Penzilla

General Terms & Conditions

1. Applicability

1.1. These terms and conditions (the "Terms") apply to all agreements between Penzilla GmbH ("Penzilla") and Customer (the "Agreement") in relation to the provisioning of services via the Internet and/or hosting services (the "Cloud Services") as well as other professional services (the "Projects") (each a "Service" or together the "Services"), unless expressly agreed otherwise in writing between the parties. The Customer may purchase Services by concluding separate Agreements with Penzilla. If Penzilla should offer further Services in the future, these Terms shall also apply to this extended offer.

1.2. The Agreement, these Terms, the Data Processing Agreement for Penzilla Services (if applicable), and the relevant Documentation exclusively govern the contractual relationship between the Customer and Penzilla. Any pre-contractual negotiation or correspondence as well as the general terms and conditions of the Customer are hereby excluded by mutual agreement between the parties.

1.3. The Agreement is for the sole benefit of the parties hereto. Third parties shall only be included in the scope of protection and performance if expressly agreed between the parties. "Third parties" in this sense shall also mean companies affiliated with the Customer.

1.4. In the event of conflicts between the Agreement and these Terms, the provisions of the Agreement take precedence.

2. Scope

2.1. The Cloud Service to be provided by Penzilla under the Agreement is described in the technical and functional documentation of the respective Service that is made available to the Customer with the Cloud Service (the "Documentation").

2.2. Projects to be provided by Penzilla under an Agreement are described in detail in the applicable Agreement. Unless otherwise stipulated in the Agreement, Projects are delivered on a time and material basis and invoiced in accordance with the price list in effect at the time of delivery. Meals, lodging, travel and other reasonably necessary out-of-pocket expenses are charged separately to the Customer.

2.3. Penzilla is entitled to change and adapt the content of the Services and Documentation, including the software provided, in particular in the event of further development of the Services offered by Penzilla (the "Continuous Modification"). In the event of material changes, Penzilla will notify the Customer of the Continuous Modification by email or within the Service within a reasonable notice period. If the legitimate interests of the Customer are adversely affected by a Continuous Modification to such an extent that the continued usage of the Services by the Customer cannot reasonably be expected, the Customer may terminate the affected Service in writing with a notice period of one month before the Continuous Modification takes effect and Penzilla shall refund any unearned prepaid licence fees. Unless terminated by the Customer, the Continuous Modification shall take effect on the date specified.

3. Right to use

3.1. For the delivery of Cloud Services, Penzilla provides the Customer with access to an online platform for the term specified in the Agreement that includes various basic Services and may also include additional Pay per Click Services and/or optional Service modules that the Customer may also purchase.

3.2. Penzilla grants the Customer the non-exclusive, non-transferable right to use the results of Projects for its own internal purpose within the scope of the contractually intended use.

3.3. The Service or the underlying software, the system performance required for use and the necessary storage space for data of Penzilla and the Customer shall be provided by Penzilla or a hosting provider commissioned by Penzilla. The system area assigned to the Customer is protected against access by third parties.

3.4. Penzilla provides the Customer with the log-in data required for the identification and authentication in the Service. Should the Cloud Services be licensed for named users, the Customer may permit named users (the "Authorised Users") to use the Cloud Service and other Services to the extent contractually agreed (in particular, without limitation, in accordance with the agreed usage metrics and volumes) and the log-in data for the Cloud Services may not be passed on or used by several persons at the same time. However, they may be transferred from one person to another when the original user is no longer authorised to use the Cloud Service. The Customer is not permitted to transfer log-in data to third parties other than additional Authorised Users who have been considered in the calculation of the fee.

3.5. The Customer is responsible for the actions and omissions of its Authorised Users, affiliated companies and business partners as if these are its own actions and omissions and obliges them to use the Service in accordance with the Agreement.

