

# General Terms and Conditions of Leadtime Labs GmbH

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## A. General

Leadtime Labs offers a web-based ERP (Enterprise Resource Planning) system to support order processing in digital service agencies under the name "Leadtime" for third parties.

Leadtime is offered in a variety of feature packages. The full expansion level of Leadtime includes the following functional areas:

- Dashboard: an overview view of the employee's various tasks.
- Agile Planning: Various tools for managing project teams
- Analytics: Various dynamic reports on the company's performance
- Projects: A ticket-based project management tool
- Timetable: A team calendar
- Billing: Functionalities for the billing of services
- Organizations: A management interface for the company's business partners
- Contacts: An address book containing all the company's contacts
- My Organization: A management interface for the company and its employees

All contracts for deliveries and services of Leadtime Labs GmbH ("Leadtime Labs") in connection with the product "Leadtime" (<https://www.leadtime.de>) are based on these General Terms and Conditions ("GTC"), no matter in which form they are concluded.

We only accept counter-confirmations by the licensee with reference to his GTC to the extent that they do not contradict our GTC.

Supplementary or deviating agreements require the express written consent of Leadtime Labs GmbH.

## B. Definitions

**(Licensed) Software:** The web-based software offered under the brand "Leadtime" (<https://www.leadtime.de>) by Leadtime Labs GmbH.

**Server Hardware:** Hardware on which the Licensed Software is operated.

**System Software:** The server software necessary to operate the Licensed Software other than the Licensed Software itself.

**Module:** Each individual view of the Licensed Software is a module.

**Package:** The software Leadtime is provided in different extensive (function) packages.

**Workspace:** The software Leadtime is provided to the licensee in an individual "Workspace". A "Workspace" contains the configuration profile and the data maintained in the system by the licensee.

## C. Subject matter of services

Subject of the contractually agreed services of Leadtime Labs are the following services:

- Provision of the Leadtime software
- Provision of consulting or training services
- Ongoing updating of the software
- Individual development services
- Hosting of the software

## D. Scope of Services

### D1 Provision of the Leadtime Software

Leadtime Labs provides the Leadtime Software to the customer for use via browser over the internet ("Software Provision"). The Software is operated on computers of a cloud hosting service provider used by Leadtime Labs. For the term of this Agreement, Customer is granted the non-exclusive, non-sublicensable and non-transferable right to access the Software via a browser and an Internet connection and to use it for its own business purposes and for the business purposes of companies affiliated with Customer pursuant to Sections 15 et seq. of the German Stock Corporation Act. Customer does not receive any rights of use to the source code or object code of the Leadtime Software.

## **D2 Provision of consulting or training services**

Leadtime Labs will provide users with documentation of the system free of charge. This documentation may be provided in writing or in a video format. If the customer requires additional consulting or training services, these can be ordered for a fee via the customer portal at an agreed hourly rate.

## **D3 Ongoing Update of the Software**

Leadtime Labs will provide the Licensee with updates (changes and bug fixes) and upgrades (new functionality) for the core functionality of the Licensed Software free of charge during the term of the Agreement.

## **D4 Custom Development Services.**

Individual development services refer to system enhancements that are ordered by an individual customer and are not included in the program core. This includes, for example, the creation of an individual plug-in or the integration of Leadtime with a third-party system via an interface.

The customer has the option to order such services via the customer portal. Once the order is placed, the customer will receive a corresponding cost estimate, which will include the estimated cost of the custom development services.

## **D5 Hosting of the software**

Leadtime is hosted in the cloud environment of Leadtime Labs. There is no on-premise installation of Leadtime. Hosting is provided on European servers of the cloud service provider DigitalOcean, LLC, located at 101 Avenue of the Americas, New York, NY 10013.

In addition to the actual hosting, Leadtime Labs or a third party contracted by Leadtime Labs will provide the following services:

- Maintenance and repair of the server hardware.
- Paying for the operating costs of the server hardware.
- Installation of updates and upgrades to the licensed software.
- Installation of updates and upgrades of the system software.
- Making backup copies of the data files.
- Provision of storage space.

## **E. Conclusion of contract and delivery**

The contract between the licensee and Leadtime Labs is concluded by written order or order in the online portal of the licensed software by the licensee and comes into force at the latest with the delivery of the service. Delivery is subject to availability, especially if it depends on third parties and they cause the unavailability.

