



ausschließlich

General Terms and Conditions for trayzr

Date: 28 April 2017

1. Content and conclusion of the agreement

1.1. Parties and subject

These General Terms and Conditions govern the legal relationship between tectuality GmbH, Liebknechtstr. 33, 70565 Stuttgart/Germany (hereinafter „trayzr“) and its customers („**Customer**“) in relation to the provision, for a limited period of time, of paid and unpaid versions of the Analytics Software "trayzr" for use via the Internet (Software as a Service). trayzr does not provide its services for consumers but exclusively for the purposes of the Customer's commercial or self-employed professional activity.

1.2. No derogating provisions

The application of derogating provisions or provisions which go beyond these provisions is excluded. This applies, in particular, to general terms and conditions of the Customer, even if trayzr accepts an order from the Customer in which the Customer refers to its general terms and conditions and/or to which the general terms and conditions of the Customer are attached and trayzr fails to object to them.

1.3. Conclusion of the agreement

In order to use trayzr, it is necessary to first order an unpaid test phase which ends automatically after 30 days. The agreement on the use in the framework of the unpaid test phase is concluded by filling in the corresponding form and clicking the button "Test now free of charge" and the sending of an e-mail with an activation link. An agreement for the provision of a paid version of trayzr is concluded when the Customer orders a paid package from the customer menu after ordering the test phase and receives a corresponding order confirmation by e-mail from trayzr. Once all of the order data have been entered, an overview page appears with the data entered which can be verified and amended again before the order is submitted.

1.4. Retrieving the contractual text

The contractual text of these General Terms and Conditions is available in German and in English and can be downloaded from <https://trayzr.com/en/terms/download>.

1.5. Obligations in e-commerce

Section 312i(1) nos. 1, 2 and 3 as well as section 312i(1) second sentence of the German Civil Code (Bürgerliches Gesetzbuch – BGB), which provide for certain obligations for the entrepreneur for e-commerce agreements, are hereby contracted out of.

2. Services of trayzr

2.1. Possibility of use



trayzr shall provide the Customer with the software product described in the Description of the service "trayzr" called "trayzr" ("**Software**") for use via the Internet ("**Service**"). The Software makes it possible to visualise and analyse data. The functions to be provided result from the package ordered. The Software is operated on computers of a data centre used by trayzr. For the term of the agreement, the Customer receives a non-exclusive and non-transferable right to access the Software via a browser and an Internet connection and to use it for its own business purposes exclusively in connection with its commercial or self-employed professional activity. This includes the right to temporarily store a program code (e.g. JavaScript) required for this purpose on the user's PC (e.g. in the random access memory or browser cache) and to run it there. The right of use is limited to the maximum number of named users booked by the Customer (see subsection 2.2). Transferring the use or providing the Service to third parties is prohibited.

2.2. User subscription

When the test phase or a paid package is ordered, this is for one user. Additional users can be booked in the form of a user subscription from the customer menu with a subscription term of one month or twelve months. The user subscriptions are automatically renewed by the selected subscription term (one or twelve months) if they have not been terminated three days, at the latest, before expiry of the subscription term via the customer menu. It is not possible to reduce the number of user subscriptions during the subscription term, only at the end. At the end of the contractual term (see subsection 9.2), all user subscriptions end automatically. Remaining terms lapse without a right of compensation. User accounts may only be used for one named natural person. Use of the access data for one user account by more than one person (passing on access data, jointly-used accounts) is prohibited. A user account may only be allocated to another person if the former user no longer uses the Software.

