

General Terms and Conditions Shortbreak

1. Scope / Commitment Period

1.1 These General Terms and Conditions (hereinafter referred to as "**GTC**") shall apply to business relations of newcon GmbH, In der Spöck 10, 77656 Offenburg, Germany (hereinafter referred to as "**newcon**") with its Customers. Customers are generally companies that use the services for their own purposes. However, Customers may also be companies that sell the Services to their own customers (the "**End Customers**") on the basis of separate agreements with newcon. In this case, the contractual partner of the End Customers is not newcon, but the Customer. In this case of "**Distribution**", different regulations shall apply in some cases. Furthermore, a Customer may also be an individual private person who uses the Shortbreak App himself as an "**End User**". In this case, the Customer himself is the only User belonging to him.

1.2 newcon provides services to Customers in connection with the provision to the Customer of an online platform operated by newcon and usable via mobile end devices with the aim of enabling the Customer's employees (the "**Users**"; in the case of an End User as Customer, the Customer/User himself) to promote health on their own responsibility. The online platform offers the Users the possibility to retrieve exercise and relaxation exercises (the "**Content**") and to use further functionalities (the online platform including the Content is hereinafter referred to as the "Shortbreak App"). The contract content in detail shall always be governed by the offer documents ("**Offer**") prepared by newcon and accepted by the Customer. In the event of contradictions between the Offer and the GTC, the Offer shall prevail.

1.3 The Customer's general terms and conditions shall only become part of the contract instead of or in addition to these GTC if newcon expressly confirms this in writing to the Customer within the scope of the conclusion of the contract.

1.4 newcon may amend these Terms and Conditions at any time. The Customer shall be notified of the amendment within the scope of the use of the Shortbreak App (Admin Dashboard) or by e-mail. If the Customer does not object to the amendments within four (4) weeks after receipt of the notice, the amended provisions shall be deemed accepted by it. In the case of distribution, the Customer shall inform its End Customers accordingly.

1.4.1 Excluded from the right to amend these GTC pursuant to this clause are provisions that affect the main performance obligations of the contracting parties and thus significantly change the relationship between main and counter performance obligations, as well as other fundamental changes to the contractual obligations that are equivalent to the conclusion of a new contract. Such changes shall require an express contractual agreement.



1.5 newcon shall be bound by a binding offer for one month from the date of submission of the offer, unless another period is specified in the offer.

2. Services of newcon

2.1 The services provided by newcon to the Customer within the framework of a business relationship shall generally consist of the following elements:

2.1.1 provision of the Shortbreak App for use by Users of the Customer in the form of a temporary software transfer including support of the Customer and its Users ("**SaaS Services**");

2.1.2 other services in the area of occupational health care, in particular training and education services ("**Services**").

2.2 As part of the provision of the SaaS Services, newcon shall provide the following services to the Customer:

2.2.1 Provision of the Shortbreak App for use by the Customer and its Users in a data center in Germany commissioned by newcon;

2.2.2 24x7 operation of Shortbreak App with an availability of 98.0% per month on working days (Monday-Friday). newcon occasionally takes up maintenance windows for maintenance work of various kinds. These maintenance operations are performed every two weeks on weekdays starting at 6pm, except in emergencies. Maintenance periods that meet these requirements are considered times when the Shortbreak App is available.

2.2.3 Establishment of admin access for the Customer's contact person (clause 3.4).

2.2.4 Web-based support of the Customer's Users via the support area of newcon (<https://www.newcon.info>); personal support of the Customer's contact person (clause 3.4) during the setup and use of the Shortbreak App via e-mail, if agreed in the offer.

2.3 Unless otherwise stated in the offer, the Shortbreak App shall be licensed for the number of employees (Users) working for the Customer, regardless of whether they actively use the Shortbreak App.

Deviating from this, the parties may also agree on licensing depending on the number of active Users at the Customer. Unless otherwise agreed, a User shall be deemed active as soon as he logs on to the Shortbreak App and inactive as soon as he does not do so for a period of more than three (3) months.

