



PIMCORE GENERAL TERMS & CONDITIONS (PTC)

For the Provision of Services by Pimcore to Customers in the EU & EEA

Last Update: September 2024

General Terms & Conditions ("**GTC**") of Pimcore GmbH, Söllheimer Straße 16, AT-5020 Salzburg, Republic of Austria, registered in the commercial register of the Salzburg Regional Court under no. FN 398049t ("**Pimcore**").

1. APPLICABILITY AND GENERAL PROVISIONS

CONTRACTUAL BASIS. Pimcore concludes agreements and provides services exclusively on the basis of the offers prepared by Pimcore in text or written form and the respectively valid version of any service descriptions, price lists and these GTC included in the offer.

AMENDMENT OF CONTRACTUAL ELEMENTS. Pimcore shall make changes to service descriptions, price lists and GTC at its reasonable discretion. They shall be communicated to the customer at least in text form and shall be deemed agreed if the customer does not object within one month and has been informed of this legal consequence in advance.

FORM OF DECLARATIONS. Declarations must be made in text form unless a stricter or less strict form is prescribed in individual cases. "**Text form**" within the meaning of these GTC means a legible declaration in which the person making the declaration is named and which is made on a durable medium. A durable medium is any medium that enables the recipient to store or save a declaration addressed to him personally on the data carrier in such a way that it is accessible to him for a period of time appropriate to its purpose and is suitable for reproducing the declaration unchanged.

ADDITIONAL AGREEMENTS. Any additional agreement must be in text form in order to be valid. This also applies to any deviation from this text form requirement.

CONTRACTUAL ELEMENTS OF CUSTOMER. Even if Pimcore is aware of the customer's specifications regarding the content of the service, they shall only become part of the agreement if Pimcore integrates them into the offer or otherwise expressly accepts them.

Even if Pimcore is aware of them, legally formative elements from the customer, such as GTC or contractual clauses, shall only become an effective part of the agreement if they are accepted by Pimcore with an additional note (e.g. "GTC accepted"). Otherwise, Pimcore expressly objects to their inclusion.

PROCEDURE IN CASE OF CONTRADICTIONS. At contradictions between the offer, service description, price lists, special Terms & Conditions (e.g. PaaS T&C) and these GTC, the documents shall apply in the order stated. Special contractual elements take precedence over general contractual elements.

PROCEDURE IN CASE OF INEFFECTIVENESS. Should any provision of the agreement be invalid or unenforceable in whole or in part, this shall not affect the validity and enforceability of the remaining provisions of the agreement. The invalid or unenforceable provision shall be deemed to be replaced by a valid and enforceable provision that comes closest to the economic purpose pursued by the parties with the invalid or unenforceable provision.

2. CONCLUSION OF THE AGREEMENT

OFFER BY PIMCORE. Pimcore submits offers in individual or non-individualised form, e.g. in the form of an order form, catalogue or web shop.

NO AGREEMENT WITH CONSUMERS. Pimcore concludes agreements exclusively with entrepreneurs within the meaning of Section 1 (1) of the Consumer Protection Act (*Konsumentenschutzgesetz - KSchG*). By submitting his declaration of acceptance, the customer confirms that customer is an entrepreneur within the meaning of this definition.

ACCEPTANCE BY CUSTOMER. The agreement is concluded when Pimcore receives the customer's declaration of acceptance within the acceptance period specified in the offer or, if no such period was specified, at a time when Pimcore could reasonably expect to receive it under normal circumstances.

The acceptance must be made at least in text form.

3. SCOPE OF SERVICES, ORDER PROCESSING AND COOPERATION BY THE CUSTOMER

PLACE OF PERFORMANCE. Place of performance is at the seat of Pimcore.

SCOPE OF SERVICES. The scope of the services to be provided is set out in the service description in the offer. Information from other sources not included in the offer in text form (e.g. presentation documents, websites or catalogues) shall not determine the scope of services.

The customer is obliged to check the service description for compliance with customer's requirements and for completeness. After the order has been placed, changes to the service description are only possible by mutual agreement and may lead to changes in particular to prices, deadlines and dates.

PROFESSIONAL SERVICE. Unless otherwise stipulated in the service description, Pimcore shall be responsible for professional service. Within the scope of the service description, Pimcore has freedom of organisation in the execution of the services, provided that several professional options for execution exist.

REPLACEABLE SERVICE. To the extent that this is consistent with the objectives of the order, Pimcore shall be entitled to deviate from the service description at its reasonable discretion and to replace services with other equivalent services.

VICARIOUS AGENTS. Pimcore is authorised to perform the services itself or to use competent third parties ("**Vicarious Agents**") to perform the services. For the service "Platform as a Service" ("**PaaS**"), Pimcore currently uses the provider Platform.sh SAS, 22 Rue de Palestro, F-75002 Paris, France ("**Platform.sh**"). PaaS is provided in accordance with the PaaS GTC.

