

# General Terms and Conditions

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## § 1 Scope of application

For the business relationship between Magicline GmbH, Raboisen 6, 20095 Hamburg (hereinafter: **Magicline**) and its contractual partners, the operators of sports and wellness facilities, (hereinafter: **Licensee**), in addition to the User Agreement concluded with the Licensee (hereinafter: **User Agreement**) and the Order Processing Agreement, these General Terms and Conditions (hereinafter: **Terms and Conditions**), including the special terms and conditions for certain services (e.g., payment service), shall apply exclusively. In the event of contradictions and conflicts of regulations, the following order shall apply: any individual agreements made with the Licensee, the content of the specific User Agreement together with the Order Processing Agreement, any special conditions and finally these Terms and Conditions. Conflicting conditions of the Licensee are not part of the contract, unless Magicline expressly agrees to their validity in writing.

## § 2 Subject matter of the contract and installation

(1) Magicline provides its licensees with professional management software (hereinafter: the software) in the form of a web-based online service as well as various optional additional services. The software is provided in the form of a "Software as a Service" service, in which Magicline not only makes the software available for use online in a constantly updated form, but also handles the IT infrastructure together with the usual security measures and the storage of the application data entered into the system by the Licensee (hereinafter: **the data**). The data is stored on servers operated either by Magicline and/or a third-party provider on behalf of Magicline, whereby the server location is always within the European Economic Area. The details can be found in the Magicline Privacy Policy, which is available at [www.magicline.com](http://www.magicline.com). In the following, the services to be provided by Magicline are also collectively referred to as the "**service**".

(2) The software can be administered by the Licensee itself via a web interface. The scope of support to be provided by Magicline may vary based on the Licensee's country and selected rate package. With regard to country-specific differences in support, the location of the Licensee where the affected software is used as intended shall be decisive in each case. The aim of the support is to allow the Licensee to use the software properly for its specific needs and to solve problems itself. Problem-solving by Magicline is not obligatory, nor is general instruction or training in the use of the software.

(3) In addition to the support described in § 2 clause (2), the Licensee may, in the event of malfunctions of the hardware control, make ask for technical hardware support as an optional additional service against payment. In the event of a request for this service, Magicline will endeavor to eliminate the fault for a period of up to 30 minutes within the framework of a telephone service call and/or by connecting to the Licensee's systems via the Internet. If the elimination of the fault is not successful in the first session, Magicline will arrange a second session with the Licensee, also lasting up to 30 minutes, in which Magicline will once again make an effort to eliminate the fault. By booking the hardware support, the Licensee allows the computer connection to its system (remote maintenance) for the elimination of possible problems at its own risk. The Licensee is responsible for backing up its individual data prior to the start of the support session. Problem-solving is not obligatory, nor is general instruction or training in the use of the software.

(4) The Licensee is responsible at its own expense for ensuring that it meets the system requirements necessary to use the software and that it has Internet access up to the transfer point.

(5) Magicline makes the software available to the Licensee in the respective current version and expressly reserves the right to make content and technical updates at any time. Updates are made to adapt to the state of the art, to optimize system performance and user-friendliness, to correct errors, update and complete the program, to optimize the program or, if necessary, for licensing reasons. Any adaptation effort resulting from a new version status on the hardware and software systems of the Licensee shall be borne by the Licensee.

(6) In principle, the service is designed to allow access to software around the clock. Magicline strives for a monthly average availability of 99.95%. This commitment does not include times when the service is temporarily unavailable due to routine or necessary maintenance, data backup, or update measures. This also excludes downtimes due to (i) the lack of technical requirements on the part of the Licensee for accessing the service, (ii) arising from errors in the general telecommunications infrastructure, (iii) attributable to the data transmission company, or (iv) due to force majeure beyond the control of Magicline.

(7) Magicline is entitled to engage subcontractors to provide the service.

### **§ 3 License**

(1) Magicline grants the Licensee the simple, non-transferable right to use the service for a limited period of time for the duration of the User Agreement (hereinafter: **License**). In doing so, the Licensee may use the service only for its own business activities at the respective location of the sports or wellness facility by its own personnel, subject to the restriction set forth in § 3 number (2) below.

(2) Each License shall only be valid for a single location of the Licensee, but can be used at multiple workstations in that location. Locations are delimited according to its postal address (i.e., the specific

address) and not just according to the political municipality (e.g., Hamburg) in which it is located, so that several locations (e.g., four locations in the City of Hamburg) can be found in a single political municipality.

