General Terms of Contract for the Purchase and Maintenance as well as Subscription of JustRelate Standard Software Programs

Status: 2022-06-15

1. Material Scope

1.1. These General Terms of Contract ("Terms of Contract") apply to all contracts concluded between

- JustRelate Group GmbH, JustRelate Deutschland GmbH, PISA sales GmbH, JustRelate Planware GmbH and/or another company affiliated with JustRelate Group GmbH (Sec. 15 AktG [German Stock Corporation Act]) as contractors, depending on which company uses these Terms of Contract; whereas this company is hereinafter referred to as "JustRelate"; and
- a business (Sec. 14 BGB [German Civil Code]), legal entity of public law and a public-law investment fund as client ("Client");

for

- the Purchase and Maintenance of JustRelate Standard Software Programs; and/or
- Subscription of JustRelate Standard Software Programs (Subscription Including Maintenance).

1.2. These Terms of Contract apply exclusively. Contrary or additional terms and conditions of the customer or terms deviating from these Terms of Contract will not be accepted by JustRelate, unless JustRelate has expressly agreed to them in writing. This shall also apply to terms and conditions, attached to purchase orders or acceptance declarations from the Client or by reference to them in such documents. These Terms of Contract shall apply even if JustRelate delivers or provides software and/or performs maintenance services without objecting to the Client's terms and conditions.

1.3. These Terms of Contract are part of the contract and any supplements. They shall also apply to all future contracts for the use of maintenance services for JustRelate software between the Client and JustRelate as the Contractor (individually and collectively also referred to as "Contractual Partners").

1.4. The license agreements of the relevant manufacturers, insofar as these are stated in the license certificates, shall apply additionally in case JustRelate delivers any database licenses.

2. JustRelate Services – Kind and Scope

The kind and scope of the services are defined in the contractual arrangements. The scope of services defined in the contract applies as agreed properties and condition. Decisive for this are:
• the standard software programs ("Software") defined in the contract, in particular in the concrete accepted quotation and in the license certificates and, if applicable, maintenance certificates and in the defined scope of functions and service of this Software defined in these or other documents of JustRelate, as well as the other services;
• the terms according to the contract, especially as defined in the accepted quotation;
• these Terms of Contract;
• generally applicable technical guidelines and specialized standards.

In case of discrepancies, the contractual agreements shall apply in the foregoing order.

3. JustRelate Software – Terms of Use

3.1. JustRelate Software – Purchase and/or License

3.1.1. The Client hereby recognizes JustRelate as the sole licensor of the Software and the related documentation, as well as the related copyrights and the trademark rights, rights to names and patents of JustRelate. The rights of JustRelate as the sole licensor also apply to the new product or Software generations, properties, functionalities, versions, larger expansions, application solutions or modules that are delivered by JustRelate to the Clients.

The Client may neither change nor otherwise modify copyright notices or other similar notices of property rights contained in the programs and the related documentation.

3.1.2. Purchase

• If JustRelate sells Software, JustRelate shall grant the Client a simple, non-transferable right of use the Software and related documentation without limitation in time within the scope agreed under the corresponding purchase agreement. The Client undertakes to use the Software and related documentation exclusively according to the contract and neither transfer nor assign it to third parties nor make it accessible to third parties in any other way and manner.

• The Client shall implement a license manager provided by JustRelate and use it during the time in which JustRelate performs the maintenance services on the Software, whereas not change or deactivate it any manner. The unmodified logfiles generated by the license manager shall be made available to JustRelate by the Client on request.

3.1.3. Licensing

• If JustRelate licenses Software, JustRelate shall grant the Client a simple, non-transferable right to use the Software and related documentation without limitation in time within the scope agreed under the Lease Agreement. The Client undertakes to use the Software and related documentation exclusively according to the contract and neither transfer nor assign it to third parties nor make it accessible to third parties in any other way and manner.
• The Client shall implement a license manager provided by JustRelate during the term of the license agreement and use it, whereas not change or deactivate it any manner. The unmodified logfiles generated by the license manager shall be made available to JustRelate by the Client on request.

3.1.4. The Client is not authorized to “reverse engineer”, decompile, disassemble or use any part of the Software to create a separate application.

3.1.5. The Client guarantees that the Software will be stored in a manner that prevents the unauthorized reproduction of the Software by third parties in the best possible way.

3.1.6. The executable program files of the Software including the user documentation are objects of the sale or licensing. The source code for the Software is not part of the scope of delivery.

