

**GENERAL TERMS AND CONDITIONS PowerTSM® SERVICES**

**Last updated: 22.9.2023**

**1. Definitions and document hierarchy**

1.1. The following terms shall have the following meanings in the context of the contractual relationship:

Activation	The date on which the Services are first made available to the Customer. In the event that the Customer is prevented from making the Services available or in the event of a breach of the Customer's obligations to cooperate, the last mutually agreed date shall be deemed to be the Go-Live date.
Force majeure	Force majeure is an extraordinary event affecting the Services from outside which does not occur with a certain frequency and regularity and is not to be expected and which can neither be averted nor made harmless in its consequences by the utmost reasonable care.
Customer	The contractual partner named in the provider's offer.
Service package	Refers to the scope of services defined by the Provider in the Order.
Provider	HAKOM Time Series GmbH, FN 390349v, Lemböckgasse 61/Stiege 2/6.OG, 1230 Vienna, Austria
Services	The Provider shall provide the Customer with online access to a software tool for the analysis and processing of time series of relevance to the energy industry in the form of a software-as-a-service solution (SaaS).
Service month	The service month begins on the day of activation and ends one day before the day with the same number in the following month. If this day does not exist in the following month, the service month ends at the end of the following month.
Service contract	The contractual relationship between the Customer and the Provider arising from the use of the Services
Tickets	The reporting of faults or service requests by the customer in the provider's ticketing tool.
Time & Material	Refers to a billing method in which billing is based on the actual work performed at the agreed hourly rate plus the external costs and expenses required for the project.
Updates	Minor functional enhancements and bug fixes (patches) are provided to the customer during the contract period at no additional cost
Upgrades	More extensive functional extensions of the software on which the services are based

	(both within the service package and in higher service packages) or extended services can be made available by agreement for a fee.
Contract year	The contract year begins with the go-live and ends on the day before the go-live in the following year.

1.2. The service contract between the contracting parties consists of the following contractual documents. The principle applies that in the event of contradictions, the more specific document takes precedence over the general document as follows:

- i) Order confirmation;
- ii) these General Terms and Conditions: All provisions of these GTC are subject to the provision that no explicit deviating provision has been made in the offer;

## 2. Scope of the GTC

- 2.1. The following General Terms and Conditions (GTC) apply to all relationships between the Client on the one hand and the Provider on the other hand from
  - ✓ the provision of access to the Provider's services; and
  - ✓ the provision of services in connection with the Services.
- 2.2. The version of the GTC valid at the time of the conclusion of the contract shall apply in each case.
- 2.3. These GTC shall apply even if no express reference is made to them in the individual case.
- 2.4. Deviating, conflicting or supplementary General Terms and Conditions (GTC), even if known, shall not become part of the contract unless the Provider has expressly agreed to their validity in writing.
- 2.5. The Provider hereby expressly objects to the Customer's GTC.
- 2.6. Amendments to the GTC shall be notified to the customer and shall be deemed agreed if the customer does not object to the amended GTC in writing within 14 days; the customer shall be expressly informed of the significance of silence in the notification.
- 2.7. These T&Cs are designed for use in relation to customers who are traders within the meaning of Directive 2011/83/EU on consumer rights.

## 3. Pre-contractual information and regulations before conclusion of the contract

- 3.1. The Provider points out that the Services are intended to support the Customer in fulfilling its various legal and contractual obligations. The customer alone remains responsible for compliance with the legal and contractual (documentation) obligations incumbent upon him.
- 3.2. The Provider's Services may contain suggestions on how to fulfil (documentation) obligations and other legal obligations. These suggestions are not binding advice; the Provider does not offer legal advice. It is up to the Client to decide whether to follow, reject or otherwise comply with the

suggestions. The Provider advises the Customer to check the proposals for correctness and completeness and to seek advice in this regard from appropriate persons.

- 3.3. All offers of the Provider are non-binding and subject to change, unless an express acceptance period is stated.
- 3.4. The Provider may grant the Customer access to a free trial version of the System. The Customer agrees to use the access solely for the purpose of evaluating the Services. The possibility of use may be revoked by the Provider at any time.

