



## Terms of use

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mantau

**Note: generally the terms of use in German language apply and not this English translation.**

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## 1 Preamble

These Terms of Use apply to the use of the group manager "mantau" (hereinafter: MANTAU) of EXEC IT Solutions GmbH (hereinafter: EXEC) by a USER.

**Note: generally the terms of use in German language apply and not this English translation.**

## 2 Scope of services

- [1] MANTAU enables the USER to store and organise electronic CONTENT of any kind. Furthermore, MANTAU allows the exchange of CONTENT with other USERS within main groups with subordinate subgroups (hereinafter collectively: GROUPS) as well as private chats.
- [2] As ADMINISTRATOR, a USER can create their own main groups and invite other USERS to their groups.
- [3] The maximum number of USERS per GROUP, i.e. per main group including its subgroups, as well as the maximum storage space available for this purpose are determined by the licence model selected by the ADMINISTRATOR for the respective main group.
- [4] The ADMINISTRATOR of a GROUP may extend the maximum number of users as well as the available storage space of a GROUP administered by him by means of a chargeable additional licence (hereinafter: ADDITIONAL LICENCE).
- [5] MANTAU is provided to the USER by EXEC in a computer centre for use (Software as a Service). This includes the provision of the application, the agreed storage space and the maintenance of operational readiness and network accessibility.
- [6] Furthermore, EXEC provides the USER, at its own discretion, with different access methods for using MANTAU, for example via mobile app, desktop application or internet browser.
- [7] User manuals and documentation are provided by EXEC exclusively in electronic form and in German.
- [8] The USER shall have no claim to adaptation of MANTAU to changed conditions of use, hardware or software of the USER.
- [9] EXEC shall be entitled to extend, reduce or change the functionalities of MANTAU or to make other further developments to MANTAU without this constituting a defect or a change in performance if
  - i. this change is reasonable for the USER because it is only advantageous for him and the achievement of the purpose of the contract is not jeopardised thereby or the change is of a purely technical nature OR
  - ii. the change is made to bring MANTAU into compliance with applicable law, in particular if the applicable law has changed OR
  - iii. the change is made to comply with mandatory judicial or regulatory decisions and requirements OR
  - iv. the respective change is necessary to ensure the integrity of MANTAU, for example to close security gaps.
- [10] Changes with only an insignificant influence on previous functions do not constitute changes in performance. Constitute changes in performance. This applies in particular to changes of a purely visual nature and the mere alteration of the arrangement of functions.

## 3 Availability

- [1] For MANTAU, EXEC guarantees an availability of 97 % on a monthly average at the TRANSFER POINT.
- [2] TRANSFER POINT is the router output in the data centre.
- [3] Unavailability exists if MANTAU is not available for retrieval by the USER at the TRANSFER POINT.

- [4] Periods of unavailability shall not include periods of
- a) to carry out maintenance work at times communicated to the USER.
  - b) from disruptions and from other events that are not caused by EXEC or its vicarious agents or are not within their sphere of influence (e.g. force majeure, disruptions in the telecommunications lines or in the systems of third parties, other fault of third parties).
  - c) in which EXEC restricts or blocks access to MANTAU or to individual functions in order to avert an acute threat to its data, hardware and/or software infrastructure or that of the USER due to external dangers (e.g. viruses, Trojans, denial of service attacks) or due to a significant threat to the security of network operation or network integrity.
- [5] If the agreed availability was not met in a calendar month, the USER shall be entitled under the warranty to reduce the remuneration agreed for the month in question pro rata temporis. The USER shall assert the reduction vis-à-vis EXEC no later than four weeks after the end of the month in which the shortfall occurred.

## 4 Use of subcontractors

EXEC is entitled to use subcontractors to perform the contractually owed services. EXEC undertakes to ensure that the same obligations apply to the subcontractors as to EXEC itself.

Actual subcontractors:

TNG Stadtnetz GmbH, Projensdorfer Str. 324, 24106 Kiel

Data Protection Officer: Christian Völz (cvoelz@ennit.de), Phone: 0431 7097 416, Address as stated above.

