

# GENERAL TERMS AND CONDITIONS OF BUSINESS

## OF CONJECT AG FOR INTERNET BASED PRODUCTS (i.e. conjectPM)

These General Terms and Conditions of Business have been drafted in German and in English. For purposes of interpretation of these General Terms and Conditions of Business and in case of any possible conflict between German and English text the German version shall be decisive and shall prevail.

### Table of contents

01. Preamble
02. Range of Validity
03. conject products and services based on the internet-platform
04. Services not offered by conject
05. Conclusion of contract
06. Term and Termination
07. Duties and obligations of the User
08. Responsibility for content
09. Limitation of Liability
10. Availability of service and limitations for claims for defect in quality or title
11. Limitations for services free of charge
12. Terms of payment
13. Credit reporting companies
14. Non disclosure agreement
15. Protection of data privacy
16. Governing law, place of jurisdiction
17. Concluding terms

### 1. Preamble

conject AG, Implerstraße 11, 81371 Munich (in the following referred to as «conject») offers software products for managing all core processes for planning, building, operation and marketing real estate. conject operates the internet based project management platform conjectPM, offers software like conjectFM (for facility management) and conjectCM (for commercial management) and offers various services for this products. All products and services are solely offered to professional users, which are either enterprises, legal entities under public law, or public funds.

### 2. Range of Validity

**2.1** These General Terms and Conditions describe the contractual relationship between conject and persons, which are using the internet based project platform of conject – by accessing the offered services, products, data information and content - and where applicable, setting up project spaces, tender procedures, and initiate offers, as well as adding data or content to this internet platform (in the following referred to as «user»).

These general terms and conditions can be accessed anytime via the URL [http://www.conject.com/agb\\_en](http://www.conject.com/agb_en), can be saved on your local computer and can be printed out.

**2.2** In addition to these general terms and conditions, the specifications of services and products («Leistungsbeschreibungen der Leistungen und Produkte») and the effective pricelist shall be applicable. For contracts regarding the usage and licensing of

conject standard software like conjectCM and conjectFM, for contracts of work and labour («Werkverträge» - according to section 631 of the German Civil Code) and contracts of personal service («Dienstverträge» - according to section 611 of the German Civil Code) the general terms and conditions of conject for software- work and service agreements shall be applicable prior-ranking to these general terms and conditions.

**2.3** Dissentient or opposing terms and conditions of business of the User shall not be applicable; even in the case that conject does not explicitly disagree the dissentient terms and conditions, or in the case that certain provisions in the dissentient terms and conditions are not part of these general terms and conditions of business of conject.

**2.4** conject may revise these general terms and conditions if the contract comprises the performance of a continuing obligation, if this is in the interest of conject and if this is reasonable in consideration of the interests of the User. The revision of these general terms and conditions is particularly possible and reasonable, if the changes substantially do not lead to disadvantages for the user and conject has a weighty reason to revise these terms and conditions. conject may also offer services, which are currently free of charge, in the future only for consideration. conject will inform the User about the changes at least one month before the changes shall become effective. The revisions shall be considered as accepted, if the User does not object to the revisions within one month. conject will inform the User particularly about his right of objection, the meaning and legal consequences of his conduct at the beginning of the one month period of time.

### **3. conject products and services based on the internet-platform**

conject offers solely technical services and products using certain internet platforms. These platforms offer services and functions supporting the project related communication between Users (Exchange of messages), the documentation (storage, exchange and cooperative work on documents) and the support to processes (workflows).

The particular specifications of these services and products are defined in the description of these specifications, the products and services to be rendered to the User shall be specified in the individual contract and the individually activated services granted to the User.

### **4. Services not offered by conject**

**4.1** conject does not offer any content. Information and content in project rooms are third-party content and will be neither edited, prepared nor checked or examined.

**4.2** conject has no influence regarding the products and services of Users (as administrator, principal, bidder in tender procedure) or other third persons. conject is not involved and/or responsible for the accomplishment, realization or handling of projects which are administrated in project rooms, at any given moment.