#### **4. Conclusion of contract and subject matter**

- 4.1. The contract is concluded by transmission of the Provider's order confirmation.
- 4.2. All performance deadlines promised by the Provider are subject to the condition that the Customer fulfils his payment and cooperation obligations.
- 4.3. The subject matter of the service contract is the provision of access to the services. The Provider is obliged to maintain, keep functional and update the software on which the Services are based.
- 4.4. The Provider does not grant the Customer any copyright licensing, exploitation, usage or processing rights to the software underlying the Service, including in particular any software modified on behalf of the Customer.
- 4.5. The scope of the services results from the order confirmation and the service package confirmed therein.
- 4.6. The Provider undertakes to activate the chargeable services within 2 working days at the latest.

#### **5. Updates, release planning and support**

- 5.1. The customer participates in the updates without further costs.
- 5.2. The customer has no claim to a specific functional extension within the framework of the service contract.
- 5.3. The implementation of functional extensions is carried out according to the provider's business requirements and possibilities.
- 5.4. The Provider agrees to enable the Customer to switch to a higher-quality service package in accordance with business requirements and possibilities.

#### **6. Additional Services**

- 6.1. To consume additional services so-called Support Credits can be purchased separately in various packages.

- 6.2. Requests for Additional Services shall be redeemed for Support Credits. Generally, one request corresponds to one Support Credit.
- 6.3. For requests whose expected processing time exceeds this processing effort, the number of required support credits will be announced in the ticket system. After confirmation by the Licensee, the request will then be processed against the announced number of support credits required.
- 6.4. Unused Support Credits expire after 12 months after purchase. Redemptions are always made on the oldest listed support credit.
- 6.5. The minimum billing per request is one Support Credit.

## 7. Additional orders

- 7.1. Services of the Provider outside the agreed scope in the area of updates and support, in particular changes, are to be remunerated separately by the Customer.
- 7.2. If the Customer requests specific changes to the Services, the Provider shall send him a corresponding written offer. The customer does not have a claim to the implementation of changes.
- 7.3. Unless the price shown is expressly designated as a lump sum price and the service is stated in hours, the offer is a cost estimate and the Client shall pay the Provider for the services according to actual expenditure ("time & material").

## 8. Availability and SLA

- 8.1. The Provider provides its services with care and reliability. However, the Provider cannot guarantee the continuous provision of its services.
- 8.2. The Provider promises the Customer an availability of *its* services (but not for the Cloud Computing Services, see item 7.3) on an annual average of at least 95% uptime and general availability.
- 8.3. The Provider's services are based on the cloud computing services of Microsoft Azure. This contractual relationship between the Provider and Microsoft is based on the following SLAs (for which Microsoft has also reserved the right to make changes):

[https://azure.microsoft.com/en-us/support/legal/sla/azure-sql-database/v1\\_8/](https://azure.microsoft.com/en-us/support/legal/sla/azure-sql-database/v1_8/)  
[https://azure.microsoft.com/en-us/support/legal/sla/virtual-desktop/v1\\_0/](https://azure.microsoft.com/en-us/support/legal/sla/virtual-desktop/v1_0/)  
[https://azure.microsoft.com/en-us/support/legal/sla/virtual-machines/v1\\_9/](https://azure.microsoft.com/en-us/support/legal/sla/virtual-machines/v1_9/)  
[https://azure.microsoft.com/en-us/support/legal/sla/active-directory/v1\\_1/](https://azure.microsoft.com/en-us/support/legal/sla/active-directory/v1_1/)  
[https://azure.microsoft.com/en-us/support/legal/sla/load-balancer/v1\\_0/](https://azure.microsoft.com/en-us/support/legal/sla/load-balancer/v1_0/)  
[https://azure.microsoft.com/en-us/support/legal/sla/app-service/v1\\_5/](https://azure.microsoft.com/en-us/support/legal/sla/app-service/v1_5/)  
[https://azure.microsoft.com/en-us/support/legal/sla/functions/v1\\_2/](https://azure.microsoft.com/en-us/support/legal/sla/functions/v1_2/)

The contracting parties agree that the Provider owes the Customer the Cloud Computing Services to the extent of the Microsoft Azure SLAs (as amended from time to time). The Provider therefore

promises the Customer the availability of the Cloud Computing Services in accordance with the Microsoft SLAs.