DIVISIBLE SERVICES. In the case of divisible services, Pimcore is authorised to provide partial services.

TERM AND PRICE ADJUSTMENTS. Each agreement has a term of 12 months. The term is extended by a further year in each case unless one party cancels the agreement with a notice period of three months to the end of the respective term.

If necessary, Pimcore shall reasonably adjust the prices annually, taking into account price increases of Vicarious Agents and suppliers as well as factors such as inflation, consumer and producer price index, collective labour agreements, currency fluctuations and similar external factors beyond Pimcore's control. Price adjustments shall be communicated to the customer in text form at least one month before the end of the respective term for the respective extended term. In this case, the customer has the right to special termination with a notice period of two weeks to the end of the respective term. If the customer does not exercise this special right of termination, the new price shall apply from the extension of the term.

If the customer continues to use the services of Pimcore despite the effective termination of the agreement, this shall be deemed an offer by the customer to conclude a new agreement under the terms of the terminated agreement (in particular with a minimum term and termination option), but at the prices applicable at the time of the offer. Pimcore may accept the customer's offer by providing the service.

UNFORESEEABLE AND UNAVOIDABLE EVENTS. Events which are unforeseeable or unavoidable for Pimcore and for which Pimcore is not responsible shall extend deadlines or postpone deadlines by the duration of the unforeseeable and unavoidable event plus the duration of the organisational measures required in such a case. Pimcore shall inform the customer immediately of the occurrence of such events.

COOPERATION OF CUSTOMER. The customer shall support Pimcore in the provision of the service on an ongoing basis, for example by appointing a contact person to process the agreement, providing documents, materials and equipment, and coordinating order details.

The customer shall be liable for all damages caused by customer's improper, delayed or omitted cooperation, in particular for the additional expenses incurred by Pimcore as a result. If Pimcore is unable to perform services as agreed due to the customer's improper, delayed or omitted cooperation, Pimcore shall be entitled, among other things, to temporarily suspend the service, to give priority to other customers and only then to perform the outstanding parts of the service for the customer, provided that the customer has fulfilled its cooperation obligations by then. Changes to deadlines and dates shall be at the customer's expense.

If claims are asserted against Pimcore by third parties due to an infringement of rights in connection with information or services provided by the customer, the customer shall also indemnify and hold Pimcore harmless and support Pimcore at its own expense in the defence against any third party claims.

INTERVENTIONS BY THE CUSTOMER. If the customer interferes with Pimcore's services in an unauthorised manner and modifies them, the customer shall be liable for any additional expenses incurred by Pimcore as a result, e.g. for the inspection, documentation, identification, allocation or elimination of defects.

INSPECTION OBLIGATIONS OF PIMCORE. Pimcore shall only be liable for ensuring that the services provided by Pimcore are not themselves unlawful. Pimcore is not obliged to check whether the use of the service results by the customer is lawful, in particular with regard to administrative, criminal, competition, trademark, copyright, personality and data protection law.

If Pimcore indicates in individual cases before the order is placed or - after new order details become known - during the provision of the service that a legal review appears necessary or useful, this shall not give rise to any liability on the part of Pimcore. The customer remains responsible for this legal inspection.

RIGHTS TO THE SERVICES. The customer receives a non-exclusive, non-transferable, non-sublicensable, geographically unlimited license, limited in time to the term of the agreement, to use the object of the license for its own use in the customer's company.

The customer is aware that the services of Pimcore partly contain software or other works and services of thirdparty rights holders ("**Third-Party Providers**") with their own license conditions, in particular also software that is subject to an open-source license. The customer is obliged to comply with the license conditions imposed by Third-Party Providers.

RIGHT TO THE FINAL PRODUCT. The customer has a right to use the service only in the agreed form of the final product. The customer is not authorized to view or receive the documents, work equipment, sketches, interim results, etc. used to create the final product or created in the process. Pimcore is neither obliged to hand them over nor to keep them.

REFERENCES. Pimcore is authorized to name itself as the copyright holder on the services created by Pimcore for the customer.

Pimcore may use the customer's data such as name and logo, project description, project images and similar for advertising purposes free of charge as a reference or as a reference to the business relationship with the customer. The customer may object to this use if it infringes its legitimate interests.

4. SPECIAL SERVICE TYPES

SERVICE AND MAINTENANCE. If service and maintenance services have been agreed, the response time owed and other service obligations shall result from the respective offer.

DATA PROTECTION. The customer shall be responsible for the backup and security of its data, in particular prior to announced installation, maintenance or other work by Pimcore.

