



# GENERAL TERMS & CONDITIONS

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## TABLE OF CONTENTS

<b>TABLE OF CONTENTS.....</b>	<b>2</b>
1. GENERAL INFORMATION.....	3
2. SCOPE OF PERFORMANCE.....	3
3. OBLIGATIONS OF THE CLIENT.....	4
4. WARRANTY, DEFAULT, IMPOSSIBILITY OF PERFORMANCE.....	6
5. CONTRACTUAL PENALTIES.....	7
6. LIABILITY.....	7
7. FORCE MAJEURE.....	8
8. PAYMENT.....	9
9. TERM OF CONTRACT.....	10
10. DATA PRIVACY.....	11
11. CONFIDENTIALITY.....	11
12. MISCELLANEOUS.....	12
<b>VERSION HISTORY.....</b>	<b>15</b>

These general terms and conditions apply on the part of the contractor ("CYBERTEC") for

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- CYBERTEC PostgreSQL International GmbH, Römerstraße 19, 2752 Wöllersdorf, Austria
- CYBERTEC PG Database Services Switzerland GmbH, Bahnhofstraße 10, 8001 Zürich Switzerland
- CYBERTEC Nordic OÜ, Tartu MNT 84a-M302, 10112 Tallinn, Estonia
- CYBERTEC PG Database Services South America S.A., Misiones 1486 oficina 301, 11000 Montevideo, Uruguay
- CYBERTEC Poland Sp. z o.o., Pl. Inwalidów 10, 01-552 Warsaw, Poland
- CYBERTEC PostgreSQL South Africa Ltd., No. 26, Cambridge Office Park, 5 Bauhinia Street, Highveld Techno Park, Conturion, South Africa, 0046

## 1. GENERAL INFORMATION

1.1. CYBERTEC provides services to the client in the field of information technology. These General Terms & Conditions are to be viewed as an integrated part of all agreements between CYBERTEC and the client. They shall be valid in their most current form, if cooperation between CYBERTEC and the client is established.

1.2. These General Terms & Conditions apply to all current and future services provided by CYBERTEC to the client, even in the event that the Terms & Conditions are not explicitly referred to when a contract is concluded. The clients' terms and conditions shall only apply if they have been acknowledged by CYBERTEC in writing.

1.3. Unless otherwise agreed upon, offers made by the contractor are valid for 30 days and without obligation.

## 2. SCOPE OF PERFORMANCE

2.1. The exact scope of the services that are to be provided by CYBERTEC is defined in the agreement between CYBERTEC and the client. It is up to CYBERTEC which facilities and technologies are used for the provision of services. CYBERTEC is entitled to change the facilities used at its own discretion, as long as this does not lead to a significant disruption of service provision.

2.2. Unless otherwise agreed to in writing, the performance of services shall be carried out remotely. In case of on-site services, travel costs and expenses shall be borne by the client in any case.

2.3. Services are provided during normal business hours, unless otherwise agreed to in writing. For services during night hours (20:00-08:00 CET/CEST), or for work on weekends and Austrian public holidays, a surcharge of 100% per hour will be charged. This does not apply if a 24-hour service availability is agreed upon.

2.4. The selection of the employees providing the contractual services is the responsibility of CYBERTEC. There is no entitlement to the use of certain employees or subcontractors. CYBERTEC is also entitled to use third parties for this purpose.

2.5. A change or extension of the service or scope of services specified in the individual agreement requires a separate written agreement between CYBERTEC and the client. Training generally is not included in any service. Provision of training therefore requires a separate agreement. Such changes made shall take effect ex nunc.

2.6. The documents placed at the client's disposal by CYBERTEC, in particular documentation relating to software products, may not be reproduced or disseminated in any form, whether free of charge or for a fee. This applies in particular to training documents.

2.7. Both contracting parties can request a change to the scope of performance at any time ("Change Request"). A Change Request must however include an exact description of the requested change, the reasons for the change, and its impact on scheduling and costs in order to allow the addressees of the Change Request to conduct an appropriate assessment. A Change Request shall only become binding once both contracting parties have accepted it.

## 3. OBLIGATIONS OF THE CLIENT

3.1. The client undertakes to support all measures necessary for provision of services by CYBERTEC. The client shall further undertake to take all measures necessary for the fulfillment of the contract that are not within CYBERTEC's scope of performance.