## **F. Term of Contract and Termination**

The contract for the provision of the software pursuant to D1 is concluded for an indefinite period. Termination is possible at any time at the end of the billing month and can be made via the customer portal. Upon termination, the Customer's Workspace will be deleted at the end of the billing month. Leadtime Labs may allow the customer a period of two weeks to back up or resume the contract.

Termination will result in the termination of all modules booked by the Licensee with Leadtime Labs. There is an option to upgrade to a more comprehensive feature package at any time. A downgrade to a smaller package will occur at the end of the billing month.

Upon termination of the contract, all outstanding payment obligations of the licensee towards Leadtime Labs become due immediately. Upon termination of the contract, all license rights of the licensee expire and the licensee must stop using the software.

### **F1 Trial Period**

Leadtime Labs provides a free trial version of the Leadtime Software. In order to use the trial version, Licensee must register on the website <https://leadtime.de>. By registering, a free usage contract for the trial version comes into effect.

For the use of the Trial Version, Leadtime Labs grants Licensee a non-exclusive (single) right of use, limited in time to 10 days, non-transferable and non-sublicensable. If Licensee decides to use the Paid Version, Licensee may place an order for such use in accordance with Section E below.

The usage agreement for the trial version will automatically terminate after 10 days without the need for a separate notice of termination.

### **F2 Satisfaction Guarantee**

Leadtime Labs provides Licensee with a "Satisfaction Guarantee" within the first two months. If the Licensee is not satisfied with the Software, he has the right to terminate his contract within these first two months by claiming the guarantee. In this case, all fees paid up to this point will be refunded to him.

After the first two months, the satisfaction guarantee expires and no refund of fees is possible.

## **G. Prices and invoicing**

The amount of fees to be paid by the licensee to Leadtime Labs results from the regulations of the public price overview <https://leadtime.de/pricing> as well as possible agreements in a separate offer. They are due immediately after receipt of the service, for the licensed software during the term according to the booked billing cycle in advance without deduction.

If the licensee is at least 30 days in arrears with a payment, Leadtime Labs is entitled to refuse the service. This happens e.g. by discontinuation of access to the licensed software.

Invoices will be sent in writing by mail or electronically by email. If the licensee authorizes Leadtime Labs to debit the invoice, the licensee must ensure that the account is sufficiently covered. If participation in the direct debit procedure is not possible due to circumstances for which the licensee is responsible, or if a return debit note is issued for which the licensee is responsible, the licensee is obligated to reimburse Leadtime Labs for any bank charges incurred.

Unless otherwise stated, prices are in Euro plus the statutory value added tax.

Offers are subject to change and non-binding. If additional taxes (such as withholding tax) are due in the country of destination for the service, these are to be borne by the licensee. Leadtime Labs is entitled to reasonably increase the fees for the use of the software. The increase is considered reasonable if it does not exceed 5% p.a. since the beginning of Licensee's use.

## **H. Self-promotion**

Unless otherwise agreed between the parties, Leadtime Labs has the right to list the Licensee in its portfolio for self-promotional purposes using its company name and logo.

## **I. Warranty, Maintenance, Liability**

### **I1 Liability for material defects**

If the Software has defects, such as errors in content, graphical errors, manufacturing defects or a failure to fulfill the agreed purpose of use, the Licensee is obligated to report these defects in detail to Leadtime Labs immediately upon discovery. In particular, the notification should include information about the symptoms and effects of the defect, the number of workstations affected, and the system and hardware environment, including any third-party software. The description should help to ensure that the defect can be reproduced.

If a defect exists, Leadtime Labs has the option to either repair the software or provide defect-free software within a reasonable period of time. If the repair or replacement is unsuccessful either within this period or within a reasonable grace period, Licensee has the right, at its sole discretion, to either reasonably reduce the price for the service or terminate the agreement. Licensee is obligated to assist Leadtime Labs in identifying the defect and correcting the defect by providing

relevant information. Leadtime Labs has the right to bypass or not correct a defect that occurs, if the elimination of the defect involves a disproportionate effort and does not significantly affect the use of the Software.