3.6. The Customer may use the Service exclusively for its own internal purposes. The Customer shall have complete responsibility, and the Customer understands and agrees that Penzilla shall have no responsibility or liability whatsoever, for any and all data and content provided by Customer. In particular, without limitation, Customer may not:

3.6.1. Sublicense, licence, sell, lease, rent, or otherwise make available the Services or the Documentation or provide access to any third party;

3.6.2. Copy, translate, disassemble, decompile, reverse engineer or otherwise modify the Services in whole or in part, or create

derivative works based thereon; however, the Documentation may be copied for internal use to the extent necessary, provided that the version shown in the Service governs;

3.6.3. Use the Services in any manner that is contrary to applicable law, including, without limitation, the unlawful usage of data, and transmitting information or data that is unlawful or infringes any copyright, patent, trademark, trade secret, or other intellectual property rights of others;

3.6.4. Conduct Penetration tests without prior consultation and approval;

3.6.5. Endanger, interfere, compromise, or circumvent the privacy, use and/or security of the Service, including without limitation submit data or content that may contain viruses or other harmful components; or

3.6.6. Breach any duty toward, or rights of, any person including, without limitation, rights of publicity or privacy, or take actions that can otherwise result in consumer fraud, product liability, tort, breach of contract, injury, or damage or harm of any kind to any person.

3.7. Penzilla Services may contain links to web services provided by partners of Penzilla and/or third-party providers on external websites that are accessible through Penzilla Services and are subject to the terms and conditions of use of such third-party providers. Penzilla only provides technical access to the content of such linked websites, the content of which is the sole responsibility of such third parties.

4. Fees

4.1. The fee to be paid by the Customer for the Services is determined by the Agreement and the price list valid at the time of the order, which is available in the Service or can be obtained from Penzilla at any time upon request. The onboarding fees and package fees for a period of twelve months are due in advance upon conclusion of the Agreement and invoiced in advance. A refund of the package fees and onboarding fees in case of termination of the Agreement is excluded, except as otherwise explicitly stated herein. Any additional fees, if applicable, will be charged per use (e.g. Pay per Use/Click, character count, projects) and invoiced monthly in arrears. In the event the individual parts of a package are not consumed within twelve months from the purchase of such package, they are forfeit.

4.2. Payments are due 14 days after the date of the invoice. Penzilla may charge the Customer an additional 1% per month (or such lower amount as required by applicable law) for all fees that are not paid on time. If the Customer is in default of payment, Penzilla may, after expiry of a reasonable notice period suspend provision of the Services. Except as explicitly stated otherwise, all fees paid

by Customer are non-refundable and no right of set off exists.

4.3. Services provided outside the agreed scope of customer support or contractual obligations shall be remunerated separately by the Customer. The applicable fees of Penzilla shall apply.

4.4. The parties agree that the fees shown in the price list shall increase every twelve months by the increase rate of the index of the average gross monthly earnings of full-time employees in Germany for the economic activity "Provision of information technology services" (published by the German Federal Statistical Office).

4.5. In addition, Penzilla may increase the compensation with prior notice, including without limitation in the event of further development, the expansion of the Services offered by Penzilla, or increased supply chain prices. The increase shall be effective 1 month after the date of the notification. If a recurring fee (e.g. monthly, quarterly, yearly) has been agreed, the recurring fee can be increased at the earliest 12 months after the initial conclusion of the Agreement. The Customer shall have the right to terminate the affected part of the Agreement within the notice period to the date the price increase comes into effect if the increase exceeds 10% of the last annual total fee.

4.6. The Customer can pay invoices using the payment methods offered by Penzilla. If a fee cannot be collected, the Customer shall bear all costs incurred by Penzilla, including without limitation bank charges in connection with the return of direct debits and comparable charges.

4.7. Invoices and payment reminders are sent by default in electronic form to an email address specified by the Customer. Should the Customer request that a paper invoice be sent by post, an administrative fee of EUR 50 will be charged. The Customer shall notify Penzilla of any necessary corrections to the invoice within the payment term; later requests for corrections will not be taken into account.