REMOTE MONITORING. If Pimcore uses or provides systems for remote monitoring of the functionality of the customer's systems without charging for this service, Pimcore shall not be liable for the monitoring or functionality of these systems.

PaaS. Additional provisions of the PaaS GTC apply to PaaS.

COMPONENTS AND SERVICES OF THIRD-PARTY PROVIDERS. To the extent that Pimcore's services include the integration or use of components, services, platforms or similar offers from Third-Party Providers or other third parties, the following applies: Pimcore assumes no warranty or liability for these components, services, platforms or similar offers. The customer accesses them at his own risk. If the customer uses a third-party offer, he also agrees to the transfer of data to the Third-Party Provider for the purposes agreed between the customer and Pimcore.

5. CONFIDENTIALITY, DATA PROTECTION & NON-SOLICITATION

CONFIDENTIALITY. "**Confidential Information**" means any information of one party ("**Disclosing Party**") that is disclosed to the other party ("**Recipient**") and is designated as confidential or that, given its nature and the circumstances of disclosure, should reasonably be considered confidential, including the integrated offering, non-publicly known functions and features of the platform, trade secrets, designs, drawings, flowcharts, data or computer programs.

The Recipient may not use or disclose Confidential Information of the Disclosing Party for non-contractual purposes, except with the consent of the Disclosing Party.

This confidentiality obligation shall not apply to Confidential Information that: (a) is or becomes publicly available without breach of any obligation to the Disclosing Party; (b) is already known to the Recipient at the time of its disclosure by the Disclosing Party without breach of any obligation to the Disclosing Party; (c) is received by the Recipient from a third party after its disclosure to the Recipient without breach of any obligation to the Disclosing Party; or (d) is developed by the Recipient without reference to or use of the Disclosing Party's Confidential Information; or (e) the Recipient is required to disclose by law or binding order of a court or public authority; provided that the Recipient promptly notifies the Disclosing Party in writing of the obligation to disclose, provides reasonable assistance to the Disclosing Party in avoiding or limiting such disclosure and limits the disclosure to what is strictly necessary.

The obligations set out in this section shall continue to apply after termination of the agreement.

For each breach of its obligations set out in this section, the customer shall forfeit a contractual penalty, which Pimcore shall determine at its reasonable discretion.

NON-SOLICITATION. The customer must not solicit employees from Pimcore. This agreement shall remain in force for three years after the end of the agreement. Any breach of this obligation shall be subject to a contractual penalty to which the previous paragraph shall apply accordingly.

6. REMUNERATION

PRICES. All prices are quoted net in euros from the registered office or branch of Pimcore.

ADDITIONAL SERVICES. All services provided by Pimcore that are not expressly covered by the agreed remuneration, in particular additional services agreed at a later date, shall be remunerated separately.

ADVANCE PAYMENT. Pimcore shall be entitled to demand advance payment of costs.

PARTIAL SERVICES. Pimcore shall be entitled to invoice partial services.

UNJUSTIFIED WITHDRAWAL. In the event that the customer withdraws from the agreement unjustified, Pimcore shall retain the right to the agreed fee. The same shall apply if Pimcore withdraws from the agreement for an important reason within the sphere of the customer. Savings realised by Pimcore according to section 1168 (1) of the Austrian Civil Code (ABGB) shall not be taken into consideration.

7. PAYMENT

DUE DATE. Pimcore's invoices are due for payment in full upon receipt of the invoice by the customer. Services shall only be provided after full payment has been received.

PAYABILITY. Pimcore invoices must be paid within 7 days of receipt of the invoice.

PROHIBITION OF SET-OFF AND RETENTION. The customer shall not be entitled to set off its own claims against claims of Pimcore, even in the case of related claims, unless the customer's claim has been recognised by Pimcore in writing or established by a court. The customer has no right of retention.

DEFAULT OF PAYMENT. In the event of late payment, the statutory interest applicable between entrepreneurs, but at least 9% per annum from the date of default, shall be payable. The customer shall bear all costs and expenses associated with the collection of the claim, such as in particular collection charges or other costs necessary for appropriate legal action.

CONTINUED DEFAULT OF PAYMENT. After unsuccessful reminder by the customer setting a grace period of at least 7 days, Pimcore may declare claims for all services and partial services already rendered, including those under other agreements concluded with the customer, due immediately and temporarily suspend the provision of unpaid services until all outstanding claims have been paid in full.

After the unsuccessful expiry of a further week, Pimcore is entitled to terminate all agreements and to demand compensation for lost profits in addition to payment for services already rendered. Pimcore is entitled not to perform services that have already been paid for or to discontinue them if savings result from the discontinuation of the service and to offset the savings against the outstanding claims.

Irrespective of the options mentioned, Pimcore is also immediately entitled to take legal action.