2.3. Third-party software/open source software and external web services

The program code run locally in the Customer's browser can include third-party software ("**Third-Party Components**") and access web services of third parties (e.g. Google Maps) ("**External Web Services**"). For the Third-Party Components and External Web Services, terms of use and licence conditions may be applicable to which foreign law may apply. In such cases, the Customer receives the rights of use directly from the respective third-party provider. External Web Services can be discontinued or provided subject to modified conditions which may make it necessary to make changes to the Service at a later date. Third-Party Components and External Web Services are governed, deviating from these General Terms and Conditions, primarily by the terms of use and licence conditions of the respective third-party provider. It is possible to download a list of the Third-Party Components used which are run locally in the Customer's browser as well as a list of the External Web Services from <https://trayzr.com/en/libraries>.

2.4. Availability

trayzr shall provide the Customer with the Service in accordance with the Description of Service Availability. The Customer is responsible for the Internet connection between the Customer and the data centre and the hardware and software (e.g. PC, network connection, browser) required for this. trayzr provides its Service at the point where the data centre used by trayzr is connected to the Internet.

2.5. Setting up the Service

The Customer shall set up the Service (individual settings or input/import of data) itself. No modifications of the Service, especially reprogramming in accordance with the wishes of the Customer, are owed.

2.6. Support



trayzr shall provide free e-mail support to assist with use of the Service. The support does not include: General know-how transfer, training, configuration and implementation or customer-specific documentation or modification of the Software. The support services shall be provided by trayzr on working days, Monday to Friday between 9:00 and 16:00 CET. Excluded herefrom are national statutory public holidays in Germany as well as 24. and 31.12. of each year. A first response to e-mail enquires shall be provided within 48 hours. Enquiries received outside of support hours shall be deemed to have been received the next working day.

2.7. Documentation

Unless otherwise agreed, trayzr only owes the provision of user documentation as an online manual or PDF user manual. Further-reaching documentation, training or induction services must be agreed and remunerated separately.

2.8. Subcontractors

trayzr is entitled to involve subcontractors, especially for the use of cloud and hosting services (currently Amazon Web Services, Inc.), for software development and for recording payment data and for payment processing (Stripe, Inc., San Francisco USA).

2.9. Changes to the Service

The Customer is aware that the Software is a piece of standard software which is provided as Software as a Service and that a large number of customers access a central system. The economies of scale which result from such a multi-tenancy model can only be used if the uniform software product is one which can also be developed further. The parties therefore agree as follows: trayzr can modify the Service (including the system requirements) for good cause. Good cause shall especially be where the modification is necessary as a result of (i) a necessary adjustment in line with a new legal situation or case law, (ii) changed technical framework requirements (new browser versions or technical standards) or (iii) protecting the system security. trayzr can also make reasonable modifications to the Service in the framework of further development of the Software (e.g. turning off old functions which have, to all intents and purposes, been replaced by new ones). As a rule, trayzr shall notify the Customer by e-mail of modifications which will have more than insignificant negative implications for it four weeks before the modifications are due to take effect. The Customer's consent to such a modification shall be deemed granted if the Customer does not object to such a modification in writing or by e-mail by the date when the changes take effect. When notifying the Customer of the change, trayzr shall point out this legal consequence again separately. If the change would have a significant effect on the contractual equilibrium between the parties, the change shall not be implemented.

3. Remuneration and default with payment

3.1. Fee structure

No basic or subscription fees are due for the test phase. When a paid package is booked, the Customer shall owe trayzr a monthly or annual basic fee which shall be calculated on the basis of the term chosen by the Customer for provision of the Software ("**Assessment Period**"). If the Customer orders additional user subscriptions (see subsection 2.2), additional monthly or annual subscription fees shall be payable for these.

3.2. Changing the package



It is possible to upgrade a booked paid package at any time, even during the Assessment Period. In this case, the Customer shall be reimbursed the fee for the remaining Assessment Period of the initial package paid in advance and a new Assessment Period shall commence with the higher package. It is not possible to change to a lower package.

3.3. Basic fee and subscription fee

The basic fee shall be due for payment – depending on the Assessment Period – either monthly or annually in advance. Subscription fees shall also be due for payment at the beginning of each subscription term in advance in each case.