## 5 Duties of the user

- [1] The USER shall be responsible for providing the system requirements necessary to use the access paths to MANTAU. In particular, the USER is responsible for the required access to the Internet.
- [2] The information required for registration to use MANTAU must be provided by the USER completely and correctly. Incorrect information shall entitle EXEC to immediately block and delete the USER without affecting any claim to remuneration EXEC may have under the usage relationship.
- [3] The USER undertakes to use MANTAU exclusively to the extent stipulated in the contract.
- [4] The USER undertakes to take all reasonable precautions to prevent misuse or unauthorised access by third parties. In particular, the USER shall keep the access data to MANTAU strictly secret and protect it from unauthorised use. The USER shall notify EXEC without delay if the access data have been passed on or if unauthorised use is suspected or has taken place. In the event of a culpable breach of these obligations and the use of his user account by third parties, the USER shall be liable for all activities that take place using his user account.
- [5] The USER undertakes not to make available in MANTAU any CONTENT that
- i. violate applicable law or the rights of third parties OR
  - ii. are obscene, pornographic, harassing or hateful OR
  - iii. incite others to engage in illegal or otherwise inappropriate conduct OR
  - iv. Contain malware, such as viruses, bots, worms, script exploits.
- [6] The USER is obliged not to use MANTAU for the creation or transmission of unsolicited messages on the part of the recipient, such as advertising, chain letters or spam.
- [7] Any interaction and communication of the USER with other users as well as any contractual relationships resulting therefrom shall take place exclusively between the users involved. EXEC is neither a party nor a representative of the respective users in this respect.
- [8] The USER shall be responsible for securing the end devices and applications used to access MANTAU and for complying with any statutory retention periods.

## 6 Duties of the administrator

- [1] To the extent that the ADMINISTRATOR uses the MANTAU function to invite a third party to its GROUPS, it shall ensure that the third party agrees to receive the invitation or link.
- [2] The ADMINISTRATOR shall administer permissions for the USERS participating in its GROUPS solely and at its sole discretion.
- [3] The ADMINISTRATOR shall be fully responsible for CONTENT posted in its GROUPS using MANTAU. This also includes, in particular, those contents which the USERS participating in the ADMINISTRATOR's groups make available in MANTAU. For this purpose, the ADMINISTRATOR may restrict, block or delete content of the USERS of his GROUPS.
- [4] The ADMINISTRATOR shall inform EXEC immediately if, in its opinion, a USER violates these Terms of Use.

## 7 User or Administrator as agent of a third party

If a USER or ADMINISTRATOR acts as a vicarious agent of a third party (hereinafter: ORGANISATION), all rights and obligations formulated in these Terms of Use for or against the USER or ADMINISTRATOR shall apply for or against the ORGANISATION which it represents.

## 8 Rights of use

- [1] EXEC shall grant the USER or the ORGANISATION he represents the non-exclusive, geographically unlimited rights of use to MANTAU necessary to carry out the contractual use only, limited in time to the term of the contract.
- [2] The ADMINISTRATOR or the ORGANISATION it represents may only use MANTAU for its own purposes. Individual contractual agreements to the contrary are possible.
- [3] The USER or the ORGANISATION he represents shall grant EXEC the right, unlimited in terms of territory and time, to use the content posted by the USER in MANTAU in accordance with the purpose of the contract, in particular to store and reproduce it.
- [4] EXEC shall be entitled to block individual USERS if there is reasonable suspicion that they are in breach of these Terms of Use.

## 9 Rights of third parties / indemnification

- [1] EXEC warrants that MANTAU is free from third party rights.
- [2] The USER shall indemnify EXEC at first request against all claims by third parties which they assert against EXEC on the basis of an unlawful act by the USER. Likewise, the ADMINISTRATOR of a GROUP shall indemnify EXEC at first request against all claims by third parties which they assert against EXEC on the basis of an unlawful act by the ADMINISTRATOR or the participating USERS of its GROUPS. Further claims for compensation by EXEC shall remain unaffected.

## 10 Data protection

- [1] With regard to the USER's data stored by EXEC for the purpose of processing the contract, MANTAU's Data Protection Terms and Conditions shall apply in the version valid at the time.
- [2] When processing the content exchanged in MANTAU, EXEC shall act for the ADMINISTRATOR of a GROUP exclusively within the scope of a commissioned processing pursuant to Art. 28 DSGVO on the basis of a commissioned processing agreement as amended from time to time.
- [3] The ADMINISTRATOR of the respective GROUP shall be responsible for compliance with the provisions of data protection law with regard to the CONTENTS exchanged between the participants of a GROUP.

