

# General Terms and Conditions of Business

Update: 15/09/2020

General Terms and Conditions for using the Services in connection with the “Dialfire” Software

## Art. 1 Scope of Application and Contracting Parties

These General Terms and Conditions of Business shall apply to all services (*hereinafter referred to as “Services”*) of Cloud IT Services GmbH, Altplauen 19, 01187 Dresden (*hereinafter referred to as “Provider”*) vis-à-vis its contractual partners (*hereinafter respectively referred to as “Customer”*), providers and customers (*hereinafter collectively referred to as “Parties”*) in connection with the software application “Dialfire” made available by the Provider for the use of the Services (*hereinafter referred to as “Service”*). The Services may only be used by companies, and exclusively for business purposes. Consumers and private individuals (non-merchants) are excluded from concluding a contract as customers.

Our offers, contracts, and deliveries are subject to the individually negotiated contractual agreements exclusively, as well as, by way of supplementation, our General Terms and Conditions of Business (GTCs). We do not accept any other General Contractual Terms and Conditions, even in the event of unconditionally executing the delivery. These General Terms and Conditions of Business shall apply to all future delivery relationships. At the latest upon receiving or paying for our Services, the Principal/Customer expresses its agreement with our General Terms and Conditions of Business. Any conflicting terms and conditions shall not become part of the contract, even if we do not object to them, or if we meet such terms unreservedly, or accept payment.

Any conflicting terms and conditions shall only become part of the contract if we confirm such in writing, pursuant to Sec. 126 of the German Civil Code [*BGB*]. The same shall apply to any contractual amendments.

## Art. 2 Subject Matter of the Contract

(1) The object of the contract is to regulate the use of the version of the “Dialfire” software made available by the Provider at the time of the contract materializing to establish telephone connections, for inbound and outbound telephony, and to grant rights of use in further related services (e.g. analysis and data integration) to be provided by the Provider vis-à-vis the Customer upon payment of the agreed fee.

These General Terms and Conditions of Business also govern the use of the Services for testing purposes.

(2) The Customer's Internet connection, the maintenance of the network connection and the procurement and provision of the hardware and software required by the Customer in order to use the Provider's Services do not form part of this contract.

The functional administration of the Service is likewise not covered by this contract. User administration, configuration, and data maintenance are the responsibility of the Customer.

Unless expressly agreed, the Provider shall not be responsible for providing any further services. In particular, the Provider shall not be obliged to provide telephony services (establishing and maintaining telephone connections), set up any further services, and/or create and provide custom adaptations or additional programs. Should further services be commissioned, the Additional Terms and Conditions (ATC Telephony Services or ATC Programming) shall apply by way of supplementation.

## Art. 3 Offer and Conclusion of Contract, Trial Version

(1) The representations of the services by the Provider on the Internet do not constitute a binding offer to conclude a contract. These are merely intended to invite the submission of an offer by the Customer, which the Provider reserves the right to accept.

(2) The customer may make a binding offer (*hereinafter referred to as a “Purchase Order”*) by registering at <https://www.dialfire.com/info/signup> , filling in a web form, and pressing the order button. By submitting the offer, the Customer declares that it is an entrepreneur and will use the Service exclusively for business purposes.

(3) The contract (*hereinafter referred to as the “Contract”*) is concluded upon the Provider accepting the Customer's contractual offer. Acceptance shall expressly be declared by email.

(4) The processing of the order and transmission of any information required in connection with the conclusion of the contract shall be carried out in an automated manner by email. The Customer must therefore ensure that the email address given

to the Provider is correct, that the proper receipt of email is technically guaranteed and, in particular, that it is not impeded by a SPAM filter.

(5) These General Terms and Conditions shall also apply to the use of the Services as part of a free trial version. The Customer shall be entitled to use the Services free of charge, up to the amount of the trial volume granted, in accordance with the terms of this contract, until such time as an order that incurs charges has been placed for the Services. The Provider shall be entitled to reduce the amount of the trial volume granted at any time, without giving any reasons.

