

# T&Cs/General Terms and Conditions of Business

Effective from: 01/08/2021

The smartifu terms and conditions of business govern the use of the smartifu service (hereinafter referred to as "SERVICE") by customers (hereinafter referred to as "CUSTOMER") of Paul Buetiger AG, Solothurnstrasse 57, 4562 Biberist (hereinafter referred to as smartifu).

- 1. SERVICE**
  - 1.1. **Purpose**  
The SERVICE is used for the digital transmission of information in connection with the use of a product or service of the CUSTOMER. smartifu provides the CUSTOMER with a login to access the SERVICE and offers support in connection with the use of the SERVICE.
  - 1.2. **Changes to the SERVICE**  
smartifu can update or otherwise modify the SERVICE at any time as long as the provisions of Article 4 of the smartifu terms and conditions of business are retained.
- 2. Term and termination**
  - 2.1. The smartifu terms and conditions of business come into effect when the CUSTOMER registers for the SERVICE or when a corresponding agreement is reached between the parties.
  - 2.2. Each party can terminate the use of the SERVICE to the end of a month. The termination must have been received in a written form at least 30 days before expiry of the subscription period.
  - 2.3. If it is not terminated at least 30 days in advance, the subscription will be automatically prolonged for a further subscription period.
  - 2.4. Following the termination, the CUSTOMER is entitled to demand that smartifu leave the CUSTOMER's content on the SERVICE for a period of no longer than 24 months in the same condition as at the time of the termination. A post-subscription fee will be payable for the requested period. The CUSTOMER cannot login to access the SERVICE during the post-subscription period.
- 3. Compliance with regulations and confidential information**  
Each party shall comply with the applicable legislation and regulations. Neither smartifu nor the CUSTOMER will transfer personal data through the SERVICE. Each party will take those technical and organisational security measures, including confidentiality, necessary in accordance with applicable legislation.
- 4. Responsibilities of smartifu**  
smartifu pledges and guarantees that the SERVICE satisfies the requirements of Commission Regulation (EU) No. 207/2012, Article 7, provided the CUSTOMER meets the obligations set out in Article 5 of the smartifu terms and conditions of business. smartifu will in particular take all appropriate measures to:
  - 4.1. optimise the availability of the SERVICE.
  - 4.2. protect the CUSTOMER's data in the SERVICE.
  - 4.3. perform a regular backup of the CUSTOMER's data on the SERVICE.
  - 4.4. maintain a process that allows the restoration of the CUSTOMER's DATA on the SERVICE.
  - 4.5. maintain a high level of quality for the SERVICE.
  - 4.6. adapt the SERVICE to regulatory and technological changes.
- 5. Responsibilities of the CUSTOMER**  
The CUSTOMER pledges and guarantees
  - 5.1. to ensure that the Internet connection to the SERVICE is maintained and protected.
  - 5.2. to manage all of the CUSTOMER-related content for the SERVICE and keep this up-to-date.
  - 5.3. that the content uploaded to the SERVICE relates to the purpose of the SERVICE (as defined in section 1.1.).
  - 5.4. that they have the necessary rights to publish and update the contents on the SERVICE.
  - 5.5. that the content is in agreement with applicable legislation and regulations.
  - 5.6. that the function and availability of any client's own URL link to the SERVICE is guaranteed, if applicable.
  - 5.7. that smartifu is entitled to block any of the CUSTOMER's content that violates this clause without first contacting the CUSTOMER.
- 6. Guarantee of SERVICE**  
In the event that smartifu ceases to exist as provider of the SERVICE or terminates the SERVICE, smartifu pledges
  - 6.1. to maintain emergency funding in order to finance the operation of the SERVICE for a period of at least 18 months.
  - 6.2. to maintain the SERVICE for at least 18 months after smartifu have sent notice of the termination to the CUSTOMER.
- 7. Fees**
  - 7.1. The CUSTOMER undertakes to pay the subscription fees in accordance with the smartifu fee scale.
  - 7.2. smartifu guarantees the CUSTOMER that the subscription fees will not change for 24 months after the CUSTOMER has registered for the SERVICE.
  - 7.3. smartifu can change the subscription fees to the end of a subscription period with 3 months' prior notice to the CUSTOMER.
  - 7.4. The fees are payable at the end of each month and within 30 days over the entire subscription period.
  - 7.5. If the CUSTOMER fails to pay the subscription fees, smartifu is entitled
    - 7.5.1. to block the CUSTOMER's login access to the SERVICE 20 days after the due date for payment.
