

# General Terms and Conditions (As of Feb. 2018)

## §1 Subject matter and term of the agreement

- 1) Papershift GmbH, Amalienstraße 41 d, 76227 Karlsruhe, Germany, registered at the Karlsruhe District Court under HRB 722151 (hereinafter referred to as “Papershift”) offers its customers (hereinafter referred to as “Customer(s)”) human resources (HR) planning services via an internet-based platform (currently available at [app.papershift.com](http://app.papershift.com)) (hereinafter referred to as “Internet Platform”). Upon registration, Customers can subscribe to the services offered by Papershift via the Internet Platform in accordance with the applicable service packages.
- 2) These General Terms and Conditions (“GTC”) apply to all services offered by Papershift via the Internet Platform.
- 3) Terms and conditions of the Customer that conflict with or deviate from these GTC are expressly not accepted unless Papershift expressly agrees to their applicability in writing. This shall apply even if the Customer accepts an offer of Papershift, making reference to his own deviating contract terms, and Papershift does not reject such. Even if Papershift refers to a letter (written or electronic) that contains or makes reference to terms and conditions of the Customer or of a third party, this shall not be construed as acceptance of the applicability of those terms and conditions. The inclusion of such terms and conditions of the Customer is hereby proactively rejected.

## §2 Subject matter of the service, recipient

- 1) The subject matter of the services offered by Papershift comprises the functions of the Internet Platform in the field of HR planning in its current version; depending on the version of the Internet Platform and the service packages subscribed to, these may e.g. comprise work and shift planning, absence planning and time tracking (collectively referred to as “Contractual Services”).
- 2) Backups are not part of the Contractual Services. The Customer always remains responsible for backing up data and contents that he, his employees or other third parties acting on his behalf upload to or create on the Internet Platform (hereinafter referred to as “Customer Data”) and shall download them and back

them up and regularly with the diligence of a prudent businessman. Depending on the services booked, Papershift will make tools for the collective download of data available to the Customer via the Customer account. The Customer shall keep the backups in such a way that he can always access them even without using the Internet Platform. Papershift shall be liable for loss of Customer Data only if such a loss could not have been avoided even if the Customer had taken appropriate backup measures.

### **§3 Registration, contract conclusion, storage of the contract text**

- 1) The registration of the Customer is required for the conclusion of the contract for the use of the Internet Platform (“Usage Contract”). By registering, the Customer assures that he is an entrepreneur in the meaning of Section 14 of the German Civil Code (BGB) and that he performs the registration on the Internet Platform in this capacity. Notwithstanding other rights of Papershift, violation of the aforesaid assurance shall entitle Papershift to terminate the Usage Contract with the Customer with immediate effect for good cause.
- 2) The Customer may only perform the registration through a person or body authorised to represent him. Papershift reserves the right to make the conclusion of a Usage Contract conditional upon the submission of evidence of the power of attorney, however without being under the obligation to check the identity and authorisation of the person acting on behalf of the Customer.
- 3) On the Customer side, the registration process takes place by completing and submitting the registration form on the Internet Platform. The Customer shall truthfully provide all data required for the registration. By clicking the registration button, the Customer submits an offer to conclude a Usage Contract according to the provisions of these GTC. The Usage Contract comes into existence through acceptance of this offer by Papershift according to the following subsection. The Customer cannot demand the conclusion of a Usage Contract.
- 4) The acceptance of the contract will take place by means of a separate e-mail that contains the contractual terms and conditions including these GTC. Papershift will not store the contractual provisions for the Customer.

- 5) The conclusion of the Usage Contract itself is free of charge for the Customer. The subscription to payable service packages takes separately according to §4 below.

