

# General Terms & Conditions

for frentix GmbH



Version 1.1

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## 1. Scope of application

### 1.1. Scope of application

The general terms & conditions here stated are applicable for the business relationship between frentix GmbH, Hardturmstrasse 76, 8005 Zürich, Switzerland (subsequently „frentix“) and their clients, as far as no other agreement has been explicitly stated in written form.

These conditions are of particular relevance for all contracts in the areas of OpenOLAT services, software and content development and consulting.

### 1.2. Changes to the GTC

Should frentix change the GTC during an ongoing business relationship then the client will be notified of such alterations within a reasonable period of time. The client can access the new GTC at [www.frentix.com](http://www.frentix.com). As long as the client does not specifically raise an objection to the GTC within a 14 day time period of their announcement by frentix then they are to be considered as accepted.

## 2. Scope of services for OpenOLAT services

### 2.1. OpenOLAT packages Demokrit, Epikur, Platon

Within the package the number of users, the number of concurrent users, storage space and data transfer are all defined. The individual details are listed within the contract.

All three packages include the following services:

- Installation of the OpenOLAT release
- Configuration and initialization of the database
- olat.com, openolat.com or openolat.org domain name (i.e. [https://your\\_name.olat.com](https://your_name.olat.com)) with SSL encryption
- Free language choice according to the available languages in OpenOLAT
- Server hosting according to paragraph 2.3 below
- Operational and technical support according to paragraph 2.4.1 below
- Software maintenance, regular installation of updates
- Service level „Standard“

The Demokrit, Epikur and Plato packages include the following optional services at an additional cost:

- The activation of additional functions/options which have been published at [www.openolat.com](http://www.openolat.com)
- Basic layout customizing
- Use of a domain name belonging to the client
- Use of your own SSL certificate while simultaneously using a client domain

The following services cannot be used with the Demokrit, Epikur and Platon packages:

- Integration with other systems (LDAP, Shibolet, REST API)
- Client specific further development on the OpenOLAT system
- Service level „Premium“
- Dedicated server hosting

### 2.2. OpenOLAT individual solutions

The following two alternatives are possible as individual solutions.

#### 2.2.1. Alternative individual OpenOLAT solution with frentix

The scope of this alternative is comprised of the following elements:

- Set up of the server, the operating system and the database
- Individual installation of the OpenOLAT release
- Configuration and initialization of the database
- Client specific configuration of OpenOLAT
- olat.com, openolat.com or openolat.org domain name (i.e. [https://your\\_name.olat.com](https://your_name.olat.com)) with SSL encryption
- Premium layout customizing and customization of the text elements for the user interface
- Activation of additional functions/options which have been published at [www.openolat.com](http://www.openolat.com)

- Access to the administration console
- Server hosting according to paragraph 2.3 below
- Operational and technical support according to paragraph 2.4.1 below
- Software maintenance and installation of updates
- Service level „Standard“

In this alternative the following optional services are available at an additional cost:

- Use of a domain name belonging to the client
- Use of your own SSL certificate while simultaneously using a client domain
- Dedicated server hosting according to paragraph 2.3.1 below
- Client specific further development of the OpenOLAT system
- Integration with other systems (LDAP, Shibboleth, REST API)
- Service level „Premium“

### 2.2.2. Alternative individual OpenOLAT solution at the client

The scope of this alternative comprises the following elements:

- Individual installation of the OpenOLAT release at the client
- Configuration and initialization of the database
- Client specific configuration of OpenOLAT
- Premium layout customizing and customization of the text elements for the user interface
- Activation of additional functions/options which have been published at [www.openolat.com](http://www.openolat.com)
- Access to the administration console
- Operational and technical support according to paragraph 2.4.1 below
- Software maintenance and installation of updates
- Service level „Standard“

In the individual solution the following optional services are available at an additional cost:

- Client specific further development on the OpenOLAT system
- Integration with other systems (LDAP, Shibboleth, REST API)
- Service level „Premium“

#### **Client responsibilities:**

- The client is responsible for the availability and maintenance of the infrastructure (hardware, storage space, network) and the base systems (operating system, database management system, file system)
- The client is responsible for the installation of a suitable backup solution and the supplying of any fail-over systems
- The client must supply the base systems (operating system, database management system, Java version, Java applications server, Apache web server, mail server) according to the document „installation requirements“
- Should some of the individual elements of the base systems be missing then these must be configured afterwards during the installation. Should the client use software components other than those recommended, then these must be tested in advance by frentix. The additional work required for the follow up configuration or other configuration work, as well as for additional testing will be invoiced separately to the client.

#### **Responsibilities of frentix:**

frentix is responsible for the operation of the application OpenOLAT: installation, availability, stability and updates.

### 2.3. Server Hosting

The necessary hardware for the operation of OpenOLAT will be provided with the server hosting. In this contract frentix provides the following services:

- Hosting and operation of the server, the operating system and the database
- Installation and maintenance of the operating system including security updates
- Network traffic and disc-space according to the contract
- Daily incremental backups (snapshots of the past two weeks can be reconstructed)

### 2.3.1. Additional options: Dedicated Server Hosting

At the clients request the OpenOLAT installation can be installed on a separate server on which the individual client installation will run exclusively. In this way the client will in no way be affected by the server requirements of another client. The use of a dedicated server is only possible in the case of individual solutions.

## 2.4. Software maintenance and operation

### 2.4.1. Software maintenance and operation with hosting by frentix

The scope of services of this element of the contract are the operation and maintenance of OpenOLAT on a server provided by frentix. The data center is for reasons of security and availability leased in Switzerland from a third party company (Co-Location). Within the framework of this contract frentix provides the following services:

- Maintenance of the operating system, the database management system and the file system
- Clarification of system specific questions regarding application usage
- Active monitoring of the relevant system parameters and prompt response on discovery of problems within the service level
- Active monitoring of the availability of the OpenOLAT server
- Support the client in finding and correcting program errors and system failures
- Installation of the newest OpenOLAT releases and bug fix updates following a comprehensive test phase
- Determination and solving of software errors

### 2.4.2. Software maintenance and operation of hosting at the client

If the software OpenOLAT is running on the infrastructure and base system provided by the client then frentix will carry out the services listed below in concluding a contract for software maintenance, operation and support:

- Clarification of system specific questions regarding application usage
- Support the client in finding and correcting program errors and system failures
- Installation of the newest OpenOLAT releases and bug fix updates following a comprehensive test phase
- Determination and solving of software errors
- Monitoring (when agreed upon and technically possible)

### 2.4.3. Invoicing

The costs of software maintenance and operation are dependent on level of usage. The usage will be fixed in the contract according to the maximum number of active user accounts resp. the maximum number of concurrent users.

A user account will be considered as active when it has not been deleted or blocked for log-in access and the account has been used by the user at least once during the last 365 days.

The specification relating to "concurrent users" will be calculated from the average number of concurrent users. Temporary peaks up to double the maximum number of concurrent users during a total of 0,5% of the online time during a year (= 44h) will be considered as normal and will be covered within the contract.

## 2.5. Operational interruption

frentix will inform the customer in the ordinary course of business about service interruptions (i.e. updates, maintenance work etc..) of the hosted system or the system for which frentix is responsible for the maintenance and support.

Generally updates will be carried out by frentix on Tuesdays between 6.00 and 12.00 (maintenance time, Zurich time zone). During an update the OpenOLAT system will not be available for a short period.

The regularly scheduled maintenance periods (around 5 times year) will be published on the home page of the OpenOLAT installation following knowledge of availability of a new update release. In addition frentix will always inform its clients at least 24 hours in advance over any upcoming work to be carried out.

