

GENERAL TERMS AND CONDITIONS

1. SCOPE OF APPLICATION, TERMS AND CONDITIONS OF THIRD PARTIES AND CONTRACTING PARTY

1.1. These General Terms and Conditions ("**Penta T&Cs**") apply to all services and the software provided within the scope of the contractual relationship ("**Penta Contract**") between Penta Fintech GmbH with its current address and the commercial register data according to the imprint on the website www.getpenta.com, its subpage, the web application under app.getpenta.com ("**Penta Web Application**"), or its mobile application (Penta-Web-Application, mobile application and website together "**Platform**") (or its legal successors hereinafter referred to as "**Penta**") as service provider and the sole proprietor or business entity as customer ("**Customer**") with all contents, functions, services and rules ("**Penta Services**", a service or software as a service, each a "**Penta Service**"). General Terms and Conditions of the Customer will only become a part of the Penta Contract if Penta expressly consents and approves this in writing.

1.2. With regards to the contract ("**Giro Contract**") between the Customer and Solaris SE ("**Solaris**") necessary for the establishment and use of the business account with the respective range of services ("**Business Account**") as well as the other services provided by Solaris, the General Terms and Conditions of Solaris, agreed separately between the Customer and Solaris, shall apply:

[General Terms and Conditions of Solaris SE](#)

1.3. The use of the Penta Services provided by Penta (in particular the use of the Business Account) is subject to this Penta T&Cs. For additionally provided services ("**Partner Services**") of other regulated and non-regulated third party providers (such as other online and mobile banking service providers, each a "**Partner**", whereby Solaris is not a Partner in the sense of this definition) - if a separate contractual relationship of the Customer with the respective Partner is required - again the terms of use and other contractual conditions separately agreed by the Customer with the respective Partner, including the General Terms and Conditions of these Partners (each a "**Partner Agreement**"), shall apply. Regardless of the afore mentioned, between the Customer and Penta, the Customer's consent to Penta's current prices and services list is required (if applicable, including a change in the Customer's pricing plan).

1.4. Customers can only be sole proprietors and businesses within the meaning of § 14 BGB. The Penta T&Cs do not apply to consumers in the sense of § 13 BGB. Further restrictions (e.g. regarding the legal form, the commercial register entry or the country of origin of the Customer) may result from regulatory requirements and business policy considerations of Penta, Solaris or other Partners.

2. SUBJECT MATTER OF THE CONTRACT

2.1. The subject of the Penta Contract is the use of the Penta Services. Through Penta, the Customer opens a Business Account with Solaris. Penta provides the Customer with access to the Business Account and to the Partner Services via the application provided by Penta. A detailed overview of the Penta Services and the respective fees charged can be found in Penta's current prices and services list ("**Prices and Services List**") to which the Penta T&Cs apply in full as part of the Penta Contract.

2.2. Penta provides against payment, inter alia, the technical requirements for and other services in connection with the business account and access to other regulated Partner Services of banking institutions as well as financial and payment service providers as a technical service provider within the meaning of Section 2 (1) no. 9 of the German Payment Services Supervision Act (ZAG) via access points, integrations and interfaces (inter alia, so-called APIs), which are provided by the respective institution or service provider.

3. SCOPE OF SERVICES

3.1. Penta owes to the Customer only those Penta Services which are listed as Penta Services in the, at the relevant time, current Prices and Services List. Penta does not conduct any banking business and does not provide any financial or payment services as defined in the German Banking Act (KWG) or the German Payment Services Supervision Act (ZAG). Moreover, Penta does not provide foreign currency exchange services.

3.2. Penta will use best efforts to provide an unrestricted use and availability of the Penta Services, but Penta cannot guarantee such use and availability. Penta is obliged to ensure an annual average of 99% with regards to the usability and availability of the Penta Services ("**Service Level**").

3.3. The provided Penta Services are also in accordance with the Penta Contract, as far as the service level is reduced by a maximum of 1% on an annual average basis and the use or availability of the Penta Services is limited by:

- repair, update or maintenance work on the Penta website; or
- circumstances beyond Penta's control, in particular all actions of third parties not acting on behalf of Penta (whereby Solaris

and the Partners are not such third parties) and the availability of technical internet functions which Penta cannot influence.