3.2. In the event that the services are provided on the premises of the client, the client shall provide access to all the network components, connections, supply current, floor space, workspaces, and infrastructure necessary for the provision of services to the extent and quality required (e.g. air conditioning) and free of charge. In every case, the client is responsible for ensuring compliance with the manufacturer's operational requirements for the respective hardware. The client is also responsible for ensuring the security of the rooms and building, including protection from water, fire, and unauthorised entry. The client is solely responsible for any special security measures (e.g. security cells) on their premises. The client is

not entitled to issue instructions of any kind to CYBERTEC's employees and shall submit all requests regarding the provision of services exclusively to the key contact specified by CYBERTEC.

3.3. The client shall provide CYBERTEC with all the information, data, and documentation required to fulfil the order in the form specified by CYBERTEC by the times and at their own expense, and shall support CYBERTEC in analysing problems, eliminating faults, and coordinating processing orders and services upon request. Any changes in the client's workflow that may lead to changes in the services provided by CYBERTEC to the client shall require prior consultation with CYBERTEC concerning their technical and commercial impact. Insofar as this results in a change or extension of the services to be provided, the respective provisions of these General Terms and Conditions shall apply. The client shall keep an additional copy of all the data and information submitted to CYBERTEC to allow these to be reconstructed at any time in the event of damage or loss.

3.4. The client shall undertake to keep confidential any passwords and log-ins required for the use of CYBERTEC's services.

3.5. The client shall fulfil all of their cooperation obligations in a timely manner so as to not impede CYBERTEC in the provision of services. The client shall ensure that CYBERTEC and/or third parties assigned by CYBERTEC to provide services are given the necessary access to the clients premises. The client is responsible for ensuring that all employees of their affiliated companies or contracted third parties cooperate to facilitate performance of the contract. If the client does not fulfil their cooperation obligations by the agreed date or to the agreed extent, the services provided by CYBERTEC shall be deemed rendered as contractually agreed and in time, potential limitations notwithstanding. The schedules for the services to be provided by CYBERTEC shall be postponed to an appropriate extent. The client shall remunerate CYBERTEC for any resulting additional expenditures and/or costs separately at the clients' respective applicable rates.

3.6. The client shall ensure that their employees and any third parties for which the client is accountable treat all facilities and technology used by CYBERTEC and any assets entrusted to the client with care; the client shall be liable to CYBERTEC for all damages.

3.7. Unless otherwise agreed upon, all supplies and cooperation provided by the client shall be free of charge.

## 4. WARRANTY, DEFAULT, IMPOSSIBILITY OF PERFORMANCE

4.1. If CYBERTEC performs the contractual services in a defective manner, CYBERTEC shall, within a reasonable period of time and at its own discretion, either repeat the service or carry out the necessary rectification work. The service is considered defective if it deviates significantly from the service owed according to the individual agreement. Defects that are discovered must be reported immediately by the client in writing via the intended communication channels. Any additional expenses incurred in remedying the defect or damage caused by a delayed report shall be borne by the client. The provisions of §§377 f öUGB remain unaffected. The client shall support CYBERTEC in remedying the defects and provide all necessary information.

4.2. If the defects are caused by a defect in the supplies or cooperation provided by the client or a violation of the clients' obligations, any obligation to eliminate defects free of charge shall be excluded. In these cases, the services provided by CYBERTEC shall be deemed provided as specified in the contract, any potential limitations notwithstanding. A chargeable remedy of defects by CYBERTEC is possible at the request of the client and requires a separate written agreement.

4.3. The reversal of the burden of proof, i.e. the obligation of CYBERTEC to prove its innocence of the defect, is excluded. § 924 öABGB "Presumption of defectiveness" is excluded by mutual agreement.

4.4. The provisions set out in this point also apply correspondingly to all products delivered by CYBERTEC to the client. The warranty period for any such deliveries is 6 months following receipt. For all third-party products delivered to the client by CYBERTEC, the manufacturer's warranty conditions for the respective product shall take priority over the provisions set out in this point. CYBERTEC shall retain title to all goods delivered by CYBERTEC until full payment.