2.4 newcon is an information provider and does not provide any health services. newcon is in particular not responsible for Users not correctly performing the exercises described in the Shortbreak App or performing them although their state of health does not permit this.

2.5 The functionality of the Shortbreak App is described in detail in the offer. newcon is entitled to expand the scope of functions of the Shortbreak App during the term of the contract. newcon is free to design and adapt the Shortbreak App and the Content within the scope of the Parties' objectives.

2.6 newcon collects usage statistics to improve its services and defines exercise updates and intervals at its own discretion.

2.7 For the provision of Services, newcon shall use carefully selected employees of its own or third parties as subcontractors with the required qualifications in each case. If an employee is prevented from providing services due to illness, vacation or other reasons for which newcon is not responsible, newcon may replace its employees with other suitable employees at any time.

2.8 The agreed remuneration shall only cover the scope of services documented in the offer. Additional services shall be charged separately on the basis of the agreed or customary market rates, unless they are unremitting and commercially insignificant auxiliary services. Insofar as the service description in the offer contains unintentional gaps or ambiguities, newcon shall be entitled to adjust the service description accordingly at its reasonable discretion.

3. Obligations of the Customer

3.1 The Customer acknowledges its obligations to cooperate as a prerequisite for the provision of services by newcon and thus as its contractual obligation.

3.2 The provision of the Shortbreak App is subject to certain prerequisites with regard to the technical infrastructure used by the Customer. The Customer shall inform itself about the essential functional features of the Shortbreak App and its technical requirements (e.g. with regard to mobile operating systems, client hardware and network connection) and observe them. It bears the risk as to whether the Shortbreak App meets its requirements and circumstances.

3.3 Technical requirements and specifications pursuant to Section 3.2 may change from time to time, in particular in connection with updates to the Shortbreak App. newcon shall inform the Customer in good time prior to any change in requirements and specifications. The Customer shall implement any current requirements and specifications without undue delay.



3.4 The Customer shall designate in writing a contact person for newcon and an address and e-mail address at which the contact person can be reached. The contact person must be in a position to make the necessary decisions for the Customer or to bring about such decisions without delay. He also acts as the customer's technical administrator and manages the customer's access to the Shortbreak app via the admin dashboard. He is sufficiently authorized by the Customer to take the necessary actions in the Admin Dashboard (including license management and consent to T&C changes pursuant to Section 1.4).

3.5 The Customer shall fulfill the obligations incumbent upon it for the performance and execution of this Agreement. It shall in particular

3.5.1 name its intended Users or its intended group of Users (in the case of release of an entire domain). Furthermore, the Customer shall notify newcon without delay of any changes in the assignment of Users caused by organizational changes, staff changes or the like, insofar as this is relevant for the provision of services by newcon;

3.5.2 the Users authorized by it pursuant to Section 3.1 shall in turn undertake to comply with the provisions set forth for the use of the Software. newcon shall be entitled to require each User to electronically agree to an end user agreement integrated into the Software, which is a prerequisite for its use of the Software.

3.6 The Customer shall manage its Users in the Admin Dashboard through its contact person (Section 3.4). In the admin dashboard, it is in particular able to send invitation links to authorized Users and/or to name a domain whose associated Users are authorized to log in. Outside of the Shortbreak app, it may request unauthorized Users to cancel accesses.

3.7 If there is an infringement of the Customer's rights of use, the Customer shall cooperate to the best of its ability in clarifying the infringement and its scope, in particular by informing newcon of the relevant infringement.

3.8 If the Customer does not fulfill a duty or obligation, does not do so properly or is late in doing so, and if newcon is therefore unable to perform its services in accordance with the contract, agreed deadlines for performance shall be extended in accordance with the delay plus a reasonable period for resuming the work. The additional expenses caused thereby, in particular for extended provision of the personnel or material resources used, shall be additionally invoiced to the Customer by newcon at the agreed rates.