## Art. 4 Provision of the Service by the Provider, Cloud IT Services GmbH - Creation of a User Account

(1) The Provider shall make available to the Customer, via a cloud service, which the Provider makes available or manages via the services of a third party, or which it provides via a network, the application required for use of the Services for use by the Customer in the respective current version, in accordance with the following regulations. A description of the scope of the cloud services can be found at <https://www.dialfire.com/info/features> .

(2) When ordering, the Customer creates an account to access the Provider's services (*hereinafter referred to as "User Account"*). The Customer creates an administration account with a password. The Customer subsequently takes over the setup of the User Accounts itself.

(3) The Customer is obliged to refrain from providing false or misleading information when creating the User Account. If the Customer creates a User Account on behalf of a legal entity or partnership, the Customer warrants to possess the legal powers required to create a User Account on behalf of that legal entity or partnership. Transferring one User Account to another user is not permitted. The Customer is obliged to keep the details of the User Account and the password confidential.

## Art. 5 Requirements for the Use of the Service

The disruption-free use of the Service requires a combination of hardware and software recommended by the Provider. The Provider shall not be responsible for the quality of the required hardware and software on the side of the Customer, nor for the telecommunication connection between the Customer and the Provider.

## Art. 6 Availability of Services

The Provider cannot guarantee the continuous and/or error-free operation of the cloud services provided by a third party, which is necessary to access the Services.

However, the Provider will endeavor to keep its services operational and available at all times; occasional interruptions and failures cannot be avoided.

For periods of interruption or failure, the Provider is exempt from the provision of the services contractually owed.

## Art. 7 Other Services by the Provider

(1) The Provider shall provide the Customer with an online user manual. The Customer is entitled to save, print and reproduce an appropriate number of copies of the user manual provided, subject to existing intellectual property rights, for the purposes of this contract. In addition, the restrictions on use of the user manual, or other documentation provided under Art. 8 of this contract, for the purposes of use of the Service, shall apply accordingly.

(2) The Provider is entitled to amend the Services to be provided and/or to extend the Scope of the Service and/or to make improvements and/or to remove features of the Service. The Customer shall not be entitled to oblige the Provider to include certain additional functionalities in the Service.

(3) The Provider shall inform the Customer, in advance, of material changes to the Services.

(4) Further services by the Provider may be agreed at any time, in writing, or by email, in particular, provision of training courses on the use of the Service. Such additional services will be provided in return for remuneration at the rates of the Provider generally applicable at the time of the order being placed.

(5) If the Customer commissions the Provider with additional Services pertaining to facilities, individual or custom adaptation and/or additional programming, the Additional Terms and Conditions of Programming (ATC of Programming) shall apply primarily for this purpose, and, by way of supplementation, these General Terms and Conditions.

(6) If the Provider is commissioned with providing telephony services (establishment and maintenance of telephone connections), the latter shall primarily be governed by the Additional Terms and Conditions for Telephony Services (ATC for Telephony Services).

## Art. 8 Rights of Use in the Service

(1) The Customer, and the Users set up by the Customer, receive a simple, non-exclusive, non-sublicensable, and non-transferable right of use in the functionalities of the Service over the Internet for the duration of the contract, which is limited to the term of the contract, and which is subject to termination, in

accordance with the provisions of the contract and these General Terms and Conditions.

(2) If the Provider creates new versions, updates, or upgrades available during the term of the contract, or supplies additional services with regard to the Service, the aforementioned rights shall also apply to the latter. However, the Provider is not obliged to provide new versions, updates, upgrades or supply any other new services, insofar as doing so is not required for the rectification of defects.

(3) A trial version of the Service is made available to the Customer for the limited period agreed upon at the time of creation of the User Account, within the scope of the trial volume. The above rights shall also apply to a trial version of the Service.

(4) The Customer shall not be entitled to any rights which are not expressly granted to the Customer above. In particular, the Customer is not entitled to use the Services beyond the agreed purpose of use. Any use that does not pertain to the use of telephone connections via the Service, or pertains to the latter only in a subordinate manner, is expressly excluded.

