2 Furthermore, the Customer may only exercise a right of retention if the counterclaim is based on the same contractual relationship.
- 14.3 The Customer's right to reclaim remuneration not actually owed shall remain unaffected by the limitation of section 14.1.

#### **15. Term, Termination**

- 15.1 The term of the Contract and the terminability shall be governed by the provisions of the Price Sheet. If the Price Sheet does not contain any information on the term or terminability, the Contract shall run for an indefinite period of time and may be terminated by either Party with two weeks' notice to the end of the month.
- 15.2 The right of both Parties to extraordinary termination for good cause remains unaffected. A good cause is present for the other contracting Party in particular if:
- a) one of the Parties seriously breaches its contractual obligations and therefore the other Party can no longer reasonably be expected to abide by the Contract;
  - b) the Customer is more than two (2) months in arrears with the payment of due fees or other remuneration, even after a reasonable period set by Point Cloud Technology to remedy the situation has expired;

- c) insolvency proceedings are applied for, instituted or dismissed in respect of all or part of the assets of a Party;
- d) one of the Parties has a reason for insolvency within the meaning of §§ 17-19 Insolvency Statute (*Insolvenzordnung*, InsO);
- e) the financial circumstances of a Party deteriorate to such an extent that proper performance of the Contract can no longer be expected, even if there is no reason for insolvency within the meaning of §§ 17-19 Insolvency Statute.

15.3 Every termination must be made in writing.

15.4 The Customer will independently back up his databases in good time before termination of the Contract (e.g. by downloading). The Customer will no longer be able to access these databases after termination of the Contract.

## 16. Confidentiality

16.1 The Parties undertake to keep all confidential information which they obtain or have already obtained in the context of the contractual relationship confidential for an indefinite period of time and to not disclose or otherwise use such information, unless it is necessary to achieve the Contract Purpose. Confidential information is all information and documents of the respective other Party which is labeled confidential or is to be considered confidential based on the circumstances, particularly information concerning operating routines, business relations, further business or trade secrets, know-how, all work results as well as the business model of Point Cloud Technology.

16.2 Exempt from this obligation shall be confidential information,

- a) that can be demonstrated to have already been known to the respective other Party upon initiation of the Contract or become known thereafter through third parties without any breach of a confidentiality agreement, of statutory provisions, or of administrative orders;
- b) that was known to the general public, unless this was due to a breach of this Contract;
- c) that have to be disclosed based on statutory obligations or on the order of a court or authority. As far as permissible and feasible, the Party obliged to disclosure shall inform the other Party in such an event in advance, providing it with the opportunity to take action against the disclosure.

16.3 Any disclosure of confidential information to third parties shall require the express written consent of the respective other Party, unless other regulations have been expressly agreed upon.

16.4 The Parties shall ensure through suitable contractual arrangements that the employees and contractors working for them shall also, without temporal restriction, refrain from any individual use or disclosure of confidential information. The Parties shall only disclose



confidential information to employees or contractors to the extent that they need to know the information for the fulfilment of the Contract.

- 16.5 The Customer consents that Point Cloud Technology is allowed to disclose the collaboration of the Parties for marketing purposes. The Customer permits Point Cloud Technology to also use the company logo of the Customer in this connection. The Customer may revoke his consent pursuant to this section 16.5 at any time by written notice to Point Cloud Technology with effect for the future.

## **17. Data Protection**

- 17.1 Point Cloud Technology treats the Customer's personal data in accordance with data protection standards and specifications. Point Cloud Technology only acts as data processor within the meaning of Art. 28 GDPR vis-à-vis such Customers that feed personal data of their customers into the Software. The Customer is obliged to notify Point Cloud Technology in advance of his intent to feed personal data of his own customers into the platform; in this case, the Parties are obliged to conclude a separate data processing agreement.

## **18. Final Provisions**

- 18.1 Should individual provisions of these GTC be or become invalid or unenforceable in whole or in part or should they not contain a necessary provision, this shall not affect the validity of the remaining provisions. In place of the invalid or unenforceable provision or to fill the loophole, the legally admissible provision shall be deemed to have been agreed retroactively which corresponds as closely as possible to what the Parties would have wished or to what would have been agreed in spirit and purpose by the Parties if they had considered the invalidity or unenforceability of the provision in question or the loophole.
- 18.2 If these GTC refer to a written form or notification, the sending of an email shall also suffice respectively.
- 18.3 The Contract and the other Contract documents are subject to the law of the Federal Republic of Germany to the exclusion of the German Conflict of Laws principles and the UN Convention on Contracts for the International Sale of Goods.
- 18.4 For all disputes arising from or in connection with the Contract or the GTC, including their validity, the District Court of Potsdam (*Landgericht Potsdam*) shall have exclusive jurisdiction to the extent permitted by law.