3.9 In the case of distribution, the provisions in these GTC regarding obligations of the Customer shall be understood to mean that the Customer shall ensure that its End Customers comply with such obligations. In this case, the Customer shall have the obligation to enter into agreements with its End Customers that impose at least the same obligations on the End Customer as apply to the "Customer" under these GTC. The Partner shall agree with newcon in advance on any deviations in content of the agreements vis-à-vis its End



Customers from these GTC, unless such deviations are merely editorial and/or commercial changes (such as, in particular, with regard to prices and terms of payment).

4. Rights of use of the Shortbreak App

4.1 Upon payment of the fees owed, newcon shall grant the number of Users of the Customer specified in the offer the simple, non-sublicensable, non-transferable right, revocable at any time, limited in time and content to the term of the agreement in accordance with the following provisions, to access the Shortbreak App by means of telecommunications and to use the functionalities associated with the Shortbreak App by means of a mobile end device in accordance with this agreement. The Customer does not receive any further rights, in particular to the Shortbreak app or the software application on which the Shortbreak app is based.

4.2 The Customer is not entitled to use the Shortbreak app beyond the use permitted under this agreement or to have it used by third parties or to make it accessible to third parties. In particular, the client is not permitted to reproduce, sell or temporarily transfer the Shortbreak app or parts thereof, especially not to rent or lend it.

4.3 The right of use always relates only to the most recent version of the Shortbreak app and/or content made available; with updates, the rights of use to previously provided versions expire for the future.

4.4 In the case of distribution, the Customer's right of use shall be limited to sublicensing to End Customers and their Users specifically named in separate agreements and the Customer's own acts of use required for this purpose. The previous paragraphs of this clause 4 shall apply accordingly to the right of use of the End Customer.

5. Prices and Terms of Payment

5.1 The prices stated in the offer are in Euro, plus the statutory value added tax applicable at the time of performance and without deductions.

5.2 Invoices are due for payment 14 days after receipt. In case of doubt, invoices shall be deemed received three working days after the invoice date.

5.3 newcon shall be entitled to adjust the remuneration for the Shortbreak App at any time. Insofar as this adjustment concerns regularly payable remuneration, newcon shall notify the Customer thereof in writing at least four (4) months (in the case of annual licenses, see Section 8.1) or at least six (6) weeks (in the case of monthly licenses, see Section 8.1) before the end of the respective term. Customer's right of termination pursuant to Section 8 shall remain unaffected.



5.4 If the Shortbreak App is used by more Users than the maximum number of Users agreed in the offer, newcon shall be entitled to additionally charge the prices stated in the offer pro rata temporis and proportionally per additional User.

6. Liability

6.1 newcon shall be liable without limitation for damages caused by gross negligence or intent on the part of newcon, its legal representatives or vicarious agents. newcon shall also be liable without limitation for damages resulting from culpable injury to life, body or health.

6.2 Only in the event of a breach of material contractual obligations, the breach of which jeopardizes the purpose of the contract and the performance of which the Customer could particularly rely on (so-called cardinal obligations), shall newcon also be liable in cases of simple negligence. This liability shall be limited to compensation for damages that were typically foreseeable at the time of conclusion of the contract. A further limitation of liability for all cases of slight negligence to the respective project volume shall be agreed individually in the offer. In addition

6.2.1 in the cases of the provision of SaaS services the liability according to § 536a BGB and

6.2.2 in cases where the Software is provided to the Customer free of charge for testing purposes, the liability of newcon for cases of slight negligence shall be excluded.

6.3 In cases of slight negligence, newcon's liability for loss of profit, loss of savings and damage to the image shall be excluded in any case.

6.4 The above limitations of liability shall also apply in favor of the legal representatives and employees of newcon and shall also apply in the event of pre-contractual or tortious liability.

6.5 The liability of newcon for damages under the Product Liability Act shall remain unaffected.

7. Secrecy and Data Protection

7.1 The Parties shall keep secret all information of the other Party which comes to their knowledge in the course of the cooperation and which is subject to secrecy, i.e. protect it with due care against disclosure to unauthorized persons. Unauthorized persons within the meaning of this provision shall not include subcontractors used in accordance with the contract and employees of newcon. The Parties undertake to involve only those employees or third parties in the cooperation whom they have previously committed to secrecy in a comparable form.