## 2.6. Support

frentix carries out support services according to the expenditure used and to the actual per-minute price defined in the current price list according to service level. As a basis for the support services frentix on the one hand offers the service level „Standard“ (see paragraph 2.7 below) and on the other hand the service level „Premium“ (see paragraph 2.8 below).

### 2.6.1. Invoicing

The user support will be calculated according to the expenditure in price per minute according to the current price list and service level, the length of support will be rounded up to exact periods of ten minutes. Blocks of ten minutes which have already begun will be fully charged. The minimum length of a request will amount to ten minutes.

The invoice will be charged monthly, quarterly or per half year as soon as the amount to be invoiced is more than 250 CHF.

### 2.6.2. Support package

frentix also offers support in the form of support packages. The following packages are available:

- Support package „S“: 5 hours of user support per year
- Support package „M“: 10 hours of user support per year
- Support package „L“: 20 hours of user support per year

Support packages must be used within a period of 12 months following contract signature. Any remaining credits will become invalid at the end of the period without requirement for provision of any other service. Remaining credit cannot be paid out or transferred into a later period of time. Support packages will be invoiced at the beginning of the time period.

## 2.7. Service level “Standard“

### 2.7.1. Support center availability

With „Standard“ support contracts, frentix provides services to the client from Monday to Friday and from 8.00 to 18.00 Zurich time zone. The exception being recognized public holidays in Canton Zürich (including Sechseläuten and Knabenschiessen).

### 2.7.2. Scope of services of the support services “Standard“

Inquiries will be received over the address support@frentix.com and will be handled through a ticket system. frentix guarantees within the aforementioned defined availability to provide the client with a reaction time of within 8 hours.

Operational interference will always be dealt with at highest priority and will be solved as quickly as possible.

In the case of server hardware defects, frentix is dependent on the reaction times of hosting partners, thus the aforementioned regulation cannot be used in relation to server hardware defects.

## 2.8. Service level „Premium“

### 2.8.1. Support center availability

For “Premium“ support contracts, frentix will provide its services to the client 365 days in the year from 6.00 till 22.00 Zurich timezone including on recognized public holidays.

### 2.8.2. Scope of services of support services “Premium“

Requests will be taken over the email address support@frentix.com, by telephone or over Skype and will be administered through a ticket system. frentix guarantees within the aforementioned defined availability to provide the client with a reaction time of within 3 hours.

Operational interference will always be dealt with as highest priority and will be solved as quickly as possible.

### 2.8.3. Cold standby failover server with „Premium“ server hosting

In order to achieve the highest possible level of availability, clients using the service level „Premium“ and a hosting contract will have a second server available to them at all times, which in the case of a hardware defect can be used immediately as a replacement. The possibility of an interruption to service will thus be reduced to the minimum.

### 2.8.4. Basic charge

In addition to the higher level of direct costs for a premium service level agreement for hosting, operations and support, a yearly basic charge will be levied which will be defined in the current price list. This is in order to guarantee short reaction times and availability. This charge will be issued yearly in advance.

## 2.9. Training

frentix offers training packages or individual training. The content of this training will be defined by frentix and the client. The following packages are available:

- Training package “S“: half day training
- Training package “M“: whole day training of which 2 hours is a free workshop

In addition to the costs of the training there are also travel and other expenses due, according to paragraph 5.3 as follows and also in some cases, additional costs of overnight stay in the case of longer training courses.

## 2.10. Duration of contract

### 2.10.1. Minimum contract duration

The minimum period for server hosting as well as for the maintenance and support contract amounts to one year, this is calculated into 12 calendar months from the point of time stated in the contract from which the system has been designated as available.

### 2.10.2. Automatic contract prolongation

As long as neither of the contract parties submits an orderly termination notice of the contract, then the contract will automatically be renewed for a further period of 12 months.