4. CONTRACTUAL RELATIONSHIP WITH SOLARIS

- 4.1. The opening and use of the Business Account is a prerequisite for the use of Penta Services.
- 4.2. The use of the Penta Services requires the execution of a Giro Contract. This Giro Contract is concluded directly between Solaris and the Customer. Penta is not a party to the Giro Contract. Under the Giro Contract, Solaris undertakes in particular to set up the Business Account for the Customer, to credit incoming payments to the Business Account, to process transfer orders to the debit of the Business Account and to issue one or more debit cards to the Customer. The Business Account shall be managed as a current account by Solaris. Details can be found in the contractual terms and conditions of Solaris. Penta will pay a fee to Solaris in its own name and on its own account for the account management and - if agreed between Penta and Solaris - for other services provided by Solaris to the Customer.
- 4.3. If the Giro Contract is terminated, the Penta Services can no longer be used.
- 4.4. Given Penta acts exclusively as a technical service provider on the basis of a cooperation agreement with Solaris with regards to the Business Account and other services of Solaris, Penta is bound by instructions of Solaris, in particular to the extent that regulatory requirements must be fulfilled. This applies, in particular (without limitation), to the following circumstances:
 - opening of an account or its refusal;
 - blocking or restriction of use of the Business Account; and
 - termination of the Giro Contract and the subsequent closure of the account.
- 4.5. Coordination with the Solaris may take some time. In some cases, Penta may also not be legally entitled to provide the Customer with information on the reasons for or other details of the respective measures taken.

5. CONTRACTUAL RELATIONS WITH PARTNERS

- 5.1. Penta is entitled to pay for the services rendered to the Customer by the Partner directly to the Partner in its own name and on its own account.
- 5.2. Paragraph 4.5 applies accordingly to all other Partners who provide Partner Services to the Customer via Penta Services.
- 5.3. The use of the Penta Services is unrestricted and still possible after the termination of a Partner

Agreement or several Partner Agreements or all Partner Agreements.

6. CONCLUSION OF CONTRACT

- 6.1. The Customer submits, directly or through its legal representative, an application to Penta for the conclusion of the Penta Contract by creating a user account on the Platform, selecting a Penta pricing plan according to the Prices and Services List and accepting the Penta T&Cs ("**Offer**"). For the user account, the Customer provides its e-mail address and a password in addition to the master data ("**Access Credentials**").
- 6.2. Penta accepts the Customer's Offer subject to the conditions precedent that (i) Customer has entered into a Giro Contract with Solaris and (ii) Customer's Business Account has been opened ("**Conditions Precedent**"). For the conclusion of the Giro Contract with the Customer, Solaris conducts a verification in accordance with regulatory and legal requirements ("**Regulatory Check**"). In the course of the Regulatory Check, Solaris verifies, among other things, the identity of the Customer and its legal representatives. For the Regulatory Check, the Customer shall provide further information and submit documents during the registration process. In simple cases, the Regulatory Check usually takes two working days from the time when the Customer submits all necessary information and documents in a complete, correct and clear manner; otherwise, however, it may take longer.
- 6.3. As soon as the Conditions Precedent have been fulfilled and, on that basis, the Penta Contract between the Customer and Penta has been concluded, Penta will notify the Customer by e-mail that the Business Account is now operational.
- 6.4. With regards to further Partner Services (not yet offered and only offered from a future date onwards), Penta will inform the Customer timely in an appropriate form about their content and any requirements to accept the general terms and conditions of the relevant Partner. Details of the conditions and requirements of the Partner Services can be found in the respective Partner Agreements. The Partner Agreements are beyond Penta's control.

7. COMMUNICATION AND MODIFICATION OF INFORMATION

- 7.1. Except as otherwise provided in the Penta T&Cs, e.g. for the conclusion of a contract pursuant to clause 6.1 and notices of termination pursuant to clauses 12.2 and 12.3, the communication channels accepted by Penta for contact by the Customer are the Penta telephone hotline, e-mails and the chat within the Penta Web Application. Penta reserves the right to contact the Customer by other means or through other channels.

- 7.2. Master data can be changed either by sending an e-mail or letter to Penta or within the Penta Web Application. If necessary, these changes may require another verification process.
- 7.3. For the activation of further online banking users of the Customer (e.g. for employees), further authentication procedures are required, which are in particular based on the specifications and requirements of Solaris and/or the respective Partner concerned.
- 7.4. A termination of the Giro Contract and the order to close the Business Account as well as the cancellation of the Partner Agreements shall be sent to the customer service of Penta by the Customer. Penta will inform Solaris and the Partners accordingly and forward the Customer's declarations.