7.2 All information of a Party - irrespective of its form - which is identified in writing as requiring secrecy or whose need for secrecy clearly results from its nature, in particular business and trade secrets, shall be deemed to require secrecy. This shall also include the terms and conditions of the respective contract as well as newcon IP which the Customer receives from newcon.

7.3 Information shall not be subject to secrecy if the receiving party can prove that it either (i) is or was generally accessible, (ii) was already in the party's possession without any obligation to maintain secrecy, (iii) was developed independently and without the use of information subject to secrecy by another party or (iv) lawfully acquired the information from a third party who was not subject to an obligation to maintain secrecy.

7.4 Both Parties shall comply with the applicable data protection provisions, in particular those applicable in Germany, and shall obligate their employees deployed in connection with the Agreement to maintain data secrecy, unless they are already generally obligated accordingly. Insofar as newcon processes personal data within the scope of the provision of its services under this Agreement, newcon shall act as the person responsible under data protection law and not on the instructions of the Customer.

7.5 The confidentiality obligations shall continue to exist beyond the end of the respective agreement.

8. Termination

8.1 Unless otherwise stipulated in the offer, contracts for SaaS services shall have a minimum term of twelve (12) months as "**Annual Licenses**". Annual licenses may be terminated by either party with three (3) months' notice to the end of the term. If no notice of termination is given, the term shall be extended by twelve (12) additional months in each case. Contracts for SaaS services as "**Monthly Licenses**" have a minimum term of one (1) month. Monthly Licenses may be terminated by either party with one (1) week's notice to the end of the term. If no notice of termination is given, the term shall be extended by one (1) further month in each case.

8.2 The right of the Customer to terminate the contract without notice if the contractual use of the Shortbreak app is not granted to it in whole or in part in due time or is withdrawn again is excluded (§ 543 paragraph 2 number 1 BGB).

8.3 The right of both parties to terminate a contract for cause shall remain unaffected. If the reason for termination is a breach of a contractual obligation, the terminating party shall, prior to termination, set a reasonable period of time for the other party to remedy the reason for termination. Good cause for termination shall include all circumstances that make further cooperation with the other party unreasonable, in particular also default in payment of



substantial amounts, a cessation of business by newcon or repeated or persistent serious deficiencies in the performance of services or cooperation.

8.4 Terminations shall require the written form.

8.5 In the event of termination of the contract, by whatever means and for whatever reason, the Customer shall immediately remove any existing links to the Shortbreak App and/or the Content from its online offer and delete any other work results provided to it by newcon as well as any existing copies of the Content.

9. General Provisions

9.1 With the Customer's consent, newcon shall be entitled to use the Customer or the Customer's brand/logo as a reference for the purpose of presentation on the company website or in brochures. Any use beyond this, e.g. as a showcase or best practice example, shall also only take place after appropriate consultation with and approval by the Customer.

9.2 The assignment of rights or obligations of the Customer under the contract - in particular assignments and pledges - to third parties shall be excluded without the prior written consent of newcon.

9.3 Offsetting by the Customer shall only be possible with an undisputed or legally established counterclaim.

9.4 Amendments and supplements to this contract must be made in writing. This shall also apply to any cancellation or waiver of the written form requirement. The parties agree that the written form requirement shall also be met by sending signed declarations by e-mail to the e-mail addresses provided by the parties for communication under this contract. Unless otherwise agreed, all other communications within the scope of the performance of this Agreement may also be transmitted by e-mail. Verbal agreements and transmission by telephone, on the other hand, shall not be sufficient.

9.5 The legal relationship between the parties shall be governed exclusively by German law to the exclusion of the UN Convention on Contracts for the International Sale of Goods.

9.6 The exclusive place of jurisdiction shall be Offenburg.

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