3.4. Payment methods and direct debit

The payment methods available are Paypal, SEPA direct debit from a German bank account and credit card (Mastercard, VISA). In the case of SEPA direct debits and payment by credit card, the booking shall be made at the beginning of the Assessment Period or the subscription term in each case and thereafter three days before the automatic renewal of the Assessment Period or the subscription term. In the case of the payment method PayPal, the payment must be made by the Customer within 7 days of receipt of the e-mail with the corresponding link.

3.5. Invoicing

trayzr shall issue an invoice at the beginning of a calendar month for the amounts due in the previous calendar month. Invoicing shall take place online by way of an invoice being placed as a downloadable and printable PDF file in the customer menu and shall be sent by e-mail at the Customer's request ("**Online Invoice**"). There is no right to digitally signed invoices (section 14(3) of the German Value Added Tax Act (*Umsatzsteuergesetz* – UStG)). In the case of online invoices, an invoice shall be deemed to have been received by the Customer when it is available for download by the Customer from the customer menu and is thus available to it or when it receives the e-mail. The Customer has no right to receive an invoice by post.

3.6. Commencement of use

Booked paid packages and user subscriptions shall only be available for use from receipt of payment.

3.7. Net prices

All prices are net and the statutory value added tax at the rate currently applicable is payable on top.

3.8. Default with payment

If the Customer falls into default with payment of the remuneration or a significant part of the remuneration for two calendar months; or falls into default with payment of the remuneration in a period of more than two months which amounts to twice one monthly basic fee or the monthly subscription fee, trayzr is entitled, after sending a corresponding warning by e-mail, to block access to the Service or to deactivate the corresponding user accounts or to terminate the contract with immediate effect. During the blocked period, the Customer shall have no access to the data stored in the Service.

4. Duties and obligations of the Customer

4.1. Back-up copies



The Customer is responsible for retaining copies of the data it has input and for regularly backing up the data. The Service is not provided for the purpose of data security, back-up or other storage of data. If the Customer breaches this duty incumbent on it to properly back up data, trayzr's liability for loss of data shall be limited in terms of amount to the type of damage which would have occurred even if the Customer had properly and regularly backed up the data.

4.2. Lawful use

The Customer shall only use the Service in the framework of the contractual and applicable statutory provisions and not infringe the rights of third parties when using the Service. It shall especially comply with the data protection provisions, provisions on competition law and copyright law and not input any defective or unlawful data or misuse the Service in any other way.

4.3. System requirements and cooperation duty

Hardware and software requirements at the Customer are set out in the system requirements accessible at [Link]. The Customer shall familiarise itself with these before making the order and thereafter ensure, at regular intervals, that it meets the requirements and that it continues to meet the requirements during the contractual term. When connecting databases of the Customer, the Customer is responsible for ensuring the availability and the correct configuration of the interface on the Customer side.

4.4. Unauthorised use

The Customer is prohibited from using the Service to develop competing product itself or via third parties and from creating and publishing comparisons with competing products.

5. Customer data and data protection

5.1. Customer data

The Customer alone is entitled to the data input, uploaded or otherwise provided via an interface by the Customer in the framework of use of the Service ("**Input Data**") and the data generated by using the Service and which are attributable to the Customer (e.g. visualisations and reports generated) (collectively "**Customer Data**"). trayzr shall treat the Customer Data confidentially.

5.2. Sensitive data

If the Customer Data is subject to professional confidentiality (e.g. patient information), the Customer shall obtain the consent of the data subjects in advance. The Customer may only upload Customer Data which fall under Article 8(1) of the Data Protection Directive (data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership as well as data concerning health or sex life), or, from 25 May 2018 onwards, data which fall under Article 9 or 10 of the General Data Protection Regulation, or process it using trayzr with trayzr's prior written consent.