### 2.10.3. Notice period

The contract can be terminated by both sides in writing, with a notice period of 2 months ending at the contract term. The relevant date for adherence to the notice period is the entry of the letter of notice with the other contract party.

In the case that a client is more than 30 days late with the payment of an invoice, then frentix is permitted to terminate the contract with immediate effect.

### 2.10.4. Data transfer in the case of termination

In the case of contract termination by one or the other of the contract partners, the client can themselves download and archive the data created on OpenOLAT till the end of the operational period. frentix in addition offers to the client against the payment of an allowance for special expenditure the creation of a copy of the database and the file system of the OpenOLAT installation. With the de-installation of the OpenOLAT systems all of the client data on the OpenOLAT system will be irrevocably deleted.

## 3. Scope of services for other services

### 3.1. Software development

#### 3.1.1. Services

The exact scope of services to be carried out will be defined in the contract or in the statement of responsibility pamphlet included in the contract.

#### 3.1.2. SCRUM development process

Software development projects will be managed according to the SCRUM development process using agile software development methods. The software to be developed will be roughly outlined with the assistance of user stories and then structured in a product backlog. The actual planning and development will be carried out in a number of sprints (iteration) depending on the size of project. After each completed sprint, the current situation and the product backlog will be newly assessed and the next sprint will be planned.

Smaller projects amounting to a few days up to a week will be implemented in a single sprint.

#### 3.1.3. Participation responsibility

The client is responsible to actively participate in the SCRUM process. This applies particularly to the analysis requirements and the processing and prioritizing of the product backlog and the approval of each of the sprints (testing, acceptance, feedback, preparation of the next sprint). The client must be available to the development team for any questions during the carrying out of the sprint.

Should additional expenditure and delays take place as a result of non-participation in this responsibility of involvement by the client then these will be debited to the client.

### 3.2. Production of multimedia and E-Learning content

#### 3.2.1. Services

The exact scope of services to be carried out will be defined in the contract.

#### 3.2.2. Responsibility of participation

The client is responsible to actively take part in the project. This is particularly in relation to authoring work. The client must be available to answer the questions of the production team during the project.

Should additional expenditure and delays take place as a result of non-participation in this responsibility of involvement by the client then these will be debited to the client.

### **3.3. Consulting**

#### **3.3.1. Services**

The exact scope of services to be carried out will be defined in the contract.

### **3.4. Duration of contract**

#### **3.4.1. Notice period**

Service contracts for development, content and consulting can be terminated in writing by both sides with a notice period of 2 months. The relevant date for adherence to the notice period is the entry of the letter of notice with the other contract party.

In the case that a client is more than 30 days in arrears with the payment of an invoice, then frentix is permitted to terminate the contract with immediate effect.

#### **3.4.2. Data transfer in the case of termination**

Following the effective termination, frentix GmbH will deliver the results of the work to that point within a period of 4 weeks. The rules in relation to rights to the software are also valid in the case of termination.

## **4. Subcontractors**

frentix can without advance consultation with the client employ subcontractors and third parties for the fulfillment of services within the framework of the signed contract.

As far as frentix uses third parties for the fulfillment of the contractually agreed services then frentix is responsible that the third parties are fully bound to the terms of the confidentiality agreement made with the client.

## **5. Compensation**

### **5.1. Hourly rate**

For expenditure related work carried out the valid hourly rate will be that stated in the current price list.

### **5.2. V.A.T**

All of the prices stated by frentix are in Swiss Francs exclusive of the related V.A.T. The Swiss V.A.T charge is not applicable for client outside of Switzerland. The correct processing of V.A.T in other countries (reverse charge process) is solely the responsibility of the client.

### **5.3. Expenses**

For operations carried out at the wish of the client which take place externally from the frentix company premises, a time for travel charge of SFr. 95.00 will be invoiced, transport costs will also be invoiced (train charges 2nd class, flight costs economy class or SFr. 0.80 SFr. / km when using own car)

For work deployment which takes more than 8 hours in a single day or for working carried out over a few days additional overnight charges will occur.