4.8. Unless expressly agreed otherwise, all amounts stated in the Agreement or the price list are exclusive of all duties or taxes. The Customer shall be responsible for all sales, use, and excise taxes, and any other similar taxes, duties, or charges of any kind imposed by federal, state or local governmental entities on amounts payable by the Customer.

5. Term and termination

5.1. The Agreement commences upon the date of last signature. The log-in data will be transmitted to the Customer or the users created for the Customer when the Cloud Service has been made available in the production environment.

5.2. The Agreement shall be concluded for the term specified in the Agreement. If no term is stated, the Agreement is concluded for a term of twelve months. The term of the Agreement shall automatically renew for a period of twelve months unless either party terminates the Agreement with a

notice period of three months to the end of the initial or any renewal term of the Agreement.

5.3. Either Party may terminate the Agreement upon 30 days prior written notice if the other party breaches a material provision of the Agreement and fails to cure such breach within the 30 days' notice period. It shall be deemed a material breach if insolvency proceedings are opened against the assets of the other party or if the other party becomes insolvent, or if there is reasonable suspicion that the Customer is committing criminal acts in connection with the use of the Cloud Service or is objectively misusing the system to unlawfully pursue actions. Instead of termination for good cause, Penzilla may suspend provision of the Services.

5.4. If the Customer terminates the Agreement due to Penzilla's unremedied material breach, the Customer is entitled to a pro rata refund of the unearned prepaid licence fees.

5.5. Termination of the Agreement does not (i) relieve the Customer of its obligation to pay all fees that have accrued or are otherwise owed by the Customer under the Agreement or (ii) limit either party from pursuing other remedies available to it, including injunctive relief.

5.6. Upon expiry or termination of the Agreement, Penzilla shall, at the request of the Customer, confirm that all data, documents and copies which have been made pursuant to the Agreement and which are not subject to any storage obligation will be deleted or destroyed.

6. Customer's Obligations

6.1. The Customer shall provide Penzilla with the documents, information and data necessary for the provision of the Services in a complete, correct, timely and free of charge manner. The Customer must follow the instructions given by Penzilla in the relevant Documentation when describing, isolating, detecting and reporting errors or bugs.

6.2. The Customer must describe error reports and questions to such an extent that Penzilla can remedy the situation as quickly as possible with reasonable effort. The Customer relies on competent employees for the above.

6.3. The Customer uses an up-to-date version of a virus protection program on its own hardware.

6.4. The Customer shall prevent unauthorised access by third parties to the Services and the associated software and shall also oblige its employees and agents to comply with this obligation.

6.5. The Customer is solely responsible for the accuracy, completeness and timeliness of information provided. The Customer warrants, represents and guarantees that any provided information is not unlawful and that it complies with applicable laws, stock exchange regulations and market practices.

6.6. If Penzilla's performance of its obligations under the Agreement is prevented or delayed by any act or omission of the Customer or its agents,

subcontractors, consultants, or employees, Penzilla shall not be deemed in breach of its obligations under the Agreement or otherwise liable for any costs, charges, or losses sustained or incurred by the Customer, in each case, to the extent arising directly or indirectly from such prevention or delay.

6.7. The Customer shall indemnify, defend, and not hold liable Penzilla and its employees, officers, directors, providers, and other agents, from and against any and all losses, damages, demands, claims, actions, liabilities, fines, penalties, expenses, and related expenses (including reasonable legal fees) asserted against or incurred by Penzilla that arise out of, or result from: (i) any data uploaded to the Service; and (ii) the Customer's breach of this Agreement.

