

1 General Information

1.1 These General Terms and Conditions (hereinafter «GTC») govern the conclusion, content and execution of contracts between Green Datacenter AG, Industriestrasse 33, 5242 Lupfig, Switzerland (hereinafter «GDC») and the customer (hereinafter «Customer») and apply to all Customer orders for the provision of data center, connectivity and/or cloud services by GDC (hereinafter «Services»).

1.2 A contractual relationship regarding the use of the Services comes into force with the acceptance of the Customer's order by GDC. An order placed by the Customer is binding until it is accepted by GDC.

1.3 The Customer's general terms and conditions of purchase, delivery or business shall not apply, even if reference is made to them in the order or in other documents.

1.4 Any provisions in individual contracts between the parties that vary from these GTC must be in writing and take precedence over these GTC.

2 Services of GDC

2.1 The specific performance obligations of GDC, including the project services, and the place of performance are set out in the service descriptions and the individual contract with the Customer (hereinafter «Contract»).

2.2 Project services include fit-out, expansion, and reconstruction work or customer-specific installations on data center space in connection with the use of the Services by the Customer. Dates are considered target dates and are only binding if they have been confirmed as «binding» in writing by GDC. The Customer will be notified in writing of any changes to dates.

2.3 GDC may engage third parties to perform the contract.

2.4 GDC endeavours to keep its infrastructure (servers, Internet connections, etc.) available at all times. For maintenance purposes, GDC may restrict or suspend the availability of the Services at any time with prior notice.

2.5 GDC may make changes to the Services and these GTC by notifying the Customer via the established information channels. Changes will be made to the extent that GDC considers them reasonable and feasible for technical reasons or due to market developments and the legitimate interests of the Customer are not unreasonably jeopardised. GDC may also make reasonable price changes during the term of the Contract if significant cost factors (e.g. new regulatory requirements, purchase prices) have changed or the improvement of the Services justifies this. The Customer may object in writing within 30 calendar days and terminate the Contract to the end of a month, subject to the contractual notice period.

3 Obligations of the Customer

3.1 The obligations of the Customer to cooperate are described in the Contract. The Customer shall bear the costs associated with his duties to cooperate.

3.2 Notwithstanding any specific provisions set out in the Contract, the following basic cooperation obligations of the Customer apply to all Services:

- Timely notification of the requirements necessary for the fulfilment of the contract, e.g. technical specifications, contact persons, regulatory requirements;
- Provision of relevant information;
- Information about regulatory requirements applicable to the Customer or its end customers, to the extent they have an impact on the provision of Services by GDC;
- Immediate notification of apparent defects, damage or unusual occurrences (incident report) and taking all reasonable measures to identify the defects or damages and their causes or to facilitate the correction of the error.

3.3 The Customer shall comply with all laws and regulations applicable to the Services. In particular, Customer shall comply with and shall ensure that its subcontractors or agents comply with the environmental, health and safety and working conditions regulations applicable at the location of the data center, the law on statutory or contractual minimum wages and equal treatment of women and men with regard to equal pay.

3.4 The Customer undertakes to comply with GDC's Datacenter Directive at all times when accessing the data center and to require any sub-contractor or auxiliary person to do so.

3.5 The Customer is responsible for its hardware and any software components (including programs, licensing and configuration) on its devices.

3.6 In addition, the Customer is responsible for insurance coverage of its systems and equipment located in the data center.

3.7 If the Customer fails to comply with its obligations to cooperate despite a written notice from GDC setting a reasonable period for remedy, GDC shall not be liable for the consequences thereof, in particular for any delays or additional costs incurred. In such case, GDC may suspend the Services without the Customer being entitled to any reduction, refund or compensation. GDC may charge the Customer for the additional costs and expenses incurred at the applicable hourly rates. A material or repeated breach of the Customer's obligations to cooperate may constitute a breach which entitles GDC to terminate the Contract for cause.

3.8 The Customer is responsible for the use of the Services, notably for the offers and services he provides to his end customers and for the data he processes on the systems in GDC's data center. GDC accepts no liability for the integrity of data stored or transmitted via its systems or the Internet.

3.9 The Customer must not use GDC's Services to

- offer information with illegal or immoral content;
- violate applicable laws;
- harm or harass third parties;
- unauthorisedly intrude into third-party systems (hacking);
- spread viruses of any kind; or
- send unsolicited e-mails (spam, junk mail etc.).

If the Customer breaches this provision, GDC may terminate the Contract in writing with immediate effect.

3.10 The use of the Services by third parties, in particular if access to GDC's data center is required, is only permitted with the prior written consent of GDC. The Customer is liable for its third parties.