(5) The Customer shall take the necessary precautions in order to prevent the use of the Service by unauthorized persons. In particular, log-in data must be kept in a place protected against unauthorized access in the usual scope.

(6) If the Customer violates the obligations arising from the aforementioned Clauses (4) to (5) for reasons for which it is responsible, the Provider may block the Customer's access to the Service, or the application data, if the violation can be demonstrably remedied by this. If the Customer continues to, or willfully and repeatedly, violates the obligations under Clauses 4 to 5, despite a corresponding written warning having been issued by the Provider, the Provider may terminate the contract, without the need to observe any notice period.

## Art. 9 Remuneration and Payment

(1) For the Services provided, and for the telecommunication connections created via the Service, the Customer shall pay the Provider the fee that emerges from the contract and the general price list forming the basis for the latter, which forms part of these GTC, plus the respective statutory Value-Added Tax (VAT).

(2) In order to be able to use the Services of the Provider according to the contract concluded, the Customer must pay in advance the amount required for such use, which amount shall be determined at the time of conclusion of the contract; it must pay an appropriate amount into the credit account set up for it in connection with the User Account (*hereinafter referred to as "Credit Account"*). Should the Credit Account not have sufficient funds to enable use of the Provider's Services, the Customer may no longer use the Services of the Provider.

(3) The actual fees incurred by the use of the Services will be invoiced at regular intervals within the billing period agreed with the Customer. If no different billing period has been agreed, invoicing is done on a monthly basis.

The Provider shall provide an electronic invoice within the User Account under the menu item "Billing" for download. The Customer hereby agrees to this. The Customer may request an invoice from the Provider, to be sent by email. The Customer can also view the current remaining amount at credit, or a possible shortfall in the Credit Account set up for it, under the menu item "Billing".

(4) In order to pay the Provider the Remuneration, the Customer shall specify a payment method for topping up the amount at credit in the Credit Account. By choosing the respective payment method, the Customer warrants that it is authorized to use the payment method it wishes and that the payment information provided by it is complete and accurate.

## Art. 10 Customer's Obligations

(1) The Customer shall fulfill all duties and obligations which can reasonably be expected of it in order for the contract to be implemented and for the Services to be rendered by the Provider. The Customer shall inform the Provider immediately if it recognizes that it cannot comply with any duty to cooperate properly, or that it is only able to do so late.

The Customer shall be responsible for the complete and timely fulfillment of the obligations incumbent upon it in order to ensure proper cooperation.

(2) The Customer undertakes in particular to:

1. keep the user and access authorizations established by it while creating the User Account, as well as the agreed identification and authentication safeguards confidential, and not to pass these on to unauthorized users;
2. protect its username, passwords, etc. through appropriate and customary measures; the Customer shall immediately inform the Provider if there is a suspicion that the log-in details and/or passwords may have become known to unauthorized persons;
3. check any data for viruses before transmitting such information to the Provider and use state-of-the-art anti-virus software;
4. refrain from misusing the exchange of electronic messages within the context of the contractual relationship and/or use of the Service for the unsolicited transmission of messages and information to third parties;
5. oblige the users authorized by it to use its User Account to comply with the provisions of the contract and these General Terms and Conditions governing the use of the Provider's Services;

6. refrain from manipulating the purpose of Dialfire (telephony) services or unlawfully using the latter by means of third-party software,
7. keep a separate extra copy of any data which is to be stored in the system.

(3) The Customer moreover undertakes to refrain from using the Services and resources provided by the Provider for acts that violate common ethics and/or any rights of third parties. This includes in particular the following actions:

1. Unauthorized intrusion into third-party computer systems (e.g. hacking);
2. Obstruction of external computer systems by transmitting/forwarding data streams and/or emails (e.g. DOS/DDosAttacks);
3. Searching for open loopholes to computer systems (e.g. port scanning);
4. Sending email to third parties for advertising purposes, unless explicit consent has been given by the recipient, or any other form of permission to do so has been granted or exists.