## 11 Warranty and remedying defects

- [1] EXEC warrants the functional scope of MANTAU agreed upon in the documentation and standard description. EXEC does not guarantee the usability of the application for a specific purpose or the success of its use.
- [2] EXEC is obliged to remedy defects in MANTAU within a reasonable period of time during the term of the contract.
- [3] It is the USER's responsibility to immediately notify EXEC of any faults, errors or damage to MANTAU via the communication channels agreed for this purpose, giving a comprehensible description of the problem.
- [4] If the provision of data from the USER is necessary for EXEC to carry out work, EXEC shall only carry out this work if and as soon as the USER provides corresponding data. EXEC undertakes, where applicable, to comply with the procedure provided for the transfer of data by the USER and, in particular, to make the necessary declarations of confidentiality for this purpose.
- [5] If access to systems not operated by EXEC is necessary for the performance of work by EXEC, EXEC shall perform such work only if and as soon as the USER provides it with appropriate remote access to such systems.
- [6] Insofar as the USER is not a consumer, termination of the contract by the USER on the grounds of non-provision of use in accordance with the contract shall only be permissible if EXEC has been given the opportunity to remedy the defect after setting a reasonable deadline and this has failed twice or if it is seriously refused by EXEC or delayed in an unreasonable manner.

## 12 Liability

- [1] EXEC shall have unlimited liability in the event of intent and gross negligence as well as in the event of injury to body, life and health and in the event of violations of the Product Liability Act.
- [2] In the event that MANTAU is provided free of charge, EXEC shall only be liable in the event of intent or gross negligence. In all other cases, EXEC shall be liable below gross negligence only in the event of a breach of an essential contractual obligation, but limited in amount to the damage foreseeable at the time of conclusion of the contract and typical for the contract. Material contractual obligations are those whose fulfilment characterises the contract and on which the user may rely.
- [3] In the aforementioned cases, EXEC shall be liable in the event of data loss only for the damage that would have been incurred if the USER had properly and regularly backed up the data in a manner commensurate with the significance of the data.
- [4] EXEC shall not be liable in cases of force majeure.
- [5] EXEC's strict liability for damages for defects existing at the time of conclusion of the contract is excluded.

## 13 Costs/Charge

The use of MANTAU is generally free of charge. For additional services for which a fee is charged, see section 14.

## 14 Additional services subject to a charge

- [1] The ADMINISTRATOR of a GROUP may extend the maximum number of users as well as the available storage space of a GROUP administered by him by means of an ADDITIONAL LICENCE.
- [2] The acquisition of an ADDITIONAL LICENCE can be made independently of a registration for MANTAU.
- [3] For GROUPS with predominantly voluntary and/or private participants, EXEC grants a discount on the regular remuneration according to the current price sheet. This is the case if less than

50% of the participants of a GROUP are in an employment relationship with the ADMINISTRATOR that is subject to social insurance contributions.

- [4] By ordering an ADDITIONAL LICENCE, the ADMINISTRATOR makes an offer to conclude a contract. There shall be no entitlement to the conclusion of a contract. EXEC is entitled to reject the offer to conclude a contract without giving reasons.
- [5] EXEC declares acceptance of the offer to purchase an ADDITIONAL LICENCE by sending a licence key to the ADMINISTRATOR.
- [6] The term of the SUPPLEMENTARY LICENCE shall be agreed at the time of purchase and shall be automatically renewed for the same period ("Renewal Period") unless terminated before the end of the respective Contract Term.
- [7] EXEC shall be entitled to restrict access to a group with ADDITIONAL LICENCE if and as long as the ADMINISTRATOR is more than two months in arrears with a due payment. EXEC's claim to the agreed remuneration shall remain unaffected by this.
- [8] Termination without notice for good cause shall remain unaffected. A good cause for termination for EXEC is in particular if the ADMINISTRATOR is more than three months in arrears with a due payment.

## 15 Rights of retention and set-off

The USER shall only be entitled to rights of retention and rights of set-off arising from the same contractual relationship. In addition, rights of set-off shall only apply if the USER's counterclaims are undisputed, have been recognised by EXEC or have been established as final and absolute by a court of law.