7. Availability

7.1. Penzilla will make the Cloud Services available and provide technical support, as specified between the Parties..

7.2. Penzilla advises the Customer that restrictions or impairments of the Service may arise which are beyond the control of Penzilla, including without limitation actions of third parties who do not act on behalf of Penzilla, force majeure, fires, strikes, accidents, or acts of God and technical conditions beyond the control of Penzilla, e.g. the Internet. The hardware, software and technical infrastructure used by the Customer can also influence Penzilla's Services. Any delay or default affecting the availability, functionality or timely performance of the Services caused by such circumstances will not constitute a breach of the Agreement. The Customer bears sole responsibility for the functionality of its internet access, including the transmission paths and its own hardware.

8. Warranty

8.1. Penzilla warrants to the Customer that the Cloud Services will perform materially in accordance with the applicable Documentation.

8.2. Penzilla warrants to the Customer that it shall perform the Services using personnel of required skill, experience, and qualifications, and in a professional manner in accordance with generally recognized industry standards for similar services and shall devote adequate resources to meet its obligations under the Agreement.

8.3. Penzilla shall not be liable for a breach of the warranty set forth above, unless the Customer used the Cloud Service in accordance with the Agreement and Documentation and gives written notice of the defective Services, reasonably described in detail, to Penzilla within ten (10) days of the time when the Customer discovers, or ought to have discovered, that the Services were defective.

8.4. Subject to the preceding paragraph, Penzilla shall, at its sole discretion, repair or re-perform such Services (or correct the defective part). If at the sole discretion of Penzilla the error cannot be corrected with reasonable commercial efforts, then Penzilla may terminate the affected Service and credit or

refund the price of such defective Services that the Customer prepaid on a pro rata basis for the period following the effective date of termination. These remedies shall be the Customer's sole and exclusive remedy and Penzilla's entire liability for any breach of the limited warranty set forth in this section 8.

8.5. Except for the warranty set forth in this section 8 above, and to the maximum extent permitted by law, Penzilla makes no warranty whatsoever with respect to the services, including but not limited to: any (a) warranty that any services are error-free, accurate, complete or reliable or will operate without interruption or that all errors will be corrected or will comply with any law, rule or regulation; or (b) warranty of merchantability, fitness for a particular purpose; title; whether express or implied by law, course of dealing, course of performance, usage of trade or otherwise. Penzilla cannot and does not guarantee the privacy, security or authenticity of any information so transmitted over or stored in any system connected to the internet.

9. Indemnity

9.1. Penzilla shall, at its own expense, defend or at its option, settle, any claim or action brought against Customer to the extent it is based on a claim that the Service as used in accordance with the Agreement, infringes any patent, copyright, or any trade secret of a third party. Furthermore, Penzilla will indemnify and hold Customer harmless from and against damages, costs, and fees reasonably incurred (including reasonable attorneys' fees) that are attributable exclusively to such claim or action and which are assessed against Customer in a final judgement. Penzilla's obligations to defend, settle, or indemnify Customer are subject to (i) Customer promptly notifying Penzilla in writing of such claim; (ii) Penzilla having the exclusive right to control such defence and/or settlement; and (iii) Customer providing reasonable assistance (at Penzilla's expense) in the defence thereof. Customer shall not settle any claim, action or proceeding without Penzilla's prior written approval.

9.2. Of Penzilla defends or settles an infringement claim arising under section 9.1 above, Penzilla's liability and Customer's sole and exclusive remedy (in addition to the "indemnity") shall be for Penzilla at its own expense, to either (a) repair, replace or modify the affected Service or (b) alternatively, procure for Customer the right to continue to use the affected Service. If the foregoing remedies are not commercially feasible (in the reasonable opinion of Penzilla), Penzilla may cancel the applicable order for the affected Service and refund any unearned licence fees paid to Penzilla by Customer for the affected Service.

10. Limitation of Liability

10.1. Except for (i) damages for bodily injury, death, damage to real or tangible personal property; (ii) intentional misconduct or gross negligence; or (iii) any other liability that may not be limited under

applicable law (the ""Excluded Matters"), in no event shall Penzilla be liable to the customer, or to any third party, for any loss of use, revenue, or profit or loss of data or diminution in value, failure to realise expected savings, damage to reputation, business interruption, downtime costs or for any consequential, incidental, indirect, exemplary, special, or punitive damages, whether arising out of breach of contract, tort (including negligence), or otherwise, regardless of whether such damages were foreseeable or whether or not Penzilla has been advised of the possibility of such damages, and notwithstanding the failure of any agreed or other remedy of its essential purpose.