4.5. If CYBERTEC is late in performing the agreed services, the client shall only be entitled to withdraw from the respective agreement if the client has granted CYBERTEC a reasonable grace period in writing for the performance of the agreed service and CYBERTEC has not performed the service in essential parts within this period and furthermore the agreed date of performance has not been met due to the sole fault or illegal action of CYBERTEC.

4.6. If it becomes apparent during performance of the work that the execution of the order in accordance with the service description is actually or legally impossible, CYBERTEC is obliged to notify the client of this immediately. If the client does not change the service description or if he does not create the necessary conditions for execution to become possible, CYBERTEC may refuse to execute the order. If the

impossibility of execution is the result of a failure of the client or a subsequent amendment of the service description by the client, CYBERTEC shall be entitled to withdraw from the order. The costs and expenses incurred up to that point for CYBERTEC's activities shall be reimbursed by the client.

## 5. CONTRACTUAL PENALTIES

5.1. Potential contractual penalties shall be regulated in the individual agreement between CYBERTEC and the client. If no corresponding written arrangements have been made, this point shall not apply.

5.2. Contractual penalties are limited to 20% of the total annual fees paid by the client to CYBERTEC. The assertion of any claims for damages above and beyond this is excluded, unless these are due to willful intent or gross negligence.

## 6. LIABILITY

6.1. CYBERTEC is liable for breach of contractual or non-contractual obligations only in case of intent or gross negligence. This exclusion does not apply in case of negligent violation of essential contractual obligations, as far as the achievement of the purpose of the respective contract is endangered thereby. In case of negligent personal injury, CYBERTEC shall be liable without limitation.

6.2. CYBERTEC shall only be liable for exceeding or failing to comply with a possibly contractually agreed to Service Level if CYBERTEC is solely responsible for the excess or failure to comply. This does not apply in particular to disruptions for which CYBERTEC is not directly responsible (e.g. external DNS routing problems, attacks on the clients infrastructure, lack of Internet service, etc.).

6.3. Where CYBERTEC is also liable for minor negligence, its liability is limited to the extent of damage that CYBERTEC reasonably expects to occur at the time of the conclusion of the contract due to the given circumstances. In cases of liability for minor negligence, CYBERTEC is not liable for subsequent damages, subsequent harm caused by a defect, or loss of profit.

6.4. CYBERTEC is not liable if the loss could have been avoided by the client through reasonable precautionary measures (in particular, by way of the daily making of backup copies of all data and programs), unless the implementation of these precautionary measures has been expressly taken over by CYBERTEC contractually.

6.5. CYBERTEC does not assume any liability or warranty for the correctness of the results developed or detected if their incorrectness is the consequence of incorrect or incomplete provision of information by the client.

6.6. The statute of limitations for claims for damages is governed by the statutory provisions; the limitation period shall however expire after one year following identification of the damage and damaging party at the latest.

6.7. If CYBERTEC is aided by third parties in providing the services, and warranty and/or liability claims arise against these third parties in this context that concern the performance of contractual obligations to the client, CYBERTEC shall assign these claims to the client. In this case, the client shall refer mainly to this third party.

6.8. CYBERTEC generally is not operator or hosting provider of production systems and is therefore not liable for data loss that is not due to CYBERTEC's fault in providing the service, especially not if it is caused by hardware failure, bugs in applications, or user errors. If the creation of a physical data backup is expressly agreed upon as a service, liability for the loss of data is not excluded, however, for the restoration of the data, it is limited to a maximum of 10% of the order amount per event of loss. The maximum amount shall however be EUR 15 000.00. All warranty and damage claims on the part of the client exceeding those stated in the respective contract – irrespective of legal grounds – are excluded.

## 7. FORCE MAJEURE

7.1. To the extent that and as long as obligations cannot be met on time or cannot be met correctly due to force majeure, e.g. war, terrorism, natural disasters, fire, strikes, lockouts, embargoes, government intervention, power outages, transport failures, telecommunication network or data cable failures, changes in legislation affecting the services after conclusion of the contract or other non-availability of products, this shall not represent a breach of contract.

7.2. If the obligations could not be fulfilled in due time due to force majeure, CYBERTEC shall be entitled to set a new performance date.

7.3. CYBERTEC shall not be liable for any damage resulting from an event in the sphere of the client or a service provider of the client.