## 16 Duration and Termination/Cancellation

- [1] The contract for the use of MANTAU comes into effect upon completion of the registration process by the USER and is concluded for an indefinite period of time.
- [2] The USER may declare termination at any time. He can terminate the user relationship by using the corresponding functionality to close his access and the associated deletion of his user account in MANTAU.
- [3] EXEC may terminate the User Agreement with two weeks' notice.
- [4] In particular, EXEC reserves the right to terminate the user relationship if the user has not logged on to MANTAU within 12 consecutive months.
- [5] The right to termination without notice for good cause shall remain unaffected by the above provisions. A reason for termination without notice for good cause exists for EXEC in particular if there is a serious or repeated breach of the provisions of these Terms of Use by the USER.

## 17 Right of revocation /Cancellation

If the USER is a consumer, he has the following right of revocation:

### Revocation policy

#### Right of revocation

You have the right to revoke from this contract within fourteen days without giving any reason.

The revocation period is fourteen days from the date of conclusion of the contract.

In order to exercise your right of revocation, you must inform us (EXEC IT Solutions GmbH, Südstraße 24, 56235 Ransbach-Baumbach, fax: +49 (0) 26 23 / 987 923; e-mail: support@mantau.de) by means of a clear declaration (e.g. a letter sent by post, fax or e-mail) of your decision to revoke this contract. For this purpose, you may use the model revocation form enclosed in the Annex, which is, however, not mandatory.

To comply with the withdrawal period, it is sufficient that you send the notification of the exercise of the right of withdrawal before the expiry of the withdrawal period.

#### Consequences of cancellation

If you withdraw from this contract, we must repay you all payments we have received from you, including the delivery costs (with the exception of the additional costs resulting from the fact that you have chosen a type of delivery other than the cheapest standard delivery offered by us), without delay and at the latest within fourteen days from the day on which we received the notification of your withdrawal from this contract. For this repayment, we will use the same means of payment that you used for the original transaction, unless expressly agreed otherwise with you; in no case will you be charged for this repayment.



**Sample revocation form**

(If you wish to revoke the contract, please complete and return this form).

To:

EXEC IT Solutions GmbH  
Südstraße 24  
56235 Ransbach-Baumbach /Germany

Fax: +49 (0) 26 23 / 987 923  
E-Mail: support@mantau.de

I/we(\*) hereby revoke the contract concluded by me/us for the purchase of the following goods(\*)/the provision of the following service (\*)

Ordered on(\*) /received on(\*): \_\_\_\_\_

\_\_\_\_\_

Name of the consumer(s)

\_\_\_\_\_

Address of the consumer(s)

\_\_\_\_\_

Signature of the consumer(s) (only in the case of use paper)

\_\_\_\_\_

Date

(\*) Delete where inapplicable.

## 18 Final clauses

- [1] There are no verbal agreements to these Terms of Use.
- [2] EXEC shall not recognise any terms and conditions of the USER that conflict with or deviate from these Terms and Conditions unless EXEC expressly agrees to their validity in text form.

### 18.1 Amendments / formal requirement

- [1] Amendments must be made in text form to be effective.
- [2] EXEC shall be entitled to amend these Terms of Use with effect for the future if this is required due to legal or functional adaptations by MANTAU.
- [3] An amendment shall be announced to the USER at least two months before it takes effect and the new version of the terms and conditions shall be made available to the USER.
- [4] The amendment shall only become effective if the USER agrees to the amended terms and conditions by the last day before the scheduled start of the validity of the new terms and conditions.

## **18.2 Severability clause**

Should individual provisions of these Terms of Use be or become invalid or unenforceable, this shall not affect the validity of the remaining provisions. The invalid or unenforceable provision shall be replaced by a provision that comes as close as possible to the economic purpose of the invalid or unenforceable provision. The same shall apply in the event that these Terms of Use are incomplete.

## **18.3 Applicable law**

These Terms of Use are governed by the laws of the Federal Republic of Germany, excluding the UN Convention on Contracts for the International Sale of Goods, unless mandatory consumer protection regulations take precedence.

## **18.4 Jurisdiction**

The place of jurisdiction is Montabaur, unless the law mandatorily prescribes otherwise.

(Effective: 01.03.2023)