(3) The Licensee is not entitled to any rights that are not expressly granted above. In particular, the Licensee is not entitled to sell the License or to transfer it to third parties for a limited period of time – in particular, by renting or lending it. The Licensee shall take the necessary precautions to prevent the use of the software by unauthorized persons. Notwithstanding the foregoing provision, the Licensee shall be entitled to transfer the License to a successor by transferring all rights and obligations under the User Agreement concluded with Magicline, together with its business (location). Upon entry of the successor into the User Agreement, the Licensee shall in turn withdraw from the contractual relationship and thus lose the right to continue using the service. If the successor does not fulfill the obligations of the User Agreement, the Licensee shall be liable to Magicline in the same way as a guarantor who has dispensed with the objection of the advance claim.

(4) The Licensee is obliged to refrain from an excessive load on the networks through untargeted and improper input of data and/or distribution of malware.

(5) The software is protected by copyright and competition law; Magicline is exclusively entitled to all rights in relation to the Licensee. The Licensee is not authorized to make changes to the software. The connection of third-party software is only permitted with the prior written consent of Magicline.

(6) If the Licensee is responsible for violating one or more of the above provisions and, despite any requisite warning in text form, fails to remedy such violation, Magicline may block its access to the service. In the event of a culpable violation of one or more of the above provisions, the Licensee shall pay a contractual penalty in the amount of six times the monthly usage fee for each violation. The assertion of further claim for damages after offsetting of the contractual penalty remains unaffected.

#### **§ 4 Price model, upgrades**

(1) The service is available in various rate packages. The rate packages differ in that access to certain functionalities of the software is linked to the selection of a certain "higher" rate package and/or certain services are covered by a contingent paid with a fixed price or are purchased and billed separately depending on usage. Magicline may offer the Licensee a manual upgrade to a higher rate package at any time. The choice of a manual upgrade by the Licensee represents the extraordinary termination of the existing User Agreement and the conclusion of a new User Agreement with the new rate package chosen by the Licensee. The new rate package shall be billed after crediting the unused payments for the previous package.

(2) The Licensee shall pay the usage fee in advance on a monthly basis in accordance with the rate package selected. Insofar as the rate package is dependent on the number of members with term contracts managed

by the software and/or the number of connected devices, the highest number of members with term contracts managed by the software and the highest number of connected devices of the Licensee per location achieved during the term of the contract shall determine the applicable rate. Increases in the number of managed members with term contracts and/or in the number of connected devices relevant to the rate package will result in an automatic adjustment of the rate package within the framework of the existing usage agreement with effect for the entire current month in which the change occurred and for the further term of the contract. A subsequent decrease in the number of managed members with term contracts or/and the connected devices, shall not result in an adjustment (reduction) of the rate. Insofar as the Licensee makes use of usage-dependent services or optional additional services outside the rate package selected by it, these services shall be charged to the Licensee on the basis of the valid price list. Unless otherwise stated, prices are net prices in the currency indicated on the price list and are exclusive of statutory value added tax.

(3) All payments are due immediately without deduction after receipt of the invoice by the Licensee. The remuneration owed by the Licensee shall be collected by Magicline via the means of payment chosen by the Licensee. If it is not possible to collect the license fee via the selected means of payment, Magicline is entitled to charge a fee for each payment in the amount stated in the price list.

(4) Magicline reserves the right to adjust the prices agreed with the Licensee in the event of changes occurring after the conclusion of the contract (for example, in the event of extensions to the scope of services of the purchased product, cost increases for provision or due to changes in statutory provisions). Price changes will take effect at the earliest at the beginning of the next but one month after receipt of a change notification sent to the Licensee in written form. If price changes for a service amount to more than eight percent within a calendar year, the Licensee shall be entitled to terminate the contract for this service on the date on which the price increase is scheduled to take effect. Notice of termination must be given no later than four weeks after notification of the price increase. If the Licensee does not exercise this right and if the Licensee has been informed of this legal consequence in the notification of the price increase, the contract will be continued at the changed prices. In the event of termination due to a price increase for a trouble-free transition phase, the Licensee is granted a special right of use under the existing conditions of up to three (3) months from the effective date of the termination.

(5) The withholding of payments by the Licensee or the offsetting of counterclaims by the Licensee shall only be permissible if the counterclaims are undisputed or have been legally established.

## **§ 5 Defects in the Magicline service**

(1) The Licensee is obliged to report any defects in the service to Magicline immediately. In this context, the Licensee shall take into account Magicline's troubleshooting advice within the scope of what is reasonable and shall forward to Magicline all information such as may be necessary for remedying the defect.