## §4 Customer account, subscription to service packages

- 1) By concluding the Usage Contract, the Customer gains access to the Internet Platform through the provision of a Customer account. The conclusion of the contract and the provision of the Customer account expressly does not yet grant a right to use HR planning services as part of the functions of the Internet Platform.
- 2) However, the Customer can place binding orders for such services as part of (payable) service packages via the Customer account and under the existing Usage Contract (“Subscription”). The Customer can select from the respective service packages and can even subscribe to multiple service packages. The service packages contain information on the specific scope of services, the period and the costs and due dates for payments (collectively referred to as “Service Properties”). In addition to the Service Properties, the provisions of these GTC shall apply. In the event of contradictions, the Service Properties shall have priority. The Customer cannot demand the booking of particular service packages.
- 3) If the Customer wishes to subscribe to a service package, he can submit an offer by clicking the “Subscription” button or (in the case of payable service packages), by clicking the “Payable Subscription” button. The Subscription comes into existence through acceptance of this offer by Papershift. The acceptance of the offer will take place by means of a separate e-mail that also contains the Service Properties of the service package.
- 4) If a Customer performs an upgrade or downgrade enabled by Papershift from one service package to another, this shall be construed as the premature termination of the current Subscription to a service package and the immediate subsequent Subscription to a new service package by the Customer by mutual agreement. Subsection (3) shall apply accordingly, under the condition that the Customer places his offer by clicking the “Payable Subscription” button.
- 5) Termination of Subscriptions (e.g. due to expiry or notice of termination) does not result in termination of this Usage Contract. Notice of termination of Subscriptions must be given in text form and is possible only if this is expressly indicated in the Service Properties. The right to termination with immediate effect for good cause remains unaffected. From the perspective of Papershift,

good cause will be deemed to be on hand especially (but not limited to) if the Customer is in default with an agreed payment and does not end this default after he is sent a reminder in which he is granted a reasonable period of at least 2 (two) weeks.

- 6) Subscription of service packages is no longer possible as soon as a Party gives notice of termination of the Usage Contract.

## §5 Term, termination

- 1) The Usage Contract is concluded for an indefinite term. It exists irrespective of any Subscriptions. Termination of one or all current Subscriptions does not affect the existence of the Usage Contract.
- 2) Both Parties may at any time give notice of termination of this Usage Contract in text form without specifying any reasons. The notice period is 30 (thirty) days, effective at the end of the calendar month; at the earliest, however, the contract will end as of the termination of the last service package subscribed to.
- 3) The right to termination with immediate effect for good cause remains unaffected. In the event of termination of this Usage Contract with immediate effect for good cause, all current Subscriptions shall end when this Usage Contract ends. From the perspective of Papershift, good cause will be deemed to be on hand especially (but not limited to) if the Customer
  - a) is in default with an agreed payment and does not without delay end this state of default after he is sent a reminder in which he is granted a reasonable period of at least 30 (thirty) days;
  - b) breaches an obligation set forth in section 9 (2) or (3) or section 10 (3) and does not without delay discontinue the breach when requested to do so by Papershift; or,
  - c) in violation of section 3 (1), has not registered as an entrepreneur in the meaning of Section 14 of the German Civil Code (BGB).

## §6 Prices and payment

- 1) The prices of service packages shall be governed by the terms mentioned therein. Unless expressly regulated otherwise, the following shall apply:

- a) Prices that apply to services subscribed to in a defined period shall be due at the beginning of such period.
  - b) For the fulfilment of payment periods and deadlines, the date on which the respective amount is credited to the bank account specified by Papershift shall be authoritative.
  - c) Invoices of Papershift shall be paid without any deductions within 2 (two) weeks.
- 2) In the event of late payment, Papershift may, notwithstanding its other rights, charge default interest pursuant to Section 288 (2) of the German Civil Code (BGB). The date of receipt of the invoice amount on the bank account specified by Papershift shall be authoritative for the calculation of the delay.

## **§7 Availability of the internet platform, place of performance**

- 1) The availability of the Internet Platform is determined as follows:
  - a) Papershift will perform the needed maintenance work on the Internet Platform from 11 p.m. to 6 a.m. (CET/CEST) (“Maintenance Window”). During this Maintenance Window, the platform may be temporarily unavailable on the Internet, either entirely or with respect to certain services.
  - b) Papershift makes the Internet Platform available on the Internet for at least 99 percent of the time per calendar quarter. The times of the Maintenance Windows shall not be included in the calculation of the availability.
  - c) Papershift may limit the access to the Internet Platform even outside the Maintenance Windows if this should be necessary for the security of the Internet Platform operation or the preservation of the network integrity, especially to avoid serious malfunctions of the network, the software or stored data.
  - d) Papershift will inform the Customer of planned service work that impairs the availability and take more than 10 (ten) minutes at least 4 (four) hours in advance by means of a notification in the Customer account.
- 2) The point of handover/delivery of the services of Papershift is the interface between the servers on which the Internet Platform is hosted and the Internet.