3.2. JustRelate Software – External Components and Software

3.2.1. The licensed Software is based on or used with certain Software components, tools, operating systems and programs that are made by third parties ("External Components").

3.2.2. The use of such External Components is subject to the "Third Party Software Acknowledgements", which are restated under "Rights and Trademark Notices" in the Software documentation. The Client accepts these provisions to the full extent.

3.2.3. The license agreements of the relevant manufacturers ("External Software"), insofar as these are stated in the license certificates of the relevant manufacturers, shall apply additionally in case JustRelate delivers any database licenses or other software licenses of third parties.

3.2.4. The Client is obligated to accept the license terms for External Software and External Components, which are contained in the so-called “click-through agreements” or to which reference is made in such agreements, and which are displayed to the Client on the monitor during the installation of the Software, the External Software or the External Components.

3.3. Violations of the License Terms

In case of violations of the terms defined in Sections 3.1 and 3.2 (Terms of Licensing and Use), JustRelate shall be entitled to terminate the contract in full or in part without notice. In that case, JustRelate generally reserves the right to assert damage compensation claims for violations of the contract, especially claims of license fees, against the Client.

3.4. JustRelate Software – Warranty

3.4.1. It is not possible according to the state of technology to rule out faults in the Software in all application conditions. JustRelate warrants, however, that the Software can generally be used for the contractual purpose and its mode of operation is consistent with the contractually agreed properties and conditions.
The Client’s specific requirements shall be agreed properties and conditions of the Software only if and insofar as the Contractual Partners have expressly agreed that the Software fulfills these requirements.

JustRelate does not accept any liability for the Client reaching any intended economic success by using the Software.

3.4.2 Errors in the Software and the related documentation shall be reported immediately to JustRelate with a precise description of the error. These errors shall be repaired free of charge by JustRelate within an appropriate period. The prerequisite for this claim to a correction of the fault is that the error is reproducible and occurs in the last version of the relevant program that has been accepted by the Client and that the Client cooperates; Section 4.2 applies analogously.

3.4.3 JustRelate may either provide reworking or a replacement delivery to fulfill the warranty obligation at its own choice. In particular, JustRelate may make a new version of the Software available to the Client in order to fulfill the warranty obligation. It shall be held equal to a correction of the fault if JustRelate delivers an alternative solution for the defective function, which permits the Client to use the Software in accordance with the contract.

3.4.4 The warranty claims are excluded if
   - the Software was not installed in compliance with the instructions;
   - the Software was used not in accordance with the terms (of licensing and use) defined in Sections 3.1 and 3.2;
   - bugfixes or new versions of the Software that have been provided were or are not installed, unless the Client proves that the fault is unrelated;
   - the Client has made changes or expansions to the Software without the agreement of JustRelate;

unless the Client proves that the fault is not causally related thereto.

3.4.5 If it becomes evident in the course of the repair of the fault that the problems are due to user errors or improper use by the Client, JustRelate may demand an appropriate fee for the expense incurred.

3.4.6 Warranty claims against JustRelate shall merely be in the entitlement of the direct Client and cannot be assigned.

3.4.7 Further claims of the Client for non-performance or deficient performance by JustRelate are excluded. Claims for non-performance or deficient performance shall lapse by limitation after twelve (12) months, beginning with the delivery of the Software, unless the defect has been fraudulently concealed.

The legal and contractual provision on the liability of JustRelate for damages remain unaffected.
4. JustRelate Software – Maintenance

4.1. JustRelate Software – Warranty Services

4.1.1. Within the scope of the maintenance, JustRelate shall support the operational and technical operating staff of the Client in the use of the Software agreed under this contract. The support shall include the answering of general technical questions about the Software and its application, the service case processing, the logging of Software errors and the explanation of manuals and technical documentation.

JustRelate shall provide a hotline to the Client, which can be reached by phone and email in the availability hours from 09:00 AM to 05:00 PM CEST on workdays in the federal state of Berlin, with the exception of December 24th and December 31st, in addition to a ticket system.

4.1.2. As part of the maintenance, JustRelate shall provide bugfixes to the Client during the term of the contract for the Software agreed under this contract.

Maintenance shall not include new products or Software generations, properties, functionalities, versions, larger expansions, application solutions or modules.

4.1.3. JustRelate shall perform services within the scope of the maintenance exclusively for the standard version of the Software. The Client shall be responsible on its own for backing up and migrating all specific customizing modifications of the Software. However, JustRelate declares its willingness to support the Client if needed against separate remuneration.