8. DATA PROTECTION AND DATA RETRIEVAL

- 8.1. Penta undertakes to protect customer data at all times by appropriate and state of the art measures and to disclose personal data of the Customer and its online banking users only for legal reasons, especially if required for the fulfillment of the Penta Contract or if the Customer has consented thereto.
- 8.2. A technical measure in the sense of clause 8.1 is that Penta transmits data, in particular account information, exclusively in encrypted form. Additionally, Penta uses other suitable and secure procedures to enable the Customer to retrieve necessary financial information and to transmit requests (e.g. TAN procedure, 2FA).
- 8.3. Details on the handling of personal data, data protection and data security are described in detail in Penta's privacy policy ("**Privacy Policy**"). Data is transmitted via a secure and encrypted internet connection. For the regular exchange of data, Penta and Solaris have concluded an agreement on joint responsibility for data processing in accordance with Art. 26 DS-GVO.
- 8.4. For the processing of the Customer's data by Partners, the data protection declaration of the respective Partner shall apply.
- 8.5. If technical or legal conditions change, Penta reserves the right to change the practice described in Penta's General Terms and Conditions and its Privacy Policy. The Customer shall be informed of any changes in due time.

9. OBLIGATIONS OF THE CUSTOMER

- 9.1. The customer is responsible for the confidentiality and security of its Access Credentials. This means that the Access Credentials must be kept secret and must not be passed on. The customer is responsible for ensuring that third parties cannot obtain knowledge of the Access Credentials and

must take the necessary measures to ensure confidentiality, in particular by using a secure password consisting of numbers, letters and special characters and by changing the password at regular intervals.

- 9.2. As part of its duty of care, the Customer shall ensure that the Customer can be reached at the e-mail address provided by it from the time of registration onwards. Any misuse of the Penta Services or the Business Account, suspicion thereof or loss of the Access Credentials must be reported by the Customer to Penta immediately in text form (e.g. by e-mail or in the Penta Web Application).
- 9.3. Furthermore, the Customer is responsible for taking appropriate precautions (on a regular basis and in accordance with the risks involved) to secure the data and contents entered, uploaded and stored in the course of its use of the Penta Services or the Business Account as well as to create its own backup copies in order to ensure the reconstruction of the data and information in case of loss.
- 9.4. If further online banking users of the Customer are activated (e.g. for employees), the Customer is responsible for the behavior of these further users as if the Customer or its legal representative had acted itself.
- 9.5. The customer must respond immediately to inquiries by Penta, Solaris and/or the Partners.
- 9.6. The availability of Penta Services is dependent on internet access. The Customer is solely responsible for ensuring that the necessary system requirements are met in order to use the Penta Services. If the Customer uses services of third parties (especially scraping software and add-ons), the Customer is responsible for ensuring that these do not impair the Penta Services. In this respect, Penta does not guarantee compatibility and is not liable for any damages resulting from the use of such services.

10. RELEASE FROM LIABILITY

The Customer indemnifies Penta against all claims, including any claims for damages, asserted by other customers or other third parties, including governmental authorities, against Penta for any infringement of rights resulting from the Customer's use of the Penta Services. The Customer is liable for any costs, including legal costs, incurred by Penta due to an infringement of third-party rights by the Customer. All further rights and claims for damages of Penta remain unaffected. The above obligations shall only apply to the extent that the Customer is responsible for the infringement in question.

11. LIMITATION OF THE OFFER

11.1. Penta is entitled to take appropriate measures to prevent damages and to ensure the availability of the Penta Services. This applies in particular if the Customer violates its contractual obligations. Such measures may include the partial or complete restriction of access to the Penta Services, especially with regards to the possibility of card payments or transfer orders.

11.2. Penta is also entitled to restrict the Penta Services in whole or in parts if the Customer fails to pay any fees due. Penta has no influence on the restrictions of services imposed by Solaris or the Partner Services.

12. DURATION AND TERMINATION OF THE PENTA CONTRACT

12.1. Unless otherwise specified in the respective service description, the Penta Contract is concluded for an indefinite period of time.

12.2. The Customer may terminate the Penta Contract by giving a five (5) business days' written notice towards the end of the month. For this purpose, an e-mail to Penta with the scanned, wet-signed termination notice as an attachment is sufficient.

12.3. Penta may terminate the Penta Contract with a notice period of eight (8) weeks in text form. A termination by e-mail to the Customer is sufficient for this purpose. In case of such an ordinary termination, Penta is not obliged to give reasons.