4 Warranty

4.1 GDC shall provide the Services in a diligent and professional manner, in accordance with the agreed specifications, availability and dates, and in compliance with all applicable laws and regulations.

4.2 GDC is only liable for the systems for which it is responsible and does not accept any liability for the fault-free provision of services by third parties.

4.3 If GDC's Services include the procurement, installation and/or operation of third party products (hardware or software) provided or ordered by the Customer, the manufacturer's warranty and guarantee provisions shall apply. GDC will coordinate the exchange or replacement of the defective third party products but assumes no liability for them. GDC reserves the right to charge the Customer for the costs involved.

4.4 GDC does not warrant that its Services will be uninterrupted or error-free, or that they will be available at all times. GDC shall not be liable for interruptions in operation, including but not limited to troubleshooting, maintenance or the introduction of new technologies.

5 Intellectual Property Rights

5.1 Unless expressly agreed otherwise, the following provisions apply to the use of software and products in connection with GDC's Services: The Customer is granted a non-exclusive, non-transferable right to use software provided by GDC for its Services for the duration of the contract. Third party standard products are subject to the licence terms of the third party.

5.2 All Intellectual Property Rights existing prior to the effective date of the Contract shall vest in the party holding such rights immediately prior to the effective date. Neither party shall acquire any ownership interest in any copyright, patent, trade secret, trademark or other intellectual property right of the other party under the Contract.

5.3 GDC shall defend the Customer against claims by third parties due to the infringement of third party property rights of GDC's performance, provided that the Customer notifies GDC of such claims without delay and leaves the any litigation and the settlement of any legal dispute to GDC. This presupposes that the Customer provides GDC with comprehensive support in the defence against the claims. If a third party asserts a claim due to an infringement of any intellectual property rights or if, in GDC's opinion, such a claim is imminent, GDC may either modify the products or Services so that they no longer infringe the property rights or procure corresponding rights of use for the Customer, or replace the products or Services with other equivalent products or services or take back the product or Service and reimburse the Customer for the fees paid less a reasonable amount for the use or depreciation.

6 Liability

6.1 Liability for personal injury is unlimited. Liability for gross negligence or wilful misconduct is unlimited.

6.2 Except as required by mandatory law, GDC, its subcontractors, agents or suppliers shall not be liable for any indirect, incidental or consequential damages, including, without limitation, damages for downtime, loss of profits, unrealised gains or savings, loss of use, loss of revenue or production, additional costs, costs and expenses incurred by the Customer in procuring substitute goods or services, or damages for loss or corruption of data.

6.3 GDC's liability for direct damages for claims arising out of a material breach of these GTC for which GDC is responsible shall be limited in the aggregate for the entire term of the Contract to the amount paid by Customer to GDC on average for three (3) months for the corresponding Service (excluding electricity).

6.4 GDC is also not responsible and shall not be liable for defects, infringements of proprietary rights or interruptions of performance caused by

- improper modifications, extensions or repair work conducted by the Customer or third parties commissioned by the Customer, which have not been approved in writing by GDC, and the resulting consequences;
- unauthorised use of the Products or Services;
- breach of GDC's Data Center Directive;
- disregarding the instructions of the manufacturers of hardware and software;
- Customer's technically inadequate equipment;
- faults or failures in the Customer's power supply; or
- software not supplied by GDC.

7 Charges

7.1 The fees are specified in the offer or in the Contract. Unless otherwise stated in the Contract, all prices are in Swiss francs and do not include VAT or other taxes; these are listed separately on the invoice.

7.2 Any costs for delivery, packaging, travelling costs and expenses as well as other ancillary costs of the products shall be charged additionally, unless otherwise agreed in the Contract.

7.3 Any payment schedule or advance payments for project services will be included in the offer or in the Contract.

7.4 The offsetting or crediting of claims by the Customer requires the written consent of GDC.

7.5 Unless otherwise agreed in the Contract, invoices are due for payment within 30 days of the invoice date. The Customer must raise any bona fide objections to the invoice in writing within the payment period. If no objection is made in writing within this period, the invoice shall be deemed to be correct.

7.6 After lapse of the payment term, the Customer shall automatically be in default without a reminder.

7.7 If the Customer is in default of payment of due invoices, GDC may charge late payment interest of 8% p.a. as well as costs and expenses for debt collection.

7.8 In the event of persistent default of payment, GDC may request securities (bank guarantee, surety) from the Customer. If the Customer does not fulfil this request, GDC may terminate the contract in writing without notice.

7.9 GDC may suspend the Services after setting a reasonable grace period if the Customer is in default of payment despite a written reminder from GDC. In addition, GDC may terminate the Contract in writing without notice if the Customer is in default of payment repeatedly or after 60 days. GDC reserves the right to assert further claims for late payment, cancellation and damages.