(2) Magicline is obliged to correct defects in the service. Magicline may choose whether to remedy defects through free repair or replacement. In addition, the elimination of a defect may also take the form of instructions to the Licensee to take action. The Licensee shall comply with such instructions unless it is unreasonable to expect the Licensee to do so.

(3) Termination by the Licensee pursuant to § 534 para. 2 sentence 1 no. 1 of the German Civil Code (hereinafter: **BGB**) due to non-granting or deprivation of the contractual use of the service as well as a reduction of the usage fee or the assertion of damages or compensation for futile expenses shall only be permissible after Magicline has been given sufficient opportunity to remedy the defect. Excluded from this are those cases for which the exercise of warranty rights without setting a special deadline is permissible due to statutory provisions (for example, because subsequent performance is impossible, unreasonable or has been refused by Magicline).

(4) Claims against Magicline due to functional impairments or performance disruptions of the service that are based on the violation of the Licensee's obligations to cooperate or on other circumstances for which the Licensee is responsible (for example, improper installation or maintenance, use for purposes other than intended, operating errors or defects in the IT system used by the Licensee) are excluded. The Licensee remains free to prove that the aforementioned circumstances have had no (detrimental) influence.

## **§ 6 Limitation of liability**

(1) Magicline shall be liable without limitation in cases of mandatory legal liability (for example under the Product Liability Act), for intentional acts or omissions of Magicline, its legal representatives and vicarious agents, as well as for damages due to injury to life, limb or health and for damages covered by a warranty granted by Magicline.

(2) In the event of gross negligence on the part of Magicline's legal representatives or executives, Magicline's liability is unlimited. In the event of a grossly negligent breach of obligations by vicarious agents of Magicline, liability shall be limited to compensation for the foreseeable damage typical for the contract.

(3) In the case of slight negligence, Magicline is only liable for damages that can be traced back to essential breaches of duty that jeopardize the achievement of the purpose of the contract, or to the breach of duties whose fulfillment makes the proper execution of the contract possible in the first place. Liability shall be

limited to the foreseeable damage typical for this type of contract. This applies to all claims for damages, irrespective of the legal grounds, including tort claims.

(4) Insofar as Magicline is liable in accordance with the above § 6 clause (3), the liability per damage event is limited to an amount of €100,000 per incident. Claims on the part of the Licensee for lost profits are excluded.

(5) Magicline's strict liability for defects of the service already existing at the time of conclusion of the contract according to § 536a para. 1 BGB is expressly excluded.

(6) Magicline is not responsible for improper use of the service by other licensees; any liability on the part of Magicline in this respect is excluded. § 278 BGB shall not apply in this respect.

(7) The above provisions shall apply mutatis mutandis to claims of the Licensee for reimbursement of futile expenses.

## **§ 7 Contract term and termination**

(1) The contractual relationship shall commence upon the conclusion of the contract and shall have a minimum term of 12 months unless a different term has been expressly agreed. The contract shall be renewed after the minimum contract term for a further 12 months in each case unless it is terminated with one month's notice to the end of the contract term.

(2) The right to exercise extraordinary termination for good cause remains unaffected. The Licensee's special rights of termination pursuant to § 4 clauses (1) and (4) and § 5 clause (3) shall also remain unaffected.

(3) Magicline may, in particular, terminate the usage agreement without notice if the Licensee is in default of payment of the monthly usage fee for the software for two consecutive months or, in a period extending over more than two months, in default of payment of the usage fee in an amount equal to the usage fee for the software of two months. Furthermore, Magicline has a right to terminate without notice in the event of insolvency, over-indebtedness or imminent insolvency of the Licensee.

(4) In the event of termination without notice by Magicline, Magicline may demand immediate liquidated damages in the amount of 70% of the remaining usage fee until the expiration of the regular contract term. The Licensee is entitled to provide evidence of lower damages.

(5) Any notice of termination must be in writing. The use of email is not sufficient to comply with the written form requirement.

(6) Upon termination of the user agreement – for whatever legal reason – the Licensee's right to continue using the service expires. However, Magicline will continue to provide the Licensee with the Licensee's data (i.e., all current data as well as all historical data still available in Magicline's system at the time of termination of the User Agreement) set up at Magicline for up to 4 weeks after termination of the User Agreement (hereinafter: follow-up period) upon the Licensee's corresponding written request. The Licensee shall save the data it has entered before the User Agreement is terminated. After the expiration of the follow-up period, Magicline is entitled to delete the data without having to separately notify the Licensee again of the pending deletion.