**4.3** conject has no influence on the files and information exchanged by Users via the internet platform. Particularly conject does not warrant that the uploaded files can be technically used for certain purpose or can be accessed by other Users and that these files are free of malicious software. Particularly there is no warranty for certain sizes and file formats. The transfer of data, files and content takes place at the users own risk using telecommunication technologies. The user is solely responsible for the uploading (saving) of his own files and data to the server.

**4.4** conject is neither party of an agreement nor representative between Users and/or third persons. conject only provides the technical infrastructure and functions of the internet-platform. conject will never act as representative for certain Users and/or third persons.

### **5. Conclusion of contract**

**5.1** Accessing the services and products of conject is only permissible, if the User is of full age (adult) and not limited in his legal capacity.

**5.2** Within the internet-platform the project rooms will be operated by the administrator (a certain user with enhanced authorizations and rights). Administrators operate the project space self-responsible and on their own risk; conject's duty is limited to the

provision of the internet-platform itself. The administrator can decide on his own, which User may access his project room and which authorizations this user shall be granted. If the User requests access to a project space and the administrator authorizes this access, a contract between User and administrator becomes effective. At the same moment, a contract between conject and this particular user, concerning the access of the internet-platform and the validity of these General Terms and Conditions of Business shall come effective. This User can access services which are free of charge and services that will be only rendered for consideration.

**5.3** A contract regarding the free-of-charge functions of the internet-platform shall be concluded as follows: By clicking on the button «free trial» on the conject website under the URL <http://www.conject.com> step 1 and 2 of the user registration form will appear. Mandatory fields are marked with a \*. The entered data will be processed using an encrypted connection. A binding contractual offer by the user can be made by clicking on the button «finish» after entering all necessary data. Up to this moment, the User can correct mistakes in the form anytime, or can cancel the registration process by closing the browser window. After the registration the User can correct mistakes in the user-information under the menu-section «My Membership» at any time. Sending of the registration form is only possible, if the user opens these general terms and conditions and accepts them by clicking on the button «Yes, I accept the Terms and Conditions of the conject AG, Munich, Germany».

The User will receive immediately after registration an automatic generated email that confirms the receipt of the registration. This confirmation email shall not be considered as acceptance of the Users contractual offer. The acceptance of the offer shall not be earlier concluded as the User will be given access to the internet-platform, i.e. that the Users login-name and password will be accepted and access to the platform will be granted. conject is free in its decision to accept the Users contractual offer or not.

**5.4** A binding contract regarding the services offered for consideration shall be concluded either by written or informal contract between the parties (offline-contract) or as online-contract as follows: The User can add services, modules and subscriptions offered for certain consideration within the internet-platform by accessing the menu-section «My Membership». Not all of the services and products offered by conject can be activated by online-contract. The particular services will be described in detail by clicking on the name and price of the service. By clicking on the button «activate now», or «subscribe now», the user can activate or subscribe certain services which will be offered for consideration. In addition to the data given by the user at registration, additional data may be necessary, like payment information, the Users Tax-ID (USt-ID) and the invoicing address. Mandatory fields are marked with a \*. The entered data will be processed using an encrypted connection. A binding contractual offer by the user for the chosen services can be made by clicking on the button «order now» after entering all necessary data. Up to this moment, the User can correct mistakes in the form anytime, or can cancel the registration process by closing the browser window.

The user will receive again an automatic generated email that confirms the receipt of the contractual offer immediately after sending the order form. This confirmation email shall not be considered as acceptance of the Users contractual offer. The acceptance of the offer shall not be earlier concluded as the User will be given access to the ordered or subscribed services, i.e. that the Users login-name and password will be accepted and access to certain services like tendering procedures will be granted. conject is free in its decision to accept the Users contractual offer or not.

**5.5** The User can access, check and print the details regarding the contract under the menu-section «My Packages», using the print-function of this internetbrowser.

**5.6** All texts that are necessary for the conclusion of a contract are available in German and English language.

## **6. Term and Termination**

**6.1** The User may terminate the contract regarding free-of-charge functions of the internet platform at any given time, without being limited to cancellation periods by written notice or by email. conject may terminate such contracts with the cancellation period of one month to the end of the month by written notice or by email.

