

Special Terms and Conditions for JustRelate etracker Individual Services

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1 Scope of Application

(1) These Special Terms and Conditions (BVB), as amended from time to time, apply to all individually provided services within the scope of the JustRelate etracker product of JustRelate Deutschland GmbH, Kitzingstraße 15, 12277 Berlin, Germany (hereinafter referred to as "JustRelate" or "Provider" or "we"), regardless of their content and legal nature. In their most recently incorporated version, they shall also apply to future contracts between JustRelate and the Customer, even if they are no longer explicitly mentioned in subsequent contracts or services. Any conflicting terms, conditions, and contract offers of the Customer are hereby rejected.

(2) "Individually provided services" mean services that JustRelate provides taking into account the individual requirements of the Customer, e.g., software development or consulting services. For the standard etracker services of JustRelate, i.e., for the licensing and use of JustRelate etracker, the Special Terms and Conditions (BGB) accessible at <https://www.etracker.com/agb/> shall apply.

(3) These Terms and Conditions apply only to entrepreneurs, legal entities under public law, and special funds under public law.

2 Conclusion of Contract and Modifications

(1) Offers from JustRelate are subject to change and non-binding. The conclusion of a contract with JustRelate is effected by a written or electronic order confirmation from JustRelate.

(2) JustRelate owes the respective services agreed upon with the Customer. Unless separately agreed otherwise, JustRelate is under no circumstances obligated to achieve a specific economic success that goes beyond the actual contractual performance.

(3) Modifications to the agreed performance require the consent of JustRelate and an agreement in text form (email, letter) to be effective.

(4) Insofar as the implementation of a modification request by the Customer affects the terms of performance, JustRelate may demand a reasonable adjustment of the remuneration as well as a postponement of any agreed deadlines.

(5) JustRelate provides its services for the Customer. Subject to an express deviating agreement, JustRelate assumes no liability toward third parties.

3 Special Conditions for Consulting Services

(1) The provisions of this Section 3 apply to the provision of consulting services by JustRelate. Consulting services include advising the Customer and supporting the Customer in the concept design and implementation of measures, particularly in the field of usage analysis and usage-optimized design of online offerings and marketing campaigns.

(2) Consulting services are provided exclusively on the basis of the information provided by the Customer. Insofar as third parties are engaged for the consulting services and the collection of necessary data at the Customer's request, such engagement shall be made in the name and on behalf of the Customer, subject to a deviating agreement.

(3) JustRelate owes a professional execution of the consulting services taking into account the requirements specified within the framework of the order placement pursuant to Section 2 of these General Terms and Conditions, and does not owe a specific consulting result. After the order has been placed, requirements can only be incorporated within the framework of a modification agreement.

(4) If the Customer books a consulting package or any other form of an aggregate of consulting services, a period within which the services can be called up (call-up period) shall be specified in the respective individual agreement. If the Customer does not call up the respective agreed service in the agreed volume within the agreed period, JustRelate will enable the Customer to call up the remaining uncalled service (remaining service) within a grace period of one month, starting upon expiry of the call-up period. The Customer is responsible for a meaningful utilization of the remaining service. Upon expiry of the grace period, any uncalled services shall expire, to the exclusion of any claims for a refund of prepaid remuneration and to the exclusion of a reduction of the remuneration due to the failure to call up the services.

4 Special Conditions for Software Development

(1) The provisions of this Section 4 apply to the creation and adaptation of software for the Customer by JustRelate.

(2) JustRelate shall designate a project manager, and the Customer shall designate a responsible contact person. These individuals must be authorized to make decisions or to bring them about without undue delay. The project manager should record decisions in text form. The contact person shall be available to JustRelate for necessary information and coordination.

(3) Subject to a separate agreement, JustRelate is not obligated to analyze the Customer's existing data, hardware, software, and other system environments, and is in this respect dependent on complete information being provided by the Customer. JustRelate will take into account the Customer's existing prerequisites insofar as they become part of the service description in text form.

(4) Insofar as the Customer's requirements do not yet result from the specification of tasks according to the contract and a sufficient service description cannot be created as a result, JustRelate will detail the performance requirements with the support of the Customer, create a specification thereof, and submit it to the Customer for approval. The Customer will approve it in text form within 14 days if it complies with the contract. The specification constitutes a binding requirement for further work.

(5) The Customer shall notify JustRelate of any modification requests regarding software services in text form. At the Customer's request, JustRelate will support the Customer in formulating the modification request against remuneration. JustRelate is entitled to reasonable remuneration for the review of modification requests in accordance with the remuneration rates agreed upon with the Customer, or, in the absence of a relevant agreement, in accordance with the current list prices of JustRelate.

(6) JustRelate does not owe the installation or implementation of the software unless this has been agreed upon with the Customer. The Customer shall ensure that expert personnel are available for the deployment of the software at the latest at the time of installation. If no fixed delivery date has been agreed upon, JustRelate will announce the provision of the performance result with a reasonable notice period (at least five days, provided this is possible with regard to the scheduling density of the respective project).