5. Misuse of phone numbers/Making unsolicited calls

Should the Customer violate one or more of these obligations, the Provider shall be entitled to immediately discontinue its Services and block access to the Service.

(4) The Customer furthermore undertakes to comply with any legal provisions relating to the use of the Provider's services. This includes, in particular, the obligation of the Customer to obtain the necessary consent of the data subject,

1. insofar as it gathers, processes or uses personal data in the context of using the Service rendered by the Provider, unless any statutory form of permission to do so has been granted or exists;
2. insofar as this is required under the Unfair Competition Act.

(5) The Customer undertakes to refrain from misusing the Services of the Provider. In particular, the Customer may only use the Service to establish inbound and outbound telephony connections, and not for other purposes (e.g. for email campaigns) and the Customer may not establish connections that are not intended for direct communication with another subscriber, but only for purposes of establishing connections and/or the connection duration.

(6) Lack of cooperation; lack of proper cooperation, or delayed cooperation on the part of the Customer, shall exempt the Provider from the obligation to render any Services affected thereby and, in particular, to comply with any agreed deadlines. If the Customer fails to cooperate, fails to cooperate properly, or delays the cooperation, the Provider shall nevertheless endeavor to provide its Services in accordance with the contract. Should there be additional work expenditure due to non-cooperation, improper, or delayed cooperation on the part of the Customer, the

Provider shall be entitled to demand an appropriate fee on account of the latter at its reasonable discretion.

(7) The Customer undertakes to use the Services exclusively as an entrepreneur, for business purposes only.

## Art. 11 Claim to indemnification

The Customer undertakes to indemnify the Provider against any claims by third parties which are based on unlawful use by it of the Provider's Services or the technical infrastructure on which the Service is made available, or any which occur with its approval or which, and in particular, any which arise from disputes under data privacy law, copyright law, competition law or any other legal disputes relating to the use of the Provider's Services. If the Customer notices that such a violation is impending, it shall be obliged to inform the Provider immediately.

If a claim is made against the Provider by third parties in this context, the Customer shall be obliged to reimburse the Provider for any expenses incurred by the Provider in connection with such claim.

## Art. 12 Data Security, Data Protection, Obligation on the part of the Customer to back up Data

(1) The Parties shall observe the applicable data privacy provisions, in particular those applicable in Germany, and shall oblige any staff deployed in connection with the contract and its implementation to observe data secrecy, unless they are already generally obliged to observe data secrecy.

(2) If the Customer gathers, processes or uses personal data, it shall ensure that it is entitled to do so in accordance with the applicable regulations, in particular, data privacy regulations; in the event of a violation, it indemnifies the Provider against any claims made by third parties.

(3) The Parties assume that the processing of any personal data concerned by the Provider and/or its subcontractors is done within the scope of the contract in accordance with the EU General Data Protection Regulation (GDPR).

The Customer shall accordingly be solely responsible for:

1. the transmission of data and information;
2. obtaining any necessary consents from users,
3. the assessment of the admissibility of the data processing undertaken by the Provider, as well as for
4. the protection of the rights of users of the Service.



The Customer accordingly remains the “master of the data” under contract law and data privacy law. Moreover, whether and to what extent third parties enter or access data remains solely at the Customer's discretion. Insofar as the Customer permits third parties to access personal data, the Customer undertakes to take care of appropriately organizing the access authorization management.

(4) The Customer shall be responsible for all data and content transferred, relayed, published or processed in connection with the use of the Services and shall create, or have a third party create, up-to-date backup copies of all data transferred to the technical infrastructure provided, in order to enable fast and cost-effective recovery of the data in the event of a system failure.

(5) The Parties shall, at the express request of the Customer, in accordance with Art. 28 (3) EU General Data Protection Regulation (GDPR), conclude a supplementary contract data processing agreement.

(6) The Provider may provide the Services via contractors in Germany and abroad. It must, however, conclude agreements on the corresponding obligations under the relevant laws with the subcontractor.