**6.2** contracts regarding services for consideration are subject to the contract terms and cancellation periods as stipulated in the individual contract terms. If the contract terms contain no provision for the contract term, such a contract shall be concluded for an undetermined period and may be terminated by each party with a cancellation period of one month to the end of a month in written form.

**6.3** If the User does not access the internet-platform, using his username and password in a consecutive period of more than six months, and the contract comprises only free-of-charge functions, conject shall have the right to freeze the Users account, or to terminate the contract as stipulated in section 6.1.

**6.4** The right to terminate the contract on important cause remains unattended. A important cause to terminate the contract is for conject particularly, if

- the User infringes the conject specifications for usernames and passwords (see also No. 7.1); or
- the User infringes the provisions No. 7.2 and 7.3 and does not discontinue these infringements in reasonable time after receiving notice or warning by conject; or
- if the User is in default with his payments for more than two successive months, see also provision No. 12, or
- the user infringes provision No. 14.1

## **7. Duties and obligations of the User**

**7.1** To prevent unauthorized access to the internet-platform and to project-rooms, the User has to choose a username and password, which will be used to identify the User upon access of the internet-platform or the project space.

**7.2** Particularly the User is obliged to:

- update his personal user profile and the companies conject user-profile upon all changes of his address, his information required for billing the services (billing-address, credit-card number, bank account details, etc.) of his company, changes of the legal status of his company (legal entity), changes in the company address, if such data was previously entered into the Users conject-profile; the conject profile can be accessed and edited under menu-section «Administration/My Profile».
- ensure that his username and password cannot be accessed by third persons, and to keep this data safe from third persons, and to change or let change his username and/or password immediately, if there is a reason to believe that third person could have obtained such information;
- to include necessary information about the user for all services («Anbieterkennzeichnung»), compliant to the legal requirements;
- to comply with all legal regulations – particularly regarding the protection of private data.

**7.3** The User guarantees,

- that he does not use or transfer technical equipment, software or other data or executes applications or upload content in the internet-platform, which include malicious software or include the risk to influence, impair or destroy technical equipment, software or data of conject, third users or third persons.
- not to use technical equipment or software or to upload content to the internet-platform, which infringe copyrights, trade mark rights, industrial property rights or other rights of conject, users or third persons,
- not to upload content to the internet-platform or to refer to such information or to establish hyperlinks to such web pages, that contain illegal or immoral content or that could damage the reputation of conject, other users or third persons.

**7.4** The user shall indemnify conject from all claims because of any infringements of provision 7.2 and 7.3 and is liable to conject for all damages related to these infringements.

**7.5** conject may restrict or block the access to data (particularly tender procedures, offers, project spaces or separate content), that violate provision 7.3, and conject may also delete such data.

**7.6** The User will inform conject immediately upon the reasonable suspicion, that other users, the administrator or third persons could use the internet-platform illegally as specified in the provisions before.

**7.7** The User is responsible for the usage of the internet-platform and project spaces by third persons in the same manner as for usage by himself, if this usage takes place under the username and password of the user, unless the user proves, that he is not responsible for this unauthorized usage of the user's username and password.

## **8. Responsibility for content**

**8.1** The User is responsible for content and data that he uploaded to the internet-platform. The administrator is responsible for content and data stored within his administrated project room; within the legal provisions this responsibility includes also content

from third users, the administrator admitted to the project room. Such content shall not be considered content from connect.

**8.2** The user is, regarding to own content, obliged to include precise information about usage rights, copyrights, and industrial property rights.

**8.3** connect is not obliged to examine content of users and to verify that this content does not contain any illegal or immoral content. The User is solely required to perform this examination and verification of justness, completeness, credibility of content.

## **9. Limitation of Liability**

**9.1** connect is fully liable for death, personal injury, impairment to health and for damages under the German Product Liability Act («Produkthaftungsgesetz»).

**9.2** connect is fully liable for damages of the contracting partner, which are caused by intentional or gross negligent acts of connect or its vicarious agents (i.e. employees).