10.2. Except for the excluded matters, in no event shall Penzilla's aggregate liability arising out of, or related to, this agreement, whether arising out of, or related to, breach of contract, tort (including negligence), or otherwise, exceed the aggregate amounts paid or payable to Penzilla pursuant to the applicable agreement giving rise to the liability for the preceding twelve months period.

11. Confidentiality

11.1. The parties undertake to treat all Confidential Information of the other party obtained before and during the performance of the Agreement confidentially for an unlimited period. The parties agree to protect the Confidential Information of the other party with the same standards as they protect their own comparable Confidential Information, but at least with reasonable care. "Confidential Information" means any information which Penzilla or the Customer protects against unrestricted disclosure to third parties or which is considered confidential under the circumstances of such disclosure or its contents. In any event, without limitation, the following information shall be considered confidential information of Penzilla: all software, programmes, tools, prices, data or other materials which Penzilla makes available to the Customer prior to or based on the Agreement. Penzilla may use data collected during the term in an aggregated, anonymised form, provided that such data is aggregated from more than one customer and does not identify the Customer, the Customer's employees or the Customer's customers.

11.2. Confidential Information may only be disclosed to third parties if it is necessary to exercise the rights of the receiving party or to fulfil the Agreement and only if such third parties are subject to comparable confidentiality obligations. Reproductions of Confidential Information of the other party must – as far as technically possible – contain all references and notes contained in the original concerning the confidential character.

11.3. The foregoing Sections 11.1 and 11.2 do not apply to Confidential Information which

11.3.1. has been independently developed by the recipient without the disclosing Party's Confidential Information,

11.3.2. has become generally accessible to the public without breach of contract by the recipient or has been lawfully obtained without confidentiality obligation from a third party entitled to provide such Confidential Information,

11.3.3. were known without restriction to the recipient at the time of disclosure,

11.3.4. are exempted from the above provisions after written consent of the disclosing party, or

11.3.5. is requested by a competent court of law, or competent public authority or mandatory regulation.

11.4. Each party shall be entitled to injunctive relief for any violation of this Section 11 by the other.

11.5. Penzilla is authorised to use the Customer as a reference customer. Customer agrees to submit a review of the Service on https://www.g2.com/ (or a comparable platform) no later than 6 months after execution of the Agreement (it is possible to submit a review anonymously).

12. Data privacy

12.1. Penzilla offers a wide range of Services to its Customers, some of which are individually tailored to their needs.

12.2. In the event of processing of personal data on behalf of the Customer by Penzilla, the parties shall comply with all data protection laws and regulations, including without limitation for Customer to be authorised to pass on personal data to Penzilla for the purposes stipulated in the Agreement. If the European Union's General Data Protection Regulation (EU/2016/679) (GDPR) applies to personal data that Penzilla processes on behalf of Customer as a data processor in the Cloud Services, then Penzilla's Data Processing Agreement describes how Penzilla processes such personal data. The Customer agrees to inform affected individuals.

12.3. The Customer collects, updates, processes and uses all relevant personal data in accordance with the applicable laws and regulations, especially without limitation data protection law.

12.4. Insofar as Penzilla receives personal data from employees or agents of the Customer during the contractual relationship, such data shall be collected, processed and used by Penzilla as described in the Data Protection Notice.

13. Intellectual Property Rights

13.1. The Customer may only use the Services to the extent contractually allowed. The Customer is only granted the rights expressly granted herein. No other rights are granted and shall remain with and be owned by Penzilla, its affiliated companies or its licensors, even to the extent that such rights have arisen as a result of the specifications of or cooperation with the Customer.