4.1.4. JustRelate is authorized to perform the maintenance in full or in part through third parties as subcontractors, without requiring the Client’s agreement for this.

4.1.5. Unless expressly agreed otherwise, JustRelate shall support only versions of the Software within the scope of maintenance for a period of up to twelve months after their release date, whereas at least up to two months after the appearance of a new release. JustRelate does not warrant any maintenance or other support for older software releases.

4.2. Client’s Responsibility and Cooperation

4.2.1. Close cooperation between the Client and JustRelate is required for the successful maintenance of Software. The correct performance of the contract and the fulfillment of the contractual duties by JustRelate therefore requires that the Client cooperates at no cost in the contract performance and rectification of defects, whereas this contribution is not a mere obligation of the Client but a true liability for a primary performance. The Client shall, in particular:

- Report Software faults immediately with a precise description of the fault
- Make all documents and information required for the performance of the services available to JustRelate on time and without request; where this concerns electronic documents, the Client shall provide these in standardized formats that are readable across platforms (PDFs, text).
- Grant access to the Client’s system via TCP/IP direct connection (SSH and/or site-to-site VPN connection or on site at the choice of JustRelate) and to the system administration, and the data sets required for the analysis and handling of faults (this can be an access, e.g. at the system level via SSH (Secure Shell) or to web services via https).
- Perform regular data backups as well as a data backup before every intervention by JustRelate into the existing IT systems (JustRelate shall inform the licensee of such interventions on time).
- Ensure during the performance of error analyses and fault repairs that the Client’s system administrator can always be contacted and is available to the required extent for technical questions and in case information is needed.
- Support necessary adjustments and expansions to the hardware periphery, and the basic software as well as other software environment in the context of the general technical advancement, in consideration of the platforms supported by JustRelate, and upon agreement with JustRelate, on its own and at its own cost; any change to the hardware periphery or the basic software and other software environment shall only be permissible upon agreement with JustRelate.
- Perform tests for the analysis of faults according to instruction by JustRelate.

4.2.2. JustRelate shall not be liable for damages arising in consequence of a delay in time with the service performance, if this delay is due to cooperation by the Client not complying with the contract.

5. Fees and Terms of Payment

5.1. The Client shall pay the following fees, respectively, for the deliveries and services below, plus the respectively applicable value added tax:

5.1.1. For the purchase of the JustRelate Software, the Client shall pay the agreed license fees to JustRelate.

5.1.2. For the maintenance services, the Client shall pay the agreed maintenance fees. Maintenance fees shall be invoiced annually in advance as of the installation of the Software.

5.1.3. As license fee (including maintenance services), the Client shall pay JustRelate the agreed license fee. In case of licensing, no separate maintenance fees will be charged, the maintenance services will be settled as included in the license fee.

5.2. Unless agreed expressly agreed otherwise, the indicated Fees are understood as net fees in euro (EUR) plus the respective value added tax. The fees will become due on receipt of the invoice.
5.3. Payments shall be made within fourteen (14) calendar days after the due date without deduction of any discounts. In the event of payment default, JustRelate may

- demand appropriate dunning fees without further warning;
- demand default interest in the amount of nine percentage points above the respective base interest rate without further warning, without prejudice to claims of further damages;
- threaten the Client in text from with the discontinuation of the maintenance services in case of maintenance fees and discontinue the maintenance services fourteen (14) calendar days after the threat, whereas at the earliest fourteen (14) calendar days after the start of default.

5.4. All deliveries and services of JustRelate shall be made exclusively subject to the reservation of title. Only upon the complete payment of the license or maintenance fees will JustRelate transfer the licenses defined in the contract for the use of the Software to the Client.

5.5. The Client may offset only against counter claims established as final and absolute or against claims that are uncontested. The Client may claim withholding only for counter claims based on this contract.

6. Data Privacy and Commissioned Data Processing

6.1. JustRelate shall comply with all requirements pursuant to the General Data Protection Regulation (GDPR) and other applicable data protection laws, and it has in particular taken all measures relating to personnel, and all technical and organizational measures required for this purpose.

6.2. For the performance of the services, JustRelate shall only process the data necessary for the performance of the services.

6.3. The Client as well shall observe all requirements under the General Data Protection Regulation (GDPR) and other data protection laws. It shall ensure, in particular, by corresponding security measures that JustRelate cannot accidentally access data sets and systems not required for the fault repair.