**9.3** Furthermore connect's liability shall be limited – whatever the legal reason may be – to the following, if connect has not given a certain guarantee:

- For negligent (not gross-negligent) caused damages, connect is only liable if such damage is caused by the breach of fundamental contractual duties («Kardinalpflicht»). Fundamental contractual duties are such duties which are essential or make it possible to comply with the agreement and whereas the other contractual party can duly rely upon the party's compliance to such duty.
- If connect is liable under this clause for negligence, connect's liability shall be limited to the typical, foreseeable damage.
- In such cases, where connect is liable for (not gross) negligence, the liability for damages caused by delay of performance («Verzögerungsschaden») shall be limited to the typical, foreseeable damage, but in maximum to 5% of the total consideration as agreed upon in the particular contract.
- connect's liability for damages caused by the simple negligent loss of data and/or software shall be limited to the typical costs and efforts of recovery, which are necessary if appropriate and regularly backups have been made by the contracting partner.

**9.4** The limitation of liability as stipulated in the aforesaid section shall also apply to limit the damages for «vergebliche Aufwendungen» (unavailing expenditures) according to § 284 BGB (German Civil Code). The aforesaid limitation of liability shall also apply to the liability of auxiliary persons (i.e. employees) of connect.

**9.5** The User is obliged to appropriate precaution and preventive measures to protect his data and applications, particular by making machine-readable backup-copies for his area of business within usual intervals. The User will utilize all technical measures, to ensure his highest possible level of internet-security.

**9.6** The Users' claims for defects or breach of duty shall become statute-barred within one year after the beginning of the statutory limitation period. Damages caused by gross negligent and intentional acting, and damages for death, personal injury and impairment to health, shall not be affected by the reduction of the statutory limitation period.

**9.7** connect shall not be liable as lesser/renter for negligent defects at the time of the conclusion of the contract or for the time after the conclusion of the contract, within the applicable laws for rental agreements and negligence liability.

## **10. Availability of service and limitations for claims for defect in quality or title**

**10.1** connect warrants the Users which are paying for using the internet-platform an annual average availability of the server, which runs the platform provided by connect, of at least 99.5%. This warranty shall not be applicable for project rooms used for testing and pilot projects. Maintenance and adjustments of the platform do not count for the grade of availability, if they are announced in advance.

**10.2** The User will inform connect immediately, but at least within two weeks if he discovers malfunctions of the internet-platform or other services of connect, in order to enable connect to perform appropriate measures to remove the malfunction.

**10.3** If conject provides storage space against consideration, conject may correct substantial malfunctions within a grace period set by the User, in order to restore the availability and functionality of the internet-platform, or to restore the availability of the storage space. If the substantial malfunction cannot be restored within the grace period, the user may reduce the consideration. The User may extraordinarily terminate the contract, if the malfunctions are of such substantial importance, that it would be not reasonable to continue the contract.

## **11. Limitations for services free of charge**

The following provisions shall apply for services by conject, which are free of charge:

**11.1** If services are used free of charge, the User cannot claim access and usage of the internet-platform or other services free of charge. conject does not guarantee that services are free of disruption and malfunctions.

**11.2** conject has the right to terminate or temporally cease services that are free of charge without prior notice, or may grant further usage only against consideration, as set forth in provision 2.4.

## **12. Terms of payment**

**12.1** Using the internet-platform for certain services as described in the specifications of services and products will require consideration in money. conject will inform the User before he starts to use certain functions about the duty to pay consideration for the usage of these functions and about the contractual and payment details. The consideration for certain services may be found in the currently effective pricelist of conject.

**12.2** The User is not entitled to offset any counterclaims against conject's claims unless they are undisputed or legally enforceable. The user is entitled to offset a right of retention or the right to refuse performance only, if the users' counterclaims originate in the same contract.

**12.3** If the user is in delay with due payments, conject may restrict or completely lock the access to the internet-platform.

## **13. Credit reporting companies**

**13.1** conject is authorized to obtain information from credit rating/credit reporting companies and bad debt insurances regarding the user, given legitimate interest (e.g. user's requests to conclude a contract for conjectPM's packages).