5.3. Use of Customer Data.

The Customer hereby grants trayzr the non-exclusive, worldwide right, limited to the term of this contract, free of charge, to use the Customer Data for the purpose of providing the Service, especially for storing the Customer Data in a data centre



operated by trayzr. trayzr also remains entitled to use the Customer Data in aggregated or statistical form for the purpose of analysing errors and further developing the Software functions (e.g. for the purpose of analysing the functions most frequently used).

5.4. Personal data

Where the Customer Data includes personal data, the following applies: In terms of the relationship between trayzr and the Customer, the Customer alone is responsible for complying with the data protection provisions. trayzr offers the Customers a Contact Data Processing Agreement pursuant to section 11 of the German Data Protection Act (Bundesdatenschutzgesetz – BDSG). The Customer can download a template for this in the customer menu, sign it and return it to trayzr for countersignature.

6. Claims for defects

6.1. Freedom from defects and quality

trayzr shall provide the Service free from material and legal defects and keep the Software in a condition suitable for use during the contractual term. The description of the Service contained in the service level agreement is the sole decisive factor for the contractually agreed quality of the Software and not the details on the website, oral or written statements made by trayzr before the contract is concluded or details contained in trayzr marketing materials. The duty to maintain the Software shall not extend to adjusting the Software to new conditions of use and technical and functional developments such as changes to the IT environment, especially changes to the hardware or the operating system, changes to bring it into line with the functional scope of competitor products or ensuring compatibility with new data formats.

6.2. Remedy of defects

The Customer shall notify trayzr without delay of any defects in the Service and explain the circumstances in detail. trayzr shall remedy significant defects or defects which significantly impair the suitability of the Software for use within a reasonable period. trayzr is entitled to show the Customer temporary work-around solutions and to remedy the defect later by modifying the Software providing that the Customer can be reasonably expected to accept this course of procedure.

6.3. Initial impossibility

Liability regardless of fault in accordance with section 536a(1) first alternative of the German Civil Code (*Bürgerliches Gesetzbuch* - BGB) is excluded for defects in the start-up period.

6.4. Statute of limitations

Claims for legal defects shall lapse after 12 months. This does not apply to claims for compensation for defects where trayzr has mandatory liability by virtue of law (see subsection 8.1 sentence 2).

6.5. Statutory provision

In all other respects, the statutory provisions on liability for defects apply.

7. Indemnification duties



7.1. Indemnification duty

If third parties (including public bodies) assert claims or complaints of violations of rights against trayzr which are based on the allegation that the Customer has breached its contractual duties, in particular has input unlawful data into the Service or has used the Service in a manner which is in breach of competition or in another unlawful manner, the following shall apply: The Customer shall indemnify trayzr against these claims without delay, offer trayzr reasonable assistance with legal defence measures and indemnify trayzr against the costs of the legal defence measures.

7.2. Preconditions for the indemnification duty

The precondition for the indemnification duty under subsection 7.1 is that trayzr informs the Customer about any claims brought against it in writing without delay, does not acknowledge the claims or submit any equivalent declarations and enables the Customer to conduct, at the cost of the Customer, all in and out-of-court negotiations regarding the claims, where possible.

8. Limitation of liability

8.1. Exclusion in certain cases

trayzr shall be liable for damage where this damage

a) was caused by trayzr with intent or gross negligence or

b) was caused by trayzr's simple negligence and resulted from significant breaches of duty which put achievement of the purpose of the contract at risk or from the breach of duties, the performance of which is essential for proper performance of this contract and on the observation of which the Customer is entitled to rely.

In all other respects, trayzr's liability is excluded irrespective of the legal reason, apart from where trayzr is liable by virtue of law, especially for injuries to life, body or health of a person, where it has assumed an express warranty, has maliciously concealed a defect or is liable under the German Product Liability Act (Produkthaftungsgesetz – ProdHaftG). trayzr only provides warranties in writing and, in the event of any doubt, warranties shall only be construed to be warranties if they are called "warranties".