12.4. The right to an extraordinary termination for good cause remains unaffected. An important reason in this sense is especially given if the Customer:

12.4.1. is more than one month in default with the payment of an entire fee, e.g. the monthly pricing plan;

12.4.2. is repeatedly in default with considerable parts of fees despite a reminder or notice;

12.4.3. fails to provide Penta or its Partners with information required for regulatory reasons within a reasonable period of time despite being requested to do so;

12.4.4. the Customer uses the Penta Services for unfair business practices;

12.4.5. impairs Penta Services, in particular through the use of unauthorised software solutions, malicious software or attacks Penta's infrastructure;

12.4.6. otherwise breaches essential contractual obligations or repeatedly breaches contractual obligations; or

12.4.7. endangers the claims and interests of Penta in such a way that Penta's financial situation deteriorates substantially or is seriously endangered.

13. LIABILITY FOR DEFICIENCIES

13.1. With regard to the provision of software services (Software as a Service) by Penta under the Penta Services, the following applies:

- In principle, the statutory regulations concerning warranty apply, unless Penta T&Cs contain deviating conditions.
- Liability for the restriction of use and availability as a result of force majeure and lawful internal company industrial and strike action is excluded. The Customer's right of termination under clause 12.2 remains unaffected.
- The Customer's right of set-off, reduction (reduction of fees according to section 536 of the German Civil Code (BGB)) and retention is excluded, unless the Customer asserts the afore mentioned rights with legally binding or undisputed claims.
- The application of section 536a para. 2 of the German Civil Code (BGB) ("Customer's right of self-removal") is excluded.
- Also excluded is the application of section 536a para. 1 of the German Civil Code (BGB) ("Liability for damages of the provider"), to the extent this section provides for a liability independent of fault.

14. LIMITATION OF LIABILITY

14.1. Penta is liable on the merits and without contractual limitation only for damages suffered by the Customer:

- which are based on an intentional or grossly negligent breach of duty by Penta or on an intentional or grossly negligent breach of duty by a legal representative or vicarious agent of Penta,
- from injury to life, body or health resulting from a negligent breach of duty by Penta or an intentional or negligent breach of duty by a legal representative or vicarious agent of Penta, as well as
- within the scope of liability under the provisions of the German Product Liability Act (Produkthaftungsgesetz), guarantees granted to the Customer or due to fraudulent misrepresentation by Penta.

14.2. For damages resulting from a slightly negligent breach of an essential obligation, Penta's liability is limited to the amount of damages that are foreseeable and typical for the type of business in question. Essential duties are duties whose violation endangers the achievement of the purpose of the contract or whose fulfilment makes the proper execution of the contract possible in the first place and on whose compliance the Customer regularly relies.

14.3. Any further liability of Penta is excluded.

14.4. Insofar as the liability of Penta is excluded or limited, this also applies to the personal liability of Penta's employees, representatives and vicarious agents as well as to tortious claims.

15. NO LIABILITY FOR THIRD PARTY PROVIDERS

- 15.1. Both Solaris and the Partners act on the basis of a separate contractual relationship with the Customer. Penta does not assume any warranty or liability in this respect.
- 15.2. If Customer uses the services of Solaris or Partner Services via Penta, this comes at the Customer's own risk. Details can be found in the product descriptions of Solaris and the Partners as well as in the terms of use provided by Penta for the respective Partner Service.

16. LIMITATION PERIOD

The limitation period for all warranty rights of the Customer shall be 12 months, unless Penta has an unlimited liability under clause 14.1.

17. UNILATERAL AMENDMENTS TO THE TERMS AND CONDITIONS

- 17.1. Penta is entitled to make changes to the Penta T&Cs including the price and service specifications and other provisions of the Penta Contract which:
- correct obvious errors or omissions;
 - represent descriptive provisions, insofar as the underlying circumstances have changed;
 - are intended for clarification purposes or are otherwise of an editorial nature; or
 - are not disadvantageous to the customer in legal or factual terms. This includes in particular the introduction of further free Penta Services.
- 17.2. Penta will notify the Customer of such changes by e-mail.

18. OTHER AMENDMENTS TO THE PENTA T&CS; FICTIONAL EXPLANATION

- 18.1. Penta will offer to the Customer any amendments to the Penta Contract other than those specified in clause 17 or elsewhere in the Penta T&Cs (including the Penta T&Cs and the Prices and Services List). If the Customer does not object within a period of 6 weeks, the changes will be considered as accepted. The receipt of the Customer's objection notice by Penta is decisive for the compliance with the objection notice period by the Customer.
- 18.2. Penta will inform the Customer by e-mail about the new regulations and the date of their coming into force and will point out the objection notice period and the consequences of an expiration of the objection notice period. Upon receipt of this e-mail by the Customer, the objection notice period is initiated.