- 8.4. To determine the availability of the provider's services, the values measured by the provider are used on the basis of the annual average.
- 8.5. The customer is also entitled to technical support through access to the ticketing system.
- 8.6. Provider support is provided on Austrian working days (but not on 24 and 31 December) between 9 am and 5 pm CET or CEST.

## 9. Rights and obligations of the client

- 9.1. The contracting parties record their contractual understanding that the Provider processes factual data and not personal data.
- 9.2. The data shall be the property of the Customer. The Customer grants the Provider the right to use the factual data for the further development and improvement of the Services.
- 9.3. The customer undertakes to use the Provider's services only in compliance with the statutory provisions and to refrain from any improper use.
- 9.4. The customer will also appoint a competent contact person who will be authorised to issue declarations.

## 10. Charges

- 10.1. The monthly fixed service fee is due from the time of activation (= start of the service month) and thereafter at the end of each service month. The monthly fixed costs are calculated from the number of clients (tenants) and users.
- 10.2. The monthly variable service charge is calculated on the basis of the storage requirement and the traffic per GB. The monthly variable service fee is charged at the beginning of the following month and is due from the time of invoicing.
- 10.3. Unless a flat fee has been agreed for an additional order, the Provider shall charge the hourly rate shown in the offer. If no hourly rate is stated, a net amount of € 240.00 per hour shall apply.

## 11. Terms of payment

- 11.1. All prices quoted by the Provider are net prices; the statutory value added tax will be charged additionally.
- 11.2. All invoices of the Provider are due for payment immediately after invoicing.
- 11.3. In the event of default in payment by the customer, the statutory default interest shall apply at the rate applicable to business transactions. Furthermore, in the event of default in payment, the

licensee undertakes to reimburse the licensor for the reminder and collection costs incurred, insofar as they are necessary for appropriate legal action. This shall in any case include the costs of two reminders of € 25.00 each as well as the standard costs of a reminder letter of a lawyer commissioned with the collection. The assertion of further rights and claims remains unaffected.

- 11.4. In the event of default of payment by the Customer, the Provider may declare all services and partial services rendered immediately due and payable.
- 11.5. In the event of late or incomplete payment, the Provider reserves the right to block the Customer's access to the Services. Furthermore, in the event of default, the Provider is not obliged to provide further services until the outstanding amount has been settled (right of retention). The customer's obligation to pay fees remains unaffected.
- 11.6. The customer is not entitled to offset his own claims against claims of the Provider unless the customer's claim has been recognised by the Provider in writing or has been established by a court of law.
- 11.7. Payments not expressly dedicated shall in principle be credited first to costs and expenses, then to interest and finally to the principal. However, the Provider is entitled to credit incoming payments first against the oldest claim.
- 11.8. The value protection of all prices shall be linked to the yearly increase of the collective agreement salary, class ST2, experience level published by the Fachverband Unternehmensberatung, Buchhaltung und Informationstechnologie of the Austrian Chamber of Commerce quoting the collective agreement for employees of companies in the field of services in automatic data processing and information technology. The basis of calculation is minimum salary of the collective agreement published for the month of the conclusion of the contract. The calculation basis for the above-mentioned value protection is the agreed percentual increase of the above quoted salary class. The contracting parties shall be entitled to demand an adjustment of the fees once a year at the beginning of the year, with effect from the billing period following the turn of the year .

## **12. Duration/Cancellation/ Minimum Subscription Period/Cancellation of Contract**

- 12.1. The service contract is concluded for an indefinite period.
- 12.2. A minimum subscription period of 2 months shall be deemed to have been agreed by both parties. The minimum subscription period defines the period during which the contractual relationship cannot be terminated. The agreement of a minimum subscription period does not constitute a time limit and allows the service contract to continue for the period of the minimum subscription.