    - 7.5.2. to block third party access to the CUSTOMER's content in the SERVICE 180 days after the due date for payment.
  - 7.6. If payment of the subscription fees is more than 20 days in arrears, smartifu is not obliged to guarantee the CUSTOMER those obligations named in Section 4 of the T&Cs.
  - 7.7. All subscription fees for the SERVICE do not include the VAT.
- 8. Property rights of the CUSTOMER**  
The CUSTOMER is and remains the owner of all uploaded content, including the functions, patents, trademarks and other intellectual property rights included therein, as well as all copyrights as uploaded by the CUSTOMER and displayed in the SERVICE. smartifu does not hold or receive any rights to the content uploaded by the CUSTOMER to the SERVICE.
- 9. Property rights of smartifu**  
smartifu grants the CUSTOMER a licence to use the property rights of smartifu. This licence is restricted to the use of the SERVICE. smartifu is the owner of all rights, titles and interests to the SERVICE, the design, the documentation as well as other features and parts thereof, including all copyrights, patents, trade secret rights, trademarks and other intellectual property rights that relate to the SERVICE.
- 10. Limitation of liability**
  - 10.1. smartifu is in no way liable for the content uploaded or used by the CUSTOMER by means of the SERVICE. It is the sole responsibility and liability of the CUSTOMER to ensure the regulatory and legal conformity of the uploaded content.
  - 10.2. smartifu makes no claims with respect to the delivery of content to third parties through the SERVICE. It is the sole responsibility and liability of the CUSTOMER to judge whether the responsibilities of smartifu described in Article 4 of the smartifu terms and conditions of use meet the requirements of adequate information with respect to the use of the CUSTOMER's product or service by third parties.
  - 10.3. smartifu collaborates with leading quality suppliers to protect the CUSTOMER's data and to optimise the availability of the SERVICE. smartifu assumes the responsibility for its choice of suppliers and their services. smartifu cannot be held liable for the non-performance of a qualified supplier.
  - 10.4. The CUSTOMER expressly acknowledges that neither smartifu nor the SERVICE in any way discharges the CUSTOMER from their responsibility and liability to ensure that the CUSTOMER's product or service is used for its intended purpose.
  - 10.5. The CUSTOMER retains full responsibility and liability for assessing and deciding which means are necessary to communicate the instructions for use for the CUSTOMER's product or service appropriately.
  - 10.6. smartifu's liability is limited to the annual subscription fee paid by the CUSTOMER, except in cases of gross negligence and intent. smartifu is under no circumstances obliged to compensate consequential or indirect damages such as loss of turnover or profits.
- 11. Indemnity**  
The CUSTOMER agrees to indemnify, defend and hold harmless smartifu and its employees against all third party claims resulting from or on the grounds of the CUSTOMER's content within the scope of performance of the SERVICE. This indemnity obligation applies in particular in those cases in which the CUSTOMER violates these smartifu terms and conditions of use and any use of the SERVICE by the CUSTOMER violates third party rights, including intellectual property rights, or applicable legislation, and in cases of misuse of the SERVICE by the CUSTOMER.
- 12. Miscellaneous**

**Transfer of the registration** – smartifu is entitled to transfer the CUSTOMER's registration as well as all rights and obligations arising from this to a company that takes over the operation of the SERVICE, provided smartifu's obligations as described in § 4 of the smartifu T&Cs remain unchanged.

**Impossibility of the performance** – Neither of the parties shall be liable to the other party for losses or damage incurred through delays or non-performance due to circumstances that lie outside the reasonable control of the respective party.

**Severability** – Should a clause in the contractual relationship be invalid, illegal or unenforceable, this shall not affect or impair the validity, legality and applicability of the remaining provisions of the contractual relationship. In this case, the parties will replace the invalid or unenforceable clause with a valid and applicable clause that comes closest to the same economic and legal intent.

**Amendments** – The provisions of the contractual relationship can only be amended in writing by a document drawn up in due form by all contractual parties.

**Applicable law, legal venue** – All disputes arising from the smartifu terms and conditions of business are subject to Swiss law. The exclusive legal venue is Biberist, Solothurn, Switzerland.

Last revised 8/2021