19. FEES AND PAYMENT PROCESSING

- 19.1. The obligation to pay the fees for Penta Services begins on the day on which Penta notifies the

Customer of the validity of the Penta Contract in accordance with clause 6.3. The payment obligation ends with the expiration of the term of the Penta Contract (if applicable) or, in case of a termination, with the effectiveness of the termination according to clauses 12.2 to 12.4.

- 19.2. The fees for the respective Penta Services are listed and specified in detail in the Prices and Services List. Any additional fees for the Partner Services, if applicable, are set out in the respective Partner Agreements or the Partner's Prices and Services List. The Customer will always be informed about any fees for Penta Services or Partner Services in connection with the respective activation of the relevant Penta Services or Partner Services. Penta collects the fees for Penta Services in principle in its own name and on its own account directly from the Customer's Business Account by means of a direct debit procedure which must be set up after registration. Certain fees for Penta Services can be collected by the Partner from the Customer for the account of Penta. These fees and the respective Penta Services concerned are marked accordingly in the Prices and Services List. Unless otherwise expressly indicated on the invoice, Penta will invoice in its own name and on its own account. As far as Penta collects fees for the Partners, Penta is entitled to do so directly from the Business Account of the Customer by means of a direct debit system which has to be set up after registration. The Customer has to ensure that the Business Account is sufficiently funded. Any fees due will be collected at the beginning of the next month for the previous month.

- 19.3. The Customer agrees to receive invoices in electronic form (i.e. within the user interface of the Penta Web Application). The Customer is responsible for the proper storage of the invoices.

20. BONUS PROGRAMS AND CREDITS

- 20.1. Penta may, under certain circumstances, including but not limited to the referral of new customers, changes in pricing plans by Penta, goodwill or marketing promotions, grant the Customer a certain amount of bonus points, so-called Penta Credits ("**Credits**") or any other types of credit.
- 20.2. Credits or any other types of credit have the value assigned to them. It is at Penta's sole discretion to disburse such Credits or any other types of credit or to credit such Credits or any other types of credit to the Customer's Business Account and thus to continuously (if necessary) offset them with future payment claims of Penta. There is no general entitlement to a disbursement of such Credits or any other types of credit. Upon termination of the Penta Contract, any such

remaining non-disbursed Credits or any other types of credit shall expire.

- 20.3. The Customer is solely responsible for an adequate tax treatment or any potential taxation of such Credits or any other types of credit.
- 20.4. If the Customer provides Penta with the personal data of third parties as part of a referral program, the Customer is responsible to Penta for ensuring that the relevant third parties concerned have consented to the disclosure of their personal data.

21. TRANSFER OF RIGHTS AND OBLIGATIONS

- 21.1. The Customer may not assign or pledge any claims against Penta. This does not apply for monetary claims insofar as the conditions of section 354a of the German Commercial Code (HGB) are fulfilled. Penta may assign all claims against the Customer to third parties.
- 21.2. Penta may entrust third parties with the performance of its obligations under this contract. During the term of the contractual relationship, the Customer may neither lease the use of Penta Services to third parties nor use Penta Services for subletting, leasing, selling, mortgaging or otherwise making it subject of a transaction. An extraordinary termination pursuant to section 540 para. 1 sentence 2 of the German Civil Code (BGB) is excluded.

22. OTHER

- 22.1. The laws of the Federal Republic of Germany shall apply (under exclusion of the UN Convention on Contracts for the International Sale of Goods).
- 22.2. The exclusive place of jurisdiction for all disputes arising out of or in connection with the Penta Contract (including the Penta T&Cs) is Berlin, if the Customer is a merchant, a legal entity under public law or a special fund under public law. This also applies to the enforcement of Penta's rights against the Customer.
- 22.3. If any provision of the Penta T&Cs is or becomes invalid, the validity of the remaining provisions of the Penta T&Cs shall not be affected thereby. The invalid provision shall be replaced by the parties to the contract by mutual consent by a provision which comes closest to the economic purpose of the invalid provision in a legally effective manner.
- 22.4. The above provision shall apply accordingly in the event of loopholes.

As of: 04.05.2020