7.10 GDC may automatically adjust the agreed charges annually in line with inflation. In addition, GDC reserves the right to adjust energy prices at any time if electricity market prices change.

8 Confidentiality and Data Protection

8.1 The Parties undertake to keep confidential data and information exchanged during the term of the Contract and marked as confidential by one or the other Party or whose confidentiality is obvious and to use them only for the purpose of the Contract and not to disclose them to third parties. Confidential data and information may be disclosed to subcontractors or auxiliaries for the performance of the contract, provided that they ensure an equivalent undertaking of confidentiality.

8.2 The obligation to maintain secrecy shall apply both before the conclusion of the Contract and after the termination of the contractual relationship or after the performance of the agreed Services. Statutory duties of disclosure and information remain reserved.

8.3 References or media releases must be agreed between the parties in writing.

8.4 The parties may process personal data such as name, telephone number and e-mail address in the course of the contractual relationship. The parties will comply with the relevant data protection obligations.

8.5 The Customer's personal data will be processed by GDC solely for the purpose of fulfilling the Contract and in accordance with GDC's Privacy Policy, which can be viewed at [green.ch/en/legal-aspects/data-privacy](https://www.green.ch/en/legal-aspects/data-privacy).

8.6 In addition, the Services provided by GDC do not involve the processing of personal data on behalf of the Customer (so-called «commissioned processing of data»).

9 Term and Termination

9.1 The term, minimum term, extension, notice period and notice effective date are specified in the offer or in the Contract.

9.2 If the contract is terminated before the end of the agreed minimum term or on a date not agreed, the agreed fees will not be refunded pro rata temporis.

9.3 Either party may terminate the contract at any time for cause, if

- the other Party culpably fails to fulfil its obligations, despite a written warning and the setting of a reasonable remedy period, in such a way that the terminating Party cannot reasonably be expected to continue the contractual relationship;
- the other Party is in material or repeated breach of the Contract and this breach is not remedied despite a written warning and the setting of a reasonable grace period, if the breach can be remedied;
- insolvency proceedings have been filed with the other Party, judicial insolvency proceedings have been opened or in the event of imminent insolvency.

9.4 GDC may also terminate the Contract in writing without notice in the cases provided for in these GTC.

9.5 If GDC terminates the Contract for a reason for which the Customer is responsible, the Customer owes GDC the fees for the remaining term of the Contract or any applicable extension period, as well as the expenses incurred by GDC in returning or transferring the Services to a third party. GDC reserves the right to claim further damages.

9.6 At the time of termination of the Contract, all materials and documentation provided by GDC for the provision of the Services must be returned to GDC at the Customer's expense and risk and all equipment and systems located at GDC's data center must be removed. If the Customer fails to vacate the data center at the time of termination, GDC reserves the right to remove and properly dispose of the equipment and systems at the Customer's expense and risk. GDC reserves the right to claim further damages.

10 Applicable Law and Place of Jurisdiction

10.1 These GTC and the Contract shall be governed and construed exclusively in accordance with Swiss law, excluding the conflict of laws rules and the Vienna Sales Convention (United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980).

10.2 Any disputes arising out of or in connection with the contractual relationship shall be subject to the exclusive jurisdiction of the courts in Lupfig/AG.

11 Final Provisions

11.1 The Customer waives any right of retention against GDC.

11.2 The Contract may not be assigned or otherwise transferred in whole or in part by either party without the express prior written consent of the other party. The Contract may, however, be assigned or otherwise transferred by GDC to any third party for factoring services, or to any successor in title to GDC or to any other affiliate, provided that GDC directly or indirectly controls such affiliate.

11.3 If it is permanently impossible or unreasonable for a party to perform its services (with the exception of payment obligations) due to force majeure (e.g. war, civil war, natural disasters, strike, epidemic, pandemic), the affected party shall be released from its obligation to perform for the duration of the event and, depending on the nature of the event, for a reasonable period thereafter, but shall also lose its pro rata entitlement to the remuneration. If such an event lasts continuously for more than 6 weeks, either party shall have a right to terminate the Contract.

11.4 Amendments and supplements as well as notices relevant to the Contract in connection with these GTC or the Contract must be made in writing. E-mails or electronically transmitted signatures are equivalent to the written form. This does not apply to termination notices; these must be sent by registered letter.

11.5 If any provision of these GTC or the Contract is found to be invalid by a court of competent jurisdiction, that provision shall be deemed null and void and the remaining provisions shall remain in full force and effect. In such a case, the invalid or unenforceable provision shall be replaced by a valid provision that comes as close as possible to the intended purpose of the invalid or unenforceable provision. The same applies in the event that the GTC or the Contract contains an omission.