### **5.4. Issuing of invoices for OpenOLAT services**

The contractually agreed services for hosting, maintenance and operation will always be invoiced for a period of one year (12 months) in advance.

The costs for contractually agreed user support will be calculated monthly, quarterly or half-yearly according to expenditure, should no support package have been chosen.

Costs for installation, training etc. will be invoiced on service delivery.

### **5.5. Issuing of invoices for other services**

The contractually agreed services will always be invoiced following service delivery or according to the payment schedule fixed in the contract.

### **5.6. Issuing of invoices outside Switzerland and EU**

Outside of the national boundaries of Switzerland as well as the European Union (initial set of countries countries) services will only be provided against advance payment and support will only be carried out in relation to a support package.



## 5.7. Payment terms

The client must pay invoices within 30 days of receipt. When this deadline passed the client is immediately considered as in arrears without the requirement for the issue of a reminder. In the case of delayed payment, frentix is permitted without any advance notice to block access to the relevant system being hosted and to impose an additional charge of SFr. 50.00 per reminder as well as to carry out the extraordinary notice of termination (see - paragraph 2.11.2 resp. 3.4.1 previous).

## 5.8. Off-setting

An off-setting of accounts in relation to demands from frentix with alleged or existing counter claims is only permitted if frentix has agreed in writing and prior to the off-setting.

## 5.9. Price changes

frentix will inform the client concerning the implementation of any price changes before the end of the termination period.

## 6. Confidentiality, non-disclosure and data protection

All information, documentation and data which the parties are trusted or familiarized with in relation to the contractual services will remain confidential and will only be used within the framework of the contractually agreed services, as far as this information is not publicly accessible. Third parties will only have access to this data as far as it is required for the carrying out of the contractually agreed services.

The responsibility of confidentiality and for adherence to the valid data protection regulations remains even following the end of the contract period.

## 7. Liability

### 7.1. Disclaimer

frentix will endeavor to achieve the highest possible level of availability of the hosted system, however it cannot guarantee a continuous, failure free operation or that the operation will be failure free at a particular point in time. The client acknowledges that the servers in the possession of frentix are located with a third party company (in Switzerland).

frentix takes no liability for any related breakdown in connection, poor availability or loss of data, existing direct or indirect damages or damages resulting from defects. frentix will also not take liability for damages caused by misuse of the network connection (including viruses, Trojans etc.) by third parties.

### 7.2. Data transferred

frentix takes no liability for the transferred data which has been exchanged with the platform over the internet. Should data be lost during services provided by frentix then the client will waive any rights to compensation.

The client is responsible in relation to the data transferred to adhere to the currently valid legal regulations and to transfer no data over the systems hosted by frentix that is legally forbidden, morally offensive or contains unlawful content and / or that damages the protected rights of third parties. In the case that such regulations are broken and frentix is faced with a claim for damages then the client is responsible to immediately compensate damages following notice for said damages.

## 8. Other regulations

### 8.1. Licenses

#### 8.1.1. Base system and OpenOLAT

There are no license costs for the running of OpenOLAT. OpenOLAT as well as the base system consisting of the operating system, the database management system as well as other system components are freely available under open source licenses.

#### 8.1.2. frentix OpenOLAT release with enhanced functions and plugins

The OpenOLAT hosting and maintenance contract from frentix includes a limited user license for the OpenOLAT plugins from frentix in binary form. This license includes the use of OpenOLAT plugins on a server within the parameters laid down according to the hosting and maintenance contract (number of users, users at the same time etc).

With the termination of the hosting and maintenance contract the client shall remain entitled to use the OpenOLAT plugin version existing at that point in time. After the termination of the contract the client has no rights to further actualization of the software. This is also the case in relation to security critical updates. In general, such updates can be purchased individually by the client. Following the dissolution of the contract there is no further guarantee provided by frentix.