## §8 Change of services, updates

In the interest of all users of the Internet Platform, Papershift endeavours to continuously improve the Internet Platform and expand it in a meaningful way in order to continually increase its benefits for its Customers. Therefore, Papershift expressly reserves the right to further develop the Internet Platform during the term of the contract. Within the scope of the further development, Papershift may, for example, change the appearance of the frontend, modify, add and remove functions, and change designs, input screens and other elements of the frontend and backend (collectively referred to as “Platform Updates”). The Customer shall not have any claim to Platform Updates or to continued use of a certain version of the Internet Platform. The Customer cannot derive any claims against Papershift due to the performance of Platform Updates as long as (i) no functions booked by him are cancelled or impaired significantly by the Platform Updates and (ii) he does not suffer any unacceptable disadvantages when using the Internet Platform.

## §9 Obligations in connection with the use of the customer account

- 1) In the context of the registration, the Customer shall select a secure access password for his Customer account. A secure password contains uppercase and lowercase letters as well as special characters and numeric characters.
- 2) The Customer shall keep the login details for his Customer account secret and shall take state-of-the-art measures to protect them from unauthorised access. Should the Customer learn of abusive access to his login details or to his Customer account or if the facts give rise to suspicion in this regard, he shall without delay inform Papershift of this.
- 3) The Customer may grant third parties (hereinafter referred to as “Employees”) employee access to his Customer account according to the service packages booked by him. The Customer alone remains the contracting partner of Papershift. No contractual relationship is established between the Employees and Papershift.
- 4) The Customer shall be liable to Papershift for the actions of the Employees whom he grants access to his Customer account. Breaches of Customer obligations from these GTC by such Employees will be attributed to the Customer. The Customer is responsible towards Papershift for ensuring that these Employees act according

to the contract and do not breach these GTC, the applicable laws and/or third-party rights when using the Contractual Services of Papershift. Breaches of the Employees against these provisions will be attributed to the Customer; in such cases, the Customer will be the respondent of Papershift.

## §10 Customer data, rights of use

- 1) Papershift operates the Internet Platform as a technology service provider in the form of a software-as-a-service (SaaS) offer. Papershift will not influence or check Customer Data or their creation, transmission and use and therefore considers such data and contents as being of a third-party nature.
- 2) To enable Papershift to perform the Contractual Services, the Customer grants Papershift a non-exclusive right without any regional restriction to store, copy, make publicly available and sublicense copyrightable Customer Data, limited in time to the term of the Usage Contract and any retention obligations of Papershift, to the extent that this is required for the performance of the contractual obligations of Papershift.
- 3) The customer shall
  - a) only upload and create data on the Internet Platform that do not infringe statutory legal requirements or third-party rights;
  - b) ensure that the upload of data and the granting of rights of use pursuant to subsection (2) above and the use of the Internet Platform by him does not breach statutory legal requirements or third-party rights.
- 4) The Internet Platform expressly does not serve the storage and management of special categories of personal data in the meaning of Art. 9 of the General Data Protection Regulation (GDPR). The Customer undertakes not to store or process such data on the Internet Platform. Should the Customer breach the aforesaid obligation and incur damage (e.g. due to loss of data, transmission, modification or consequences of actions in breach of data protection law), Papershift shall be liable only if and to the extent that liability would also have existed in the case of data that do not represent special categories of personal data in the meaning of Art. 9 GDPR.

## §11 Data protection

Papershift strictly complies with the regulations of applicable data protection legislation. The Customer is the controller of personal data that the Customer collects, processes or uses. If required by data protection law, the Parties shall conclude data protection agreements with each other. The conclusion of such agreements constitutes a material contractual obligation. Should the Customer refuse to conclude such agreements that are required by law, Papershift may discontinue all affected services and delete stored personal data and, after the end of a reasonable period, terminate the contract with the Customer.

## §12 Rights of Papershift in the event of breach of obligations, indemnification

- 1) Notwithstanding its other rights, Papershift may block the Customer's Customer account if,
  - a) pursuant to these GTC, Papershift is entitled to terminate this Usage Contract with immediate effect for good cause;
  - b) the Customer is in default with payments due according to this Usage Contract (including any service packages subscribed to) by more than 30 (thirty) days despite a prior reminder;
  - c) the Customer breaches one or several of his obligations from section 9 (2) or (3) or section 10 (3); or
  - d) the Customer account is accessed by unauthorised third parties without any fault of Papershift.

The account will be blocked until the reason for the blocking no longer applies or this Usage Contract ends. The Customer cannot derive any rights against Papershift due to the blocking of the account according to this subsection.