Leadtime Labs warrants that the Software will be usable for the agreed or expected purpose of use in accordance with the official product description current at the time of the order throughout the period of use, to the extent that this is within Leadtime Labs' capabilities. If defects or limitations occur during the period of use in the course of regular revision and improvement of the Software by Leadtime Labs, Licensee is obliged to report them immediately via the ticket form, by phone or by e-mail to support@leadtime.de. Depending on the severity of the impairment, Leadtime Labs will have a reasonable period of time to remedy the problem. If the issue is merely an inconvenience with no impact on functionality or processes, Leadtime Labs will provide an improvement as part of its normal update process.

Leadtime Labs' liability for material defects does not extend to defects resulting from Licensee or third parties having made modifications to the Software without being authorized to do so, either by operation of law, contractual agreement or Leadtime Labs' prior written consent.

## **I2 General Liability**

Leadtime Labs is only liable for damages and consequential damages caused by it, a legal representative or a vicarious agent intentionally or by gross negligence. However, Leadtime Labs is also liable in case of slight negligence for damages caused by injuries to life, body or health, as well as for damages caused by a breach of essential contractual obligations by Leadtime Labs. Material contractual obligations are obligations the fulfillment of which is a prerequisite for the proper performance of the contract or on the fulfillment of which the licensee regularly relies or may rely.

In the event of a negligent breach of a material contractual obligation, Leadtime Labs' liability will be limited to the amount paid by Licensee to Leadtime Labs as remuneration for one month. This limitation of liability does not apply to Leadtime Labs' liability for injury to life, body or health or to liability under the Product Liability Act.

The liability of Leadtime Labs according to §536a Abs. 1 Alt.1 BGB (German Civil Code) for defects already existing at the time of the conclusion of the contract is excluded regardless of fault. Leadtime Labs is not liable beyond the above mentioned provisions. This limitation of liability also applies to the personal liability of Leadtime Labs' employees, agents and officers. It is the responsibility of the licensee to make appropriate backups prior to using the software and on a regular basis, especially before making changes to the hardware or software environment.

### **I3 Infringement of intellectual property rights**

If a third party asserts a claim against Licensee for infringement of proprietary rights by the Software licensed from Leadtime Labs, resulting in impairment or prohibition of use of the licensed Software, Leadtime Labs shall be liable as follows:

Leadtime Labs shall have the option, at its sole discretion and expense, to either modify or replace the Licensed Software so that it does not infringe any Proprietary Rights and substantially conforms to the agreed-upon functions and features in a manner reasonably acceptable to Licensee.

Leadtime Labs will indemnify Licensee against any royalties due to Licensee for use of the Licensed Software from the owner of the Proprietary Rights or any third party. However, if Leadtime Labs is unable to do so on reasonable terms, it will notify Licensee and prohibit Licensee's use as of a specified date. In such event, Licensee shall, at Leadtime Labs' option, either delete or return to Leadtime Labs the Licensed Software, including the Documentation and all copies. Thereupon, Leadtime Labs will refund to Licensee the consideration already paid, less a reasonable amount to reflect the period of use.

For Leadtime Labs to be liable in this regard, the following requirements must be met: Licensee must promptly notify Leadtime Labs of any third party claim, not acknowledge the alleged infringement of any Proprietary Rights, and either leave any legal action, including any out-of-court settlement, to Leadtime Labs or pursue it only in consultation with Leadtime Labs. The reasonable and necessary court costs and attorneys' fees incurred by Licensee in defending against such claims will be paid by Leadtime Labs.

In the event Licensee discontinues use of the Licensed Software for mitigation or other good cause, Licensee shall advise the third party that such discontinuance does not constitute an acknowledgment of the alleged infringement of any Proprietary Rights. As far as the licensee himself is responsible for the infringement of intellectual property rights, claims against Leadtime Labs are excluded.

### **J. Rights of Use of the Software**

Leadtime Labs grants the licensee a non-exclusive (simple), non-transferable and non-sublicensable right to use the Software for the duration of the contract.

In all other respects, the provisions of the Copyright Act shall apply in addition with regard to the rights of use. The Software may only be used for the duration of a valid license.