8.2. Limitation in terms of amount

In the case of subsection 8.1 first sentence, b), trayzr's liability shall be limited to the foreseeable damage typical for a contract for this type.

8.3. Amount of typically foreseeable damage

For cases according to subsection 8.1 first sentence, b), the parties assume that the "typically foreseeable damage" for all damage events in one calendar year shall be, at the maximum, equivalent to the net remuneration for services by trayzr, which are provided for or which were provided in accordance with the agreement in this calendar year (depending on which of these is higher).

8.4. Unpaid test phase



trayzr's liability is limited to intent and gross negligence for damage caused during an unpaid test phase.

8.5. Employees and parties instructed by trayzr

The liability limitations set out under subsections 8.1 to 8.4 also apply to claims against employees and parties instructed by trayzr.

9. Term and termination

9.1. Unpaid test phase, post-contractual storage period

A 30-day test phase initially commences when the contract is concluded (see subsection 1.2). No basic or subscription fees are due for the test phase. The contract ends automatically at the end of the test phase unless the Customer orders a paid package during the test phase or within six months of when the test phase ends (post-contractual storage period). During the post-contractual storage period, it is only possible to book a paid package; access to the Customer Data or the functions of the Service is excluded. During the post-contractual storage period, trayzr is entitled to store the Customer Data so that the Customer can continue to use them if it later books a paid package. If the Customer would prefer the data to be immediately deleted during the post-contractual storage period, it can contact support at trayzr.

9.2. Paid packages

If the Customer orders a paid package (see subsection 1.2), the contractual term is the same as for the Assessment Period chosen when ordering the package, i.e. one or twelve months. The contract is automatically renewed by the Assessment Period on each occasion if it is not terminated by three days, at the latest, before expiry of the contractual term. Termination is only possible via the customer menu.

9.3. Subscription term

The term of user subscriptions (see subsection 2.2) is independent of the contractual term. However, at the end of the contractual term, all user subscriptions end automatically.

9.4. Deletion and return of data at the end of the contractual term

At the end of the contractual term, the Customer can no longer access the Service and its Customer Data. The Customer can use the export function of the Service to download the files it has uploaded (e.g. text files, Excel files) in their original format. Reports generated can be exported as text or Excel files. Data which can be linked by an interface from external databases are not saved in the Service and cannot be exported. trayzr is under no obligation to release Contractual Data in any other manner (e.g. to provide data as an SQL dump or in a particular format or to release other files). At the end of the agreement, trayzr shall delete the Contractual Data unless it has a statutory duty to retain them. If deleting the data is only possible at disproportionate expense (e.g. in back-ups), trayzr is entitled to initially block the data before finally deleting them.

10. Final provisions

10.1. Offsetting



The Customer can only offset its contractual counterclaims or assert a right of retention arising from the respective legal transaction concerned against other claims if the claim is undisputed by trayzr or has been established by a court of law.

10.2. Applicable law

This agreement and all disputes arising in connection with this agreement (both contractual and based on a tort) are exclusively subject to German law excluding the UN Convention on Contracts for the International Sale of Goods (CISG).

10.3. Language of the agreement and interpretation

The contractual text is available in German and in English. In the event of a discrepancy or where something is unclear, the German version shall prevail. In all language versions, legal terms shall have the meaning attributed to them on the basis of the legal understanding in Germany on the basis of German law.

10.4. Place of Jurisdiction

If the Customer is an entrepreneur, a legal person under public law or a special fund under public law, the exclusive place of jurisdiction is the place where trayzr has its registered office. trayzr remains entitled to file a claim at the place of the Customer's registered office.

10.5. Partial invalidity

If individual provisions of this agreement are or become invalid, this shall not affect the validity of the remaining provisions. In place of the invalid provision, the provision shall apply which the parties would have fairly agreed upon on the basis of the originally intended purpose of the agreement from an economic perspective. The same shall apply in the event that the agreement should contain a lacuna.