- 2) The Customer shall indemnify Papershift against any and all third-party claims that are based on a culpable breach of his obligations from sections 9 and 10 of these GTC or his obligations according to data protection law or on other non-contractual or unlawful use of the services offered by Papershift by the Customer or his Employees or with his approval. This includes the assumption of the costs of legal defence of Papershift (including court and legal counsel costs in



the statutory amount). If the Customer notices or must notice the danger of a breach that establishes the claim to indemnification, he shall without delay inform Papershift of this.

- 3) In case third parties assert claims against Papershift, the Customer shall – upon first demand – comprehensively, truthfully and without delay provide Papershift with all information that is required for the review of the claims, also with respect to indemnity and defence.
- 4) Papershift reserves the right to assert further claims and rights against the Customer.

### **§13 Subcontractors, assignment of rights and obligations**

- 1) Papershift may delegate its service obligations from the Usage Contract to third parties or sub-contractors and transfer claims against the Customer to third parties. *Vis-à-vis* the Customer, Papershift will remain responsible for the contractual performance.
- 2) Transfer of rights and obligations under this contract by the Customer to third parties is subject to the express prior approval of Papershift.

### **§14 Offsetting**

The Customer shall only have a right to offset if his counterclaims are effectively established in court or undisputed or acknowledged by Papershift in writing. However, the Customer shall also have a right to offset against claims of Papershift without the aforesaid restriction if he asserts defects or counterclaims from the same contract.

### **§15 General limitation of liability**

Papershift shall be liable exclusively according to the following regulations, no matter what the legal basis may be.

- 1) Papershift shall only be liable for intent and gross negligence. In the event of slight negligence, Papershift shall be liable only in the case of a breach of a material contractual obligation whose fulfilment is essential to the due performance of the Agreement and on whose fulfilment the Customer may rely on (cardinal obligation). In this context, Papershift shall be liable only for foreseeable damage

whose occurrence must typically be expected. This also applies to lost profit and unrealised savings.

- 2) The limitation of liability of Papershift shall not apply in the event of injury to life, body and/or health and in the case of liability under the German Product Liability Act (ProdHaftG).
- 3) Papershift shall not be liable for any events of force majeure that make the contractual performance impossible, even if such events merely impair the due performance of the contract to a significant extent or hinder it temporarily. Force majeure comprises all circumstances that are independent from the will and influence of the contracting Parties, such as terror attacks, embargo, confiscation, natural disasters, strike, official orders or other serious and unforeseeable circumstances for which the contracting Parties are not responsible. In this context, a circumstance will be regarded as force majeure only if it occurs after the conclusion of the contract.
- 4) Moreover, Papershift shall not be liable for malfunctions and loss of quality of the data transfer on the Internet for which Papershift is not responsible and that impairs or prevents the use of functions of the Internet Platform or services that can be accessed via the Internet Platform.
- 5) To the extent that the liability of Papershift is excluded or limited, this shall also apply to the liability of the employees, other staff members, representatives and agents of Papershift

## §16 Amendments to these GTC

Papershift reserves the right to amend these GTC without specifying reasons in accordance with the following procedure: The amended GTC will be sent to the Customer to the mail address he provided during the registration; the respective amendments will be highlighted. If the Customer does not object within 2 (two) weeks of the receipt of the said e-mail, his approval of the respective amendments will be deemed granted. In the notification containing the amendments, Papershift will separately draw the Customer's attention to the importance of the period set. If the Customer objects to the amendments within this period, Papershift may on his discretion terminate this contract according to the provisions of section 5 of these GTC.

## §17 Miscellaneous

- 1) The contract language is English, all declarations and communication shall take place in English language. The Parties shall ensure that their contacts are proficient in the English language.
- 2) The Usage Contract and all contracts concluded between Papershift and its Customers shall be governed by German law, under exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).
- 3) As far as this is permitted by law, the courts at the location of Papershift's registered office (currently Karlsruhe, Germany) shall have exclusive jurisdiction over all disputes from or in connection with the contractual cooperation between the Parties.
- 4) Should individual provisions of these GTC or of contracts or agreements concluded between the Parties be fully or partially invalid or unenforceable or become invalid or unenforceable after the conclusion of the respective contract, this shall not affect the validity of the other provisions. Instead, the Parties shall endeavour to agree a substitute regulation that comes as close as possible to the effects of the invalid or unenforceable regulation in a legally permissible and economic way. The aforesaid provisions shall also apply in case regulations should turn out to have gaps.