**13.2** on petition by the user, conject will provide these companies addresses to the user which provide such information about the user. conject may inform these companies about contract infringements and irregular termination of the contract by the User. conject will give such information to these companies if it is necessary to protect the legitimate interests of conject and if legitimate interests of the User will not be affected. conject will act compliant to private data protection legislation. The aforesaid companies collect such information to provide their customers with such information to evaluate the creditworthy of customers or the addresses of debtors, if the customer proofs a legitimate interest in such information.

## **14. Non disclosure agreement**

**14.1** The parties are mutual obliged to handle all information confidential, particularly company- and business secrets, that become known to the other party because of the execution of this contract and which are marked in detail as confidential. The parties are mutual obliged to restrict the availability of such information to third parties only to cases, where such availability is necessary to fulfill the contract. The same applies for information, which can usually be recognized as confidential even if such information is not explicitly marked as confidential.

**14.2** The aforesaid may not apply for information

- that was already known to the other party earlier than the closing of this contract or contract negotiations or that was communicated by third parties as not confidential, if these third parties did not violated any non disclosure agreements themselves;
- that both parties individually and both developed independently from each other.
- that is or will become known to the public without default or effort or help of the other party

**14.3** This non-disclosure agreement is valid during the term of this contract and after termination of the contract for one whole additional year.

## **15. Protection of data privacy**

**15.1** conject will store, process and delete person related data and data related to the usage and billing, compliant to the legal requirements, particularly the German Data Protection Act («Bundesdatenschutzgesetz») and the German Telemedia Act («Telemediengesetz»). Person related data and data related to usage and billing will be stored without the consent of the user solely and processed to third persons (like providers for payment-services, if this is necessary to comply with conject's contractual duties, to conclude a contract, to process a contract and for invoicing. conject will not make data available to third persons for reasons of marketing, market research or opinion research.

Please see conject's data privacy statement, available under <http://www.conject.com/privacystatement>

**15.2** conject will use data related to the usage of conjectPM only in anonymous and statistically processed form. Regarding project-rooms, e.g. the demand of storage, the number of files and the frequency with which certain functionalities are used will be measured

**15.3** If the user explicitly agrees, person related and usage related data will be integrated into the conject-customer care management system for the purpose of better customer guidance and consultancy. Conject may contact the user in particular cases within this purpose. The user has the right to revoke his consent at any time, e.g. via email at [privacy@conject.com](mailto:privacy@conject.com) or in any other form.

**15.4** The information contained within the files, that are saved in project rooms, will not be processed or analyzed in any way by conject, and will not be made available to unauthorized persons. conject has no influence on the rules and hierarchies in a project room, or about the agreements regarding document rights or the organization of a project, the members of a project room may agree upon.

## **16. Governing law, place of jurisdiction**

**16.1** The present General Terms and Conditions of Business and all agreements based thereon are governed exclusively by the laws of the Federal Republic of Germany under exclusion of the Convention on the International Sale of Goods (CISG) and a possible relegation to the laws of another county due to international private law.

**16.2** Provided the User is an enterprise, a legal entity or a special public fund, or has no general place of jurisdiction within the Federal Republic of Germany, or changes his general place of jurisdiction or place of residence to a place outside of the Federal Republic of Germany, or his place of residence is not known by the time the complaint is filed, Munich, Germany shall be the solely place of jurisdiction for all disputes arising from the contractual relationship.

## **17. Concluding terms**

**17.1** Chances or supplemental terms of these General Terms and Conditions of Business must be in written form to become valid. This does also apply for the cancellation of this term 17.1.

**17.2** The assignation of claims under these General Terms and Conditions of Business by the User requires the prior written consent of conject.

**17.3** Should one or more provisions of these General Terms and Conditions of Business be or become invalid the validity of the remaining provisions shall remain unaffected thereby. If the invalid provision is not a «General Term and Condition», i.e. if this provision was negotiated between the parties, the invalid provision shall be interpreted and replaced by a new provision, that shall reach the intended economic purpose of the invalid provision as far as possible.