If the Client cannot rule out that JustRelate will come into contact with personal data in the course of the performance of the services, the services shall be performed by JustRelate Services exclusively on behalf of the Client in the form of commissioned data processing pursuant to Art. 28 GDPR. In this case, JustRelate and the Client shall conclude an agreement on commissioned data processing pursuant to Art. 28 GDPR on the basis of the corresponding standard contract of JustRelate.

6.4. The Client is aware that JustRelate and its subcontractors may be compelled based on orders by authorities or courts to surrender or disclose the Client’s data.
7. Confidentiality

The Contractual Partners undertake to keep the knowledge obtained in the context of the object of the contract – especially technical or financial data and other knowledge – secret and use it solely for the purposes of object of the contract. This shall not apply to information, which is or becomes publicly accessible without unauthorized contribution or omission by the Contractual Partners or which must be made accessible based on a court order or a law.

8. Liability and Liability Limitation

8.1. JustRelate shall be liable without limitation for damages arising from the injury to life, body or health, and for intent and gross negligence.

8.2. If no case of Sections 8.1 is given, JustRelate shall be liable in case of simple negligence only for the breach of an essential contractual duty (so-called cardinal duty), the fulfillment of which permits the regular performance of the contract in the first place and on the fulfillment of which the Client may regularly rely. The liability of JustRelate shall be limited in this case to the damage predictable and typical for the contract. The liability of JustRelate is furthermore limited in amount to at most EUR 250,000 per damage event.

8.3. JustRelate shall be liable for the loss of data in accordance with the foregoing paragraphs only if and insofar as such a loss could not have been avoided by appropriate data backup measures taken by the Client.

8.4. JustRelate shall owe fulfillment of the duty of care as customary in the industry. For the assessment of whether JustRelate has fault, it must be considered that software cannot in fact be created completely without faults.

8.5. JustRelate shall not be liable for acts of God, which make performance of the services at subject of the contract impossible for it or which merely complicate the regular performance of the contract significantly or temporarily. Deemed acts of God are all circumstances, which are outside of the intent and control of the Parties, such as war and other military conflicts, mobilizations, blockades, internal unrest, terrorist attacks, embargo, seizure, natural disasters, illegal strikes and other labor disputes, government measures, decisions by authorities or other serious and unpredictable circumstances not the fault of the Parties. A circumstance will be deemed an act of God if it occurred after the conclusion of the contract.

8.6. Liability based on compulsory law, especially according to the Product Liability Act shall remain unaffected.
9. Contract period and termination

9.1. The contract shall enter into force upon its signing, unless agreed otherwise.

9.2. The minimum term is set in the contract. If no minimum term is set in the contract, 
   ● a minimum term of twelve (12) months shall apply to purchase and maintenance agreements; and 
   ● a minimum term of three (3) years to license agreements.

After the end of the minimum period, the contract will extend annually for another twelve (12) months, respectively, without any action by the Parties. The contract can be terminated ordinarily with a notice period of three (3) months, for the first time toward the end of the minimum term.

9.3. The right of extraordinary termination for good cause without notice remains unaffected.

9.4. Orders cannot be cancelled ordinarily, unless agreed otherwise. The right of extraordinary cancellation for good cause without notice remains unaffected.

Any termination of this contract shall simultaneously apply as a cancellation of all orders not fulfilled yet.

10. Duties of Loyalty

10.1. JustRelate and the Client undertake mutual loyalty. It is prohibited during the term of the contract and for a period of twelve (12) months following its termination to hire or otherwise employ staff or former staff of JustRelate Cloud Services, who is or was assigned to work on the performance of maintenance services for the Client during the term of this contract.

10.2. In each case of violation against Section 10.1 clause 2, JustRelate shall be entitled at its choice 
   ● either the contract and, if applicable, any contracts concluded between the Contractual Partners for JustRelate Cloud Services without notice; or 
   ● demand payment of a contract penalty to be set at the equitable discretion of JustRelate, which shall be reviewed by the competent court in case of a dispute.


11.1. JustRelate is permitted to name the Client as a reference customer for advertising purposes and in press releases.


11.3. The exclusive place of jurisdiction for all legal disputes arising from and in connection with the contract is Berlin; nonetheless, JustRelate shall be entitled to sue the Client at the place of its registered office.
11.4. If individual provisions of this contract should be or become fully or partly invalid, the validity of the remaining provisions shall not be affected by this. The Contractual Partners undertake on this day already to replace the invalid provision in that case by a provision that comes closest to the economic purpose of the invalid provision. The same applies to any omissions in the provisions of the contract.