## 8. PAYMENT

8.1. The fees to be paid by the client and the conditions are defined in the contract (offer).

8.2. Time spent travelling by CYBERTEC's employees shall generally be considered working time. Travelling times shall be compensated at an agreed to flat rate or by the hour.

8.3. CYBERTEC is entitled to make the provision of services conditional on the payment of deposits or the provision of other guarantees at an appropriate level on the part of the client at any time.

8.4. Unless otherwise stated in the agreement between CYBERTEC and the client, services are invoiced in advance. All payments are to be made by the client free of all charges and deductions to the bank account disclosed by CYBERTEC. All payments to be made by the client to CYBERTEC are to be understood exclusive of the legal value added tax, as far as an offset of this is not omitted by the use of the reverse charge procedure. Sales taxes as well as indirect taxes, which are due on the payments, are therefore at the expense of the client. Any costs, fees, and charges associated with the establishment and execution of an individual agreement between CYBERTEC and the client are borne by the client. If CYBERTEC is claimed for such a payment, the client will indemnify and hold CYBERTEC harmless. Furthermore, the client bears all duties resulting from the contractual relationship, e.g. legal transaction fees or withholding taxes. Should CYBERTEC be held liable for such taxes, the client will indemnify and hold CYBERTEC harmless.

8.5. Invoices sent by CYBERTEC are payable within 14 days after receipt of the invoice. It is incumbent on the client to ensure that his remittances are made in time to meet the deadlines agreed to. Otherwise, the client is responsible for the delay and the legal default interest according to § 456 öUGB is agreed upon for the case of the delay in payment. If the delay of the client exceeds 14 days, CYBERTEC is entitled to stop all services. Furthermore, CYBERTEC is entitled to demand immediate payment for all services already rendered, regardless of any payment deadlines.

8.6. The client is not entitled to withhold payments due to incomplete total delivery, guarantee or warranty claims, or criticism.

8.7. Services provided by CYBERTEC and utilized by the client beyond the agreed to scope of performance shall be charged to the client on the basis of actual staff and material costs according to the rates specified by CYBERTEC.

8.8. Any set-off of counterclaims of the client against payment obligations of CYBERTEC is inadmissible and is expressly excluded by the contracting parties, unless such claims are expressly acknowledged by CYBERTEC or have been legally established.

## 9. TERM OF CONTRACT

9.1. Agreements between CYBERTEC and the client become effective upon receipt of the booking confirmation by CYBERTEC, unless otherwise specified.

9.2. Contracts structured as continuing obligations may be terminated in writing by either party following a notice period of 3 months, but no earlier than the end of the minimum term specified in the agreement. The minimum term shall be 12 months, unless otherwise specified.

9.3. Each contracting party is entitled to terminate the contract prematurely or without previous notice if a compelling reason exists. A compelling reason shall be deemed to exist in particular if the other contracting partner, despite having been issued a written warning and threatened with termination, violates significant contractual duties or initiates or opens bankruptcy or other insolvency proceedings against the other contracting partner, or is rejected due to a lack of assets, or the services of the other contracting partner are hindered or prevented due to force majeure for a period exceeding six months.

9.4. CYBERTEC is further entitled to terminate the contract prematurely for a compelling reason if significant parameters concerning the provision of services have changed and for this reason CYBERTEC cannot in economic terms be reasonably expected to continue providing the services.

9.5. Upon termination of the contract, the client must immediately return all the documents and records placed at their disposal by CYBERTEC.

9.6. After termination of the contract, CYBERTEC shall support the client in returning the services to the client or a third party designated by the client upon request and for CYBERTEC's respective applicable rates. A separate agreement must be made in this regard.

## 10. DATA PRIVACY

10.1. CYBERTEC will comply with the provisions regarding data privacy set forth at <https://www.cybertec-postgresql.com/data-protection-policy/> when handling personal data and adopt all the technical and organizational measures necessary for the protection of data within CYBERTEC's scope of responsibility.

10.2. CYBERTEC shall require their employees to comply with the provisions of § 6 öDSG, including company regulations, and § 11 öUWG.