- 12.3. The Service Agreement may (after expiry of the minimum subscription period) in principle be terminated in writing by either contracting party subject to a notice period of 4 weeks to the end of the month without stating reasons.
- 12.4. Each contracting party is free to terminate the service contract for good cause.
- 12.5. In the case of remediable important reasons, a warning including a reasonable grace period of at least 14 days is required before the termination for an important reason can be pronounced.

### **13. Warranty**

- 13.1. The Provider warrants its services against payment in accordance with the statutory provisions.
- 13.2. The Services are based on the Provider's own development and are provided to the Customer "as is" (and with the commissioned modifications, if applicable). The Provider makes no express promises of any particular functionality or interoperability with existing or future needs of the Customer.
- 13.3. The Provider shall provide all Services in accordance with the existing technical, economic, operational and organisational possibilities. The Provider shall not be liable for any interruptions, malfunctions, delays, deletions, transmission errors or memory failures in connection with the use of the Services.

### **14. Liability**

- 14.1. The liability of the Provider and that of its organs, employees or other vicarious agents ("Contributors") is limited on the merits to intent or gross negligence; liability for slight negligence is excluded. This exclusion of liability does not apply to personal injury and damage to property which the Provider has taken over for processing. Insofar as the Provider's liability is excluded or limited, this shall also apply to the personal liability of its contributors.

### **15. Data protection**

- 15.1. The contracting parties record their contractual understanding that the Provider processes factual data and not personal data. The Client is obliged to notify the Provider of the processing of personal data and to request the conclusion of a contract for the processing of personal data.
- 15.2. The Provider declares to comply with Austrian/European data protection law and to provide the Customer with sufficient guarantees for lawful and secure data processing.
- 15.3. All data provided by the customer remains the responsibility of the customer, who is also the responsible person within the meaning of the GDPR.
- 15.4. If the Provider acts as a Data Processor for the Customer within the meaning of Art. 4 No. 8 and Art. 28 et seq. of the GDPR, a supplementary DPA shall be concluded between the Contracting Parties.

## **16. Secrecy**

- 16.1. The contracting parties shall treat all information and documents which they receive from or become aware of via the other party in strict confidence, at least with the same care as their own information of the same kind. Items shall be stored and secured in such a way that knowledge and misuse by third parties are excluded. The obligations apply in particular to software and data. They shall remain in force permanently even after termination of the contract.
- 16.2. Information and documents may only be used for the purpose of implementing the contract. They may only be disclosed to such employees, subcontractors and professionals who need to know them for the performance of the contract. Employees, subcontractors and professionals shall, at the request of the other party, be bound in writing directly for the benefit of that party to maintain confidentiality in accordance with these rules.
- 16.3. The duty of confidentiality does not apply to information and documents which are or become public knowledge without this being due to a breach of contract by the party or which the receiving party has received from third parties authorised to disclose them to the general public. Any party relying on these exceptions shall bear the burden of proof.

## **17. Reference**

- 17.1. Subject to the Customer's written revocation, which is possible at any time, the Provider is entitled to refer to the business relationship with the Customer on its own advertising media and in particular on its website with the name and company logo.

## **18. Other**

- 18.1. Amendments or supplements to this contract must be made in writing. The transmission of a document signed by the company as a digital copy (in particular a scan) corresponds to the written form. All this also applies to the waiver of the written form.
- 18.2. Should individual provisions of the contract be or become invalid in whole or in part, or should there be a loophole in the contract, this shall not affect the validity of the remaining provisions.
- 18.3. Place of performance is in 1230 Vienna.
- 18.4. Austrian substantive law shall apply to the exclusion of the conflict of law rules.

## **19. Place of jurisdiction**



- 19.1. For all disputes arising in connection with the present contract, including preliminary and subsequent effects, the exclusive jurisdiction of the court having subject-matter jurisdiction for 1230 Vienna is agreed.