(7) If the software is made available to the Licensee on the basis of a rate package where the use of the software is free of charge, Magicline is entitled to delete the software including all data contained therein if the Licensee does not use (or no longer uses) the software. Non-use of the software shall be deemed to have occurred if more than 6 months have passed since the Licensee last logged in. Magicline will separately notify the Licensee of the impending deletion at least four weeks in advance by means of an email message.

## **§ 8 Data protection, confidentiality**

(1) The Parties shall observe the applicable data protection provisions and oblige its employees deployed in connection with the User Agreement and its implementation to maintain confidentiality and to observe data protection on the basis of the applicable laws (For Magicline and Licensees within the EU: General Data Protection Regulation (GDPR) and, if applicable, state laws such as the German Federal Data Protection Act (BDSG-neu) or future successor regulations).

(2) The prerequisite for the use of the services by the Licensee is, in addition to the existence of the User Agreement, the existence of an Order Processing Agreement pursuant to Art. 28 GDPR between the Licensee and Magicline.

(3) The Licensee is responsible for ensuring that the processing of personal data carried out by the Licensee using the service is permissible under data protection law. This applies in particular with regard to the permissibility of the processing of the respective data set pursuant to Art. 6 para. 1 of the GDPR. The Licensee shall also be solely responsible for safeguarding the rights of data subjects under Art. 12 to 22 of the GDPR. The Licensee shall be fully liable to Magicline for any damages resulting from the Licensee's failure to comply with data protection regulations. In this respect, the Licensee shall indemnify Magicline upon first request in the event of claims by third parties.

(4) Magicline processes the Licensee's personal data for the purpose of implementing the contractual relationship with the Licensee. Details are summarized in the "Privacy Policy" information sheet, which can be found on Magicline's website at <https://www.magicline.com/de/datenschutz-und-informationssicherheit>.

(5) Any information relating to the Studio or Magicline that is marked as confidential, and any information that is not expressly marked as confidential but which by its nature and content should reasonably be regarded as confidential, shall be deemed to be "**Confidential Information**". Each Party undertakes to take all necessary steps to maintain confidentiality, in particular:

- To disclose Confidential Information only to employees and agents of the Parties who need to have access to such information in order to exercise rights and obligations under this Agreement; and
- not to disclose confidential information to third parties without the prior written consent of the other Party, unless such disclosure is a necessary part of the contractual performance owed in each case.

The obligation to maintain confidentiality does not apply to information:

- that is accessible to the general public;
- disclosed to one of the parties by a third party without an obligation of confidentiality;
- which was already in the possession of one of the parties or were known to them at the time of disclosure;
- developed independently of the Confidential Information by the other Party; or
- if and to the extent that one of the Parties and/or its employees is required to disclose such information by law or by decision of a court or administrative authority.

The obligation of confidentiality described in this clause shall survive termination of this Agreement, regardless of the reasons for such termination.

## **§ 9 Other agreements**

(1) Additions and amendments to the agreements made, in particular the User Agreement and the Order Processing Agreement, must be made in writing to be effective. This also applies to changes to this written form requirement itself.

(2) Changes to these Terms and Conditions shall be notified to the Licensee in text form no later than one month before their proposed effective date. Changes become effective if the Licensee accepts them or fails to indicate its rejection by their entry into force at the latest. Magicline will notify the Licensee of this approval effect in the notification of changes. Special regulations apply to price changes (§ 4 clause 4).

(3) These Terms and Conditions and all legal relationships between Magicline and the Licensee shall be governed by the laws of the Federal Republic of Germany, excluding international uniform law, in particular



the UN Convention on Contracts for the International Sale of Goods, as well as legal norms that refer to another legal system.

(4) The place of performance is Hamburg. The exclusive – also international – place of jurisdiction for all disputes arising from or in connection with the business relationship between Magicline and the Licensee, irrespective of the legal grounds, is Hamburg. However, Magicline shall also be entitled to bring an action before the court having jurisdiction over the Licensee's place of business.

(5) Should any provision of the User Agreement and/or the Order Data Processing Agreement be or become invalid in whole or in part, this shall not affect the validity of the remaining provisions. The same applies in the case of a loophole.

(6) In the case of additional translations of these Terms and Conditions into other languages, only the German text version is decisive for the interpretation of agreements made.

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