## 11. CONFIDENTIALITY

11.1. The parties shall keep secret all confidential information of the other party that comes to their knowledge in connection with cooperative work done and shall protect it with due diligence against disclosure to unauthorized persons. The obligation to maintain secrecy shall persist beyond the end of the contractual relationship. Employees of CYBERTEC as well as subcontractors of CYBERTEC shall not be considered as unauthorized. Employees and third parties assigned by the parties are to be obligated by the assigning party to keep confidential information of the other party that is subject to secrecy.

11.2. Regardless of their form, all data shall be classified as confidential, which is identified in writing as being subject to confidentiality or the confidentiality of which clearly results from its nature (in particular trade and business secrets).

Information is not subject to confidentiality if the receiving party can prove that

- the information is or was generally accessible
- the information already was in possession of the receiving party prior to the obligation to maintain secrecy
- the information was independently developed by the party without the use of classified information
- the information was lawfully acquired from a third party who was not under an obligation of confidentiality.

## 12. MISCELLANEOUS

12.1. During and for one year after the termination of a contractual relationship between CYBERTEC and the client, the client undertakes not to entice away the employees / subcontractors used for the provision of the services, neither itself nor via third parties. In case of violation, the client is obliged to pay a contractual penalty to CYBERTEC in the amount of twelve times the gross monthly salary that the respective employee / subcontractor last received from CYBERTEC, however, at least the collective agreement salary of an employee of companies in the field of services in automatic data processing and information technology in the experience level for special activities (ST2). Special agreements between CYBERTEC and the client about taking over employees / subcontractors remain unaffected by this provision. No violation of this provision occurs if a person employed by CYBERTEC actively contacts the client.

12.2. In connection with the conclusion of a contract, the client shall designate a knowledgeable and competent key contact who is authorized to make or authorize all necessary decisions.

12.3. If it is necessary for CYBERTEC's employees or contracted third parties to enter the place of performance, CYBERTEC shall undertake to comply with the clients' safety guidelines.

12.4. Any changes and amendments to the contract must be made in writing. This also applies to the annulment of this formal requirement.

12.5. Should one or more provisions of these GTCs or the contract between the client and CYBERTEC be or become partially or wholly invalid or impracticable, this shall not affect the validity of the remaining provisions. The invalid or impracticable provision shall be replaced by an appropriate valid provision that has, to the greatest extent possible, a similar commercial effect to the invalid or impracticable provision.

12.6. Every assignment of the rights and obligations arising from a contract between CYBERTEC and the client shall require the other contracting party's prior written consent. CYBERTEC is however entitled to assign the contract to a corporate affiliate without the consent of the client.

12.7. CYBERTEC is entitled to refer to the client (company name & logo) as a reference customer within the full scope of its commercial activity. This consent can be revoked at any time. The revocation must be made in writing. If the removal of the client as a reference customer is not possible after receipt of the revocation due to technical and/or practical reasons (e.g. already published in print media etc.), no claims of the client can be asserted. The revocation does not affect the validity of these terms and conditions.

12.8. CYBERTEC is entitled to audit the compliance with the terms of the contract at the clients' premises, either itself or through a third party determined by CYBERTEC to be bound to confidentiality. The audit shall take place after prior announcement during the usual business hours and in a manner that restricts the business operations at the client as little as possible. For this purpose, the client shall grant CYBERTEC access to the necessary information, databases, log files, etc., enable CYBERTEC or the third party to monitor compliance with the contract and fully support CYBERTEC or the third party in doing so.

12.9. The entire contractual relationship between CYBERTEC and the client shall be governed by Austrian law, excluding conflict of laws and the UN Convention on Contracts for the International Sale of Goods, subject to individual agreements to the contrary.

12.10. Each party to this agreement irrevocably agrees that the locally competent court for the place of business of CYBERTEC shall have exclusive jurisdiction to hear, settle and/or determine any dispute, controversy or claim. CYBERTEC also has the right to sue at the general place of jurisdiction of the client.

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SWITZERLAND

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## VERSION HISTORY

Version	Effective Date	Description	Author	Reviewed By	Approved By
1.0	2023	Setting up the terms	Anna Karall		
1.1	2024-04-04	Transferred data from the website to the new design	Sarah Gruber	Sarah Gruber	Andrea Schantl-Weiß

### If you need further information

For more information, or if you have any questions about our range of products, tools and services, contact us. There's no obligation—send us an inquiry via email or give us a call.



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