At no time is the client permitted to make available the OpenOLAT plugins from frentix to third parties or to run them on more computers than that stated in the hosting and maintenance contract. All usage and distribution rights of the OpenOLAT plugins from frentix lie exclusively with frentix.

OpenOLAT and the OpenOLAT plugins from frentix are based on various elements and software libraries which from this point will be referred to as base software. The licensing regulations stated above relate solely to the extended OpenOLAT functions from frentix. For the base software OpenOLAT the license regulations for each of the individual components are applicable. The base software OpenOLAT, the installed operating system OpenSuSE/Ubuntu and the deployed MySQL/PostgreSQL database are freely available under various open source licenses.

## 8.2. Rights

### 8.2.1. Software

The software which is specifically developed for the client remains the exclusive property of frentix. This includes all ownership, usage and distribution rights. The client will be provided with rights of usage for an unlimited period. The client is not permitted to provide the software to third parties without the written agreement of frentix. The client is permitted to run the software on multiple servers and thus to offer services to third parties, as long as these parties do not as a result gain ownership of the software.

Frentix reserves the right to publish the software developed for the client under the Apache 2.0 Open Source license within the framework of the OpenOLAT project. Should this occur then the regulations of the Apache 2.0 Open Source license are applicable.

### 8.2.2. Multimedia and e-learning content

All content for specifically implemented multimedia and e-learning content remains fully under the ownership of the client.

Excluded from this are technical aids which have been required and in some cases specifically developed for the implementation, including drawings, generators and similar items so long as these do not contain the professional knowledge of the client and thus could be considered the intellectual property of the client.

### 8.2.3. Technical products from consulting mandates

Content, graphics, diagrams and similar which have been created for the client from consulting mandates remain fully in the ownership of frentix, as long as these involve general, non-client specific content. This includes all ownership, usage and distribution rights. The client will be provided with an unlimited right of usage. The resulting products are not permitted to be provided to third parties without the advanced written agreement of frentix and are only permitted for internal use.

Content, graphics, drawings and similar material created for the client from consulting mandates becomes fully the property of the client as far as they involve client specific content or analysis.

## 8.3. Severability clause

The invalidity or unenforceability of any provisions of this contract shall not affect the validity or enforceability of any other provision of this contract, which shall remain in full force and effect. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this contract so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that transactions contemplated hereby are fulfilled to the extent possible.

## 8.4. Governing law and place of jurisdiction

The parties submit all of their disputes, out of or in connection with this contract to the exclusive jurisdiction of the courts of Canton Zürich. This contract is governed by and shall be construed in accordance with the laws of Switzerland.

## 8.5. Notification

Notifications which the contract parties address to each other are considered as valid on delivery to the last stated address of the other contract party. This with the exception of the notice of the contract which must be received in a legally qualified written form, notification per email is also permitted.

## 8.6. Written form provision

The entirety of this contract agreed by the two parties including the attached GTC encompasses the whole agreement between the two parties, any amendments or supplements to this contract must be defined and agreed upon in a written form, any other verbally transmitted agreements are expressly excluded.

## 8.7. Translation

The parties acknowledge that these GTC's have been setup originally in German and have later been translated into English. In case of any dispute between the parties, the German original ("Allgemeine Geschäftsbedingungen") shall prevail.

## I. Changes to the GTC

### 1.1. Version 1.1 as of May 17<sup>th</sup> 2013

- 2.2.1 / 2.2.2: Installation of external chat server removed. Since OpenOLAT 8.4 the chat is integrated
- 2.1 / 2.2.1: Additional selection of openolat.org and openolat.com domains
- 2.4.3: Precised term „active users“ to match the wording in the price list
- 2.5 / 2.7.1: specified time zone
- 8.1.2: Add Ubuntu and PostgreSQL as explicitly named software products
- 8.4: Emphasis of the place of jurisdiction in Zurich