## **Art. 13 Claims in Cases of Defective Performance, Obligation of The Customer to Notify Defects, Support Area**

(1) If the services to be provided by the Provider under this Agreement are defective, the Provider shall, within a reasonable period of time and following receipt of a notice of defects from the Customer, improve or re-perform such services, according to the Provider's choice; such subsequent performance can also be achieved by providing a replacement or workaround. It shall be made, insofar as, and as long as, this is reasonable for the Customer.

(2) A Support Area, where support in regard to the Services of the Provider can be arranged for, is made available to the Customer. The Customer shall be entitled to send communications to the Provider within said Support Area. The Provider shall endeavor to respond promptly to these messages, within the scope permitted by its operations.

(3) In the event of subsequent performance failing, the Customer shall be entitled to reduce the agreed remuneration by a reasonable amount, upon setting a reasonable grace period and said grace period expiring. Such right of reduction shall be limited to the amount of the remuneration attributable to the defective part of the Service.

(4) If the option to use the Services is not restored within a reasonable grace period to be set by the Customer, once the Provider has become aware of the defect, i.e.,

where the use of the Service is completely or substantially restricted and rectification of the defect has failed, the Customer may terminate the contractual relationship by way of extraordinary termination, without the need to observe any period of notice. Any failure to rectify the defect can only be assumed if such rectification is impossible, if it is refused, or unreasonably delayed by the Supplier, or if there are reasonable doubts about the prospects of success, or if, for other reasons, such rectification becomes unreasonable for the Customer.

(5) The Customer shall be obliged to immediately notify the Provider of any defects in contractual services, in particular defects relating to the Services of the Provider. Insofar as the Provider has not yet been able to rectify the defect as a result of omission, or a delay in notifying the defect, the Customer shall not be entitled to reduce the remuneration owed in whole or in part under this contract, to demand compensation for the damage caused by the defect or to terminate the contract due to the defect, without complying with a period of notice by way of extraordinary termination. The Customer must state that it is not responsible for failing to report any defects.

## Art. 14 Liability, Limitation of Liability, Product Liability

(1) The Provider shall be fully liable for any damage caused

1. by injury to life, the body or health, which are based on an intentional or negligent breach of duty, or otherwise intentional or negligent conduct by the Provider or any of its legal representatives or vicarious agents;
2. by the absence or lapse of a guaranteed feature of the Service, or non-compliance with a guarantee;
3. by intentional or grossly negligent breach of duty, or otherwise intentional or grossly negligent conduct of the Provider or any of its legal representatives or vicarious agents.

(2) The Provider shall also be liable, subject to the limitation of compensation for foreseeable damages typical for the contract, for such damage which is based on a slightly negligent breach of essential contractual obligations by the Provider, or any of its legal representatives or vicarious agents.

Essential contractual obligations are such which enable the fulfillment and proper execution of this Contract in the first place and on the compliance of which the Customer may rely.

Liability for any other remote consequential harm caused by a defect shall be excluded.

(3) Liability for any other damage, in particular for damage caused by slight negligence due to the violation of other non-essential contractual obligations by the Provider, any of its legal representatives or vicarious agents, shall also be excluded.

(4) The Provider's liability to pay compensation for damage that may exist at the time of concluding the contract shall be excluded.

(5) The liability of the Provider under the Product Liability Act shall not be affected by the foregoing provision.

(6) If the disruption of performance is caused by third parties (e.g. by the cloud service), the limitations of liability agreed with these third parties shall also apply to this contract. In this case, the liability of the Provider shall be limited to the liability of the third party.

## Art. 15 Commencement of Contract, Term, Termination, Blocking

(1) The contractual relationship commences with the conclusion of the contract. The provision of the Service is done in an automated manner via the transmission of the registration confirmation.

(2) This contract has no minimum term and may be terminated by either of the Parties with a termination period of 14 days to the end of a given month, at any time, by way of ordinary termination.