13.2. Unless otherwise agreed, the Customer is entitled to

all rights to and in relation to the Customer's data.

13.3. Should the Customer provide copyrighted or trademarked material and works of the Customer to Penzilla for the performance of the Agreement, the Customer grants Penzilla a royalty free, non-exclusive right to use such copyrighted or trademarked material and works for the term of the Agreement.

14. Amendment of the Terms

14.1. Unless otherwise specifically provided, Penzilla shall be entitled to amend or supplement these Terms by notifying the Customer of any changes or amendments in writing at least six weeks before they take effect.

14.2. If the Customer does not agree with the changes or amendments to the Terms, the Customer may object to the changes until four weeks before the date on which the changes or amendments are intended to take effect. The objection must be made in writing. If the Customer does not object, the amendments or supplements to the Terms shall be deemed approved.

15. General provisions

15.1. Penzilla may use subcontractors. Penzilla remains responsible for fulfilling the obligations assumed by Penzilla even if subcontractors are appointed.

15.2. Penzilla is entitled to transfer rights and obligations in whole or in part to third parties due to changes in group structure. The Customer may not assign or transfer the Agreement, contractual rights or obligations to third parties without prior written consent of Penzilla. Any purported assignment or delegation in violation of this Section 15.2 is null and void. No assignment or delegation relieves the Customer of any of its obligations under the Agreement.

15.3. System notifications and information from Penzilla relating to the Agreement, Services, operation, hosting or support of the Service may also be made available within the Service. Such notification may also be transmitted in electronic or written form to the contact specified in the Agreement and/or other contact persons.

15.4. Neither party shall be deemed to have waived any provision hereof unless such waiver is in writing and executed by a duly authorised officer of both parties. Except as otherwise set forth in the Agreement, no failure to exercise or delay in exercising any rights arising from the Agreement shall operate or be construed as a waiver thereof.

15.5. If any term or provision of the Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not

Penzilla GmbH | Zeppelinstraße 67 | 81669 München
Managing Director: Catherine Leser, Christoph Leser
Handelsgericht Amtsgericht München – HRB: 268749 | USt-IdNr: DE346843032
Olinda Deutschland | IBAN: DE38 1001 0123 3192 5004 29 | BIC: QNTODEB2XXX

Penzilla **General Terms and Conditions**, 2023 | Seite 1/7

affect any other term or provision of the Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

15.6. Unless explicitly agreed otherwise in writing, (i) all notices, requests, consents, claims, demands, waivers, and similar notifications (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth in the Agreement, or to such other address that may be designated by the receiving party in writing; (ii) all Notices shall be delivered by personal delivery, nationally recognised overnight courier (with all fees prepaid), or certified or registered mail (in each case with return receipt requested and postage prepaid). Except as otherwise provided in the Agreement, a Notice is effective only (a) upon receipt of such Notice by the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section. E-mail shall be deemed a valid communication form except for Notices.

15.7. Survival. Provisions of the Agreement, which by their nature should apply beyond their terms, will remain in force after any termination or expiration of the Agreement including, but not limited to, the following provisions: Fees, Termination, Confidentiality, Intellectual Property Rights, Limitation of Liability and Survival.

15.8. Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in the Agreement shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for, or bind, the other party in any manner whatsoever.

15.9. No Third-Party Beneficiaries. The Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns, and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of the Agreement.

15.10. Export. Customer shall not export or re-export or provide access to the Services in any form in violation of any applicable export or import laws of any jurisdiction, including without limitation the USA, EU and Germany.

15.11. This Agreement may be executed in two or more counterparts and by facsimile or any electronic means, each of which shall be deemed an original but all of which together shall constitute one and the same Agreement.

15.12. The Agreement is governed by the laws of the country in which the Penzilla entity concluding the Agreement is registered and shall be subject to the exclusive jurisdiction of the courts of the city of residence of Penzilla.