Without written permission from Leadtime Labs, the licensee is not entitled to use the software beyond the extent described herein, to make copies of the documentation, the original software or the backup copy; to rent or otherwise commercially exploit the software or documentation, if this is not expressly permitted, to sublicense it or to make it available to third parties in a manner

not expressly permitted or to pass it on to third parties; to change, modify or adapt the software or documentation.

It is prohibited to translate, modify or reuse the product in parts. After expiration of the granted period of use, the software may no longer be operated or used. The provisions of copyright law shall also apply additionally in this case.

## **K. Copyright and Reproduction Rights**

Licensee warrants that it has the appropriate rights or permissions to use all materials and information that it submits to Leadtime Labs for editing and processing. Licensee shall indemnify Leadtime Labs against all claims of third parties, including the costs of legal defense, asserted by such third parties against Leadtime Labs for infringement of third party rights in this context.

Copyright and/or other industrial property right notices on the Documents may not be removed or obscured by the Parties, and processed material may not be disclosed to third parties.

## **L. Confidentiality**

The Parties undertake to maintain secrecy with regard to confidential information. Confidential information" shall mean all information within the meaning of Section 2 No. 1 of the German Business Secrets Act (GeschGehG) as well as all other information and documents of the respective other party which are marked as confidential or which are to be regarded as confidential under the circumstances. This includes in particular information about the software, operational processes and other know-how.

This confidentiality obligation shall not apply to confidential information which: (a) was already known to the Recipient at the time of the conclusion of the Agreement or becomes known later by a third party without breach of confidentiality agreements, statutory provisions or official orders; (b) is publicly known at the time of the conclusion of the Agreement or is made publicly known thereafter, provided this is not based on a breach of this Agreement; or (c) must be disclosed due to statutory obligations or orders of a court or authority. To the extent legally permissible or possible, the party required to disclose will provide the other party with advance notice and an opportunity to oppose such disclosure.

The parties will take appropriate technical and organizational measures to protect confidential information and personal data, taking into account the state of the art and - where personal data is involved - in accordance with Article 32 of the General Data Protection Regulation (GDPR). They will also implement a process to regularly review, assess and evaluate the effectiveness of these measures to ensure the security of the processing.

Only employees and other persons who are subject to a professional duty of confidentiality or who have previously been subject to corresponding confidentiality obligations under this contract



will be granted access to confidential information. This confidentiality obligation shall apply, to the extent permitted by labor law, even after termination of their employment. Obligated employees and other persons may be disclosed only that confidential information which they need to perform their services.

The obligation of confidentiality shall continue indefinitely and regardless of the termination of the contractual relationship.

## **M. Use of data and data protection**

The parties undertake to comply with the applicable statutory provisions on the handling of personal data, in particular the EU Data Protection Regulation (DSGVO) and the German Federal Data Protection Act (BDSG). A contract for commissioned processing will be concluded between the parties. For further details on the processing of personal data by Leadtime Labs, please refer to the privacy policy of Leadtime Labs. The privacy policy can be found at the following link: <https://leadtime.de/legal>

## **N. Miscellaneous and Final Provisions**

Leadtime Labs reserves the right to change these terms and conditions or its offer at any time in a reasonable manner if market conditions change or there are changes in legislation or supreme court rulings. The licensee will be informed about this three months in advance. In this case the licensee has a special right of termination. Leadtime Labs is entitled to commission third parties with the provision of parts or the entire range of its services. This includes in particular hardware services such as the provision of servers, their maintenance and data center services. In addition, certain services in the context of consulting, training, support and the like may be provided by partners or freelancers of Leadtime Labs, who are also bound to confidentiality and compliance with the provisions of these Terms and Conditions.

If any provision of these terms and conditions or any integrated part or offer is or becomes invalid or incomplete, the remaining provisions of the agreement will remain valid. The invalid provision shall be replaced by a provision that comes as close as possible in economic terms to the meaning and purpose of the invalid provision in a legally effective manner. The same applies to any loopholes in these terms and agreements.

The law of the Federal Republic of Germany shall apply, to the exclusion of the UN Convention on Contracts for the International Sale of Goods. The exclusive place of jurisdiction for all disputes in connection with this contract, including the validity of the contract, is the registered office of Leadtime Labs. However, Leadtime Labs reserves the right to take legal action against the licensee also at the licensee's place of business.