PAYMENT IN INSTALMENTS. If Pimcore and the customer conclude an instalment payment agreement, the loss of a deadline shall be deemed agreed in the event of late payment of an instalment if the customer does not subsequently make this payment within two weeks after receiving a reminder.

8. LIABILITY

OBLIGATION TO GIVE NOTICE OF DEFECTS. The customer must give notice of defects or damage to the software in text form immediately, but at the latest within 8 days of receiving the license key. Hidden defects in the software must be reported by the customer immediately, but at the latest within 8 days of becoming aware of them. A hidden defect is a defect that the customer could not or could not have recognised by applying the diligence of a prudent businessman.

The defect or damage must be described in detail and comprehensibly in the notice of defects. In the case of defects or damage that do not occur regularly, the exact times and general conditions of the occurrence of the defects or damage must be stated. The customer must enable Pimcore to investigate and rectify the defects or damage.

If the customer does not give notice of the defect or damage in good time when the software is provided under the purchase agreement, guarantee, warranty and compensation claims as well as any other claims are excluded.

If the software is provided under a lease agreement, the customer shall not be entitled to claim compensation for the defect or damage for the period by which the notice of defect is delayed. The customer's claim to rectification of the defect shall remain unaffected.

GUARANTEE. In the event of a guarantee by Pimcore, the period for asserting the guarantee claim shall commence upon receipt of the license key. The guarantee claim shall expire six months after the customer becomes aware of the occurrence of the guarantee case, but at the latest upon expiry of the guarantee period. If the guarantee promise does not specify the content of the guarantee, Pimcore shall be liable for the usually assumed characteristics.

WARRANTY. The right to warranty and the right to warranty recourse are limited to six months from receipt of the license key in the case of contractual software purchase.

Deviations from technical ÖNORM standards or the state of the art shall not give rise to a claim by the customer if the work is sufficiently functional.

The customer shall have the right to improvement or replacement or, in the case of minor defects, to a price reduction or, in the case of major defects, to cancellation at Pimcore's discretion. If the defect cannot be remedied by improvement or replacement after two attempts, the customer may demand a price reduction or cancellation of the agreement. The rectification of the defect shall neither extend the warranty period nor shall it start anew for the part of the service affected by the rectification of the defect.

REDUCTION BY MORE THAN HALF. The right to reduce by more than half (*"Recht der Verkürzung über die Hälfte"*) is excluded.

DAMAGES AND OTHER CLAIMS. Claims for damages and claims based on other liability regulations, in particular recourse claims, of the customer are excluded, unless they are based on gross negligence or intent on the part of Pimcore.

Such claims shall lapse six months after getting knowledge of the damage and the injuring party, but in any case, after three years from the act of infringement.

Claims based on personal injury and other non-dispositive liability provisions are excluded from this exclusion of liability.

Pimcore's liability for damage to data or loss of data is limited to the effort that would have been required to restore the data from the backed-up data material if the customer had properly backed up the data.

PROTECTIVE EFFECT FOR THE BENEFIT OF THIRD PARTIES. The agreement has no protective effect for the benefit of third parties.

LIABILITY FOR THIRD PARTY SERVICES. Third parties whose services Pimcore only procures, such as manufacturers of plug-ins and other software elements that Pimcore distributes, are not Vicarious Agents of Pimcore. Pimcore is therefore only liable for the selection fault. If the third party is involved at the suggestion of the customer, Pimcore shall not be liable at all.

BURDEN OF PROOF. A reversal of the burden of proof to the detriment of Pimcore is excluded. In particular, the existence of the defect at the time of delivery, the time of discovery of the defect, the timeliness of the notice of defect and the existence and degree of fault must be proven by the customer.

EXTENSION OF THE DEADLINE. If the customer claims that the agreement has not been fulfilled as agreed, the customer shall only be entitled to assert claims if the customer has granted Pimcore a reasonable extension of at least fourteen days. This also applies to the cancellation of the agreement for good cause.

WITHDRAWAL FROM THE AGREEMENT. Withdrawal from the agreement by the customer must be declared in writing.

9. FINAL PROVISIONS

APPLICABLE LAW. All claims between the customer and Pimcore relating to the agreement shall be governed by Austrian law to the exclusion of international conflict of law rules.

UN CISG. The provisions of the UN Convention on Contracts for the International Sale of Goods (CISG) shall not apply.

CONTRACTUAL ÖNORM. Unless the validity of ÖNORM standards has been expressly agreed, these shall not apply to the agreement.

PLACE OF JURISDICTION. The place of jurisdiction for all disputes between Pimcore and the customer arising from the agreement is Salzburg (City), Austria. However, Pimcore shall also be entitled to take legal action at the general place of jurisdiction of Pimcore and the customer.

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