(3) The right to terminate the contract for a significant reason shall not be affected thereby for the Parties. A significant reason for the Provider is, in particular, where the Customer culpably breaches an essential contractual obligation, and the Customer does not rectify the situation within a reasonable period of time despite a warning.

(4) All terminations must be made in writing in order to be effective.

(5) In the event of a breach of the Customer's obligations pursuant to Art. 10 (3), (4) or (5), the Provider shall be entitled to:

1. restrict the Customer's access to the Provider's Services;
2. demand the rectification of the Customer's breach of duty, or to eliminate such breach itself.

The exercise and assertion of further rights and claims (in particular the right to [partly] terminate the contract as well as to claim compensation for damage) shall not be affected thereby for the Provider.

The Provider will notify the Customer of the planned measures in advance and set a reasonable period for the Customer to rectify the breach of duty before taking any of the aforementioned measures. The foregoing does not apply to emergencies and/or to the extent that there is another legal obligation.

## **Art. 16 Obligations in the event of Termination of the Contract and thereafter**

(1) Upon termination of the contract, all of the Customer's rights to use the Service shall expire.

(2) Any credit balance on the Customer's Credit Account, which may still exist at the time of termination of the contract and which is not used for Services of the Provider by the Customer, shall be reimbursed to the Customer within 4 weeks of termination of the contract, provided that all obligations arising from this Contract incumbent upon the Customer have been fulfilled. Offsetting the Customer's claims against any claims held by the Provider arising from, or in connection with this contract, shall be permitted.

(3) Upon termination of the contract, the Customer shall be obliged to return all documents and data in its possession which relate to the contract. Saved data must also be deleted.

## **Art. 17 Force Majeure, Delays in Performance**

Delays in performance due to Force Majeure; this includes events that significantly impede, or make it impossible for the Provider or third parties commissioned along the downstream service chain, to provide the Services outlined in this contract, in particular, strike, lock-out, official directives, failure or faults in the communication networks and gateways of other operators, in particular in connection with cloud services by third parties, shall entitle the Provider to postpone or suspend Services for the duration of the obstruction, insofar as the Provider or third-party providers along the downstream service chain, are not responsible for such events.

## **Art. 18 Right of Set-off and Retention, Assignment**

(1) The Customer may only offset the Provider's claims against any undisputed claims or claims established with legal finality. The Customer shall be entitled to assert a right of retention only on account of counterclaims arising from this Contract.

(2) The Customer may only transfer the rights and obligations arising from this contract to a third party with the prior written consent of the Provider.

## Art. 19 Provision of Services owed by the Provider through Third-Party Service Providers

This contract shall entitle the Provider to render its Services through third parties operating as subcontractors. The Provider shall be liable for the provision of services by subcontractors to the same extent that it is liable for its own actions.

## Art. 20 Final Provisions, Place of Jurisdiction, Applicable Law

(1) Any agreements, subsidiary agreements, representations, as well as subsequent amendments and additions to this contract must be made in writing. This shall also apply to the rescission, amendment, or waiver of this requirement for the written form.

Changes to these GTCs are permissible at any time during the contractual term, and shall become part of the contract in the respective amended form, if the Provider points out such amendment/s to the GTCs to the Customer, giving the Customer an opportunity to take note of the amended GTCs, on the proviso that the Customer does not object to the amendment/s within 14 days of being informed about the latter. The aforementioned period only commences once the Customer is notified of the 14-day right of objection in relation to the amendment/s to the GTCs.

(2) Should any provision of this contract be, or become, invalid, or if the contract is incomplete, the remaining provisions shall not be affected; the remaining provisions shall remain in force. In such a case and in the event of loopholes which the party did not foresee, the parties shall agree on a provision which best corresponds to the meaning and purpose of the contract and which, in the case of an invalid provision, comes closest to it.

(3) This contract shall be governed by the law of Germany, subject to the exclusion of the regulations on international law.

(4) The place of performance and exclusive place of jurisdiction for any disputes arising from, or in connection with, this contract, shall be Dresden, Germany.