(7) JustRelate only owes the handover or escrow of the source code, or the consent to such escrow, if and to the extent this has been agreed upon in text form.

5 Invoicing and Billing

(1) Insofar as services are billed on a time-and-materials basis, invoicing by JustRelate shall occur on a monthly basis after the services have been rendered, unless a deviating agreement has been made with the Customer.

(2) Claims of JustRelate become due upon invoicing and are payable within 14 days without deductions. In the event of default, JustRelate is entitled to suspend performance until all outstanding claims have been fulfilled in full. Other statutory claims and rights of JustRelate remain unaffected.

(3) JustRelate reserves title to the delivered performance results until full payment of all current and future claims arising from the business relationship with the Customer. JustRelate is further entitled, in the event of default, to offset outstanding claims against the Customer with advance payments made by the Customer for other JustRelate services. This may shorten the term of prepaid standard products in the event of offsetting. If JustRelate wishes to exercise this right, JustRelate will notify the Customer of this circumstance in the event of default and grant a reasonable grace period for payment.

(4) The Customer shall only be entitled to a right of set-off if its counterclaims are uncontested by JustRelate, legally established by a court of law, or result from the same contractual relationship. The Customer is only authorized to exercise a right of retention insofar as its counterclaim is based on the same contractual relationship.

6 Cooperation of the Customer

(1) The Customer must communicate to JustRelate all information material to the respective order and inform JustRelate in a timely manner of any problems or modification requirements. JustRelate may assume that the communications made by the Customer are correct and complete and is not obligated to conduct investigations. Nevertheless, JustRelate will inform the Customer of any detected inaccuracies. Instructions from the Customer must be given sufficiently in advance to allow for a reasonable implementation period.

(2) The Customer shall only hand over to JustRelate templates and materials whose use in accordance with the order by JustRelate does not infringe any rights of third parties. The Customer shall indemnify and hold JustRelate harmless in this respect from all claims and rights of third parties. The indemnification also includes the costs of a reasonable legal defense to the extent permitted by law.

(3) The Customer is obligated to establish within its operational sphere all conditions necessary for the proper execution of the order. This concerns in particular the hardware and software required for the implementation of the services, unless explicitly to be provided by JustRelate. Insofar as JustRelate is to work at the Customer's premises in accordance with the agreement, the Customer shall provide free of charge sufficient workstations, training rooms, presentation facilities (beamer/flipchart/whiteboard), and other necessary work equipment and cooperation not to be provided by JustRelate according to the agreement.

(4) The Customer is liable for its cooperation; in particular, prior to handing over data carriers to JustRelate, the Customer must check them for viruses and other malware using a current antivirus program corresponding to the state of the art. If the provision of the contractual service is hindered or thwarted by a delayed, incomplete, or defective fulfillment of the Customer's duties of cooperation, JustRelate is entitled to demand reasonable compensation for the resulting additional expense.

(5) The Customer undertakes to back up data unsolicitedly prior to handing it over to JustRelate or prior to processing by JustRelate.

7 Acceptance

(1) The Customer must check the contractual compliance of deliveries and services, as well as preliminary and intermediate products handed over to it, in any case immediately upon receipt and grant acceptance without undue delay. JustRelate is entitled to demand an intermediate acceptance upon completion of individual work sections. The acceptance of a service shall be deemed granted if it is not refused by the Customer within 21 days from delivery with a meaningful justification, or if the Customer uses the work result. In the case of prior intermediate acceptances, only the contractual compliance of the last delivered performance component and the interaction of all components shall be the subject of the acceptance test for the final partial performance.

(2) At the request of JustRelate, acceptances must also be declared by the Customer in text form.

(3) In the event of a refusal of acceptance, the obstacles to acceptance must be described in detail. Insignificant defects shall not prevent acceptance and must be remedied by JustRelate within a reasonable period. A defect is material if its presence eliminates or impairs the suitability of the service for the agreed purpose to such an extent that this leads to a noticeable additional expense for the Customer.

(4) JustRelate is prepared to support the Customer in acceptance tests against separate remuneration.

8 Confidentiality

JustRelate undertakes to maintain confidentiality regarding business and trade secrets as well as all information designated as confidential by the Customer that becomes known to JustRelate in connection with the performance of the contract.

9 Disruption of Performance

(1) The delivery or performance date or the delivery or performance period—hereinafter uniformly referred to as the "delivery date"—is agreed upon according to the estimated performance capacity of JustRelate and is understood to be non-binding and subject to timely self-supply and circumstances for which JustRelate is not responsible, in particular non-delivery, incorrect delivery, or late delivery through no fault of its own. Such events shall extend the delivery date accordingly, even if they occur during an already existing default. In this case, any grace period set by the Customer shall also be extended by the duration of the unforeseen event. If such events lead to a postponement of performance of more than one month, both the Customer and JustRelate may—independent of other rights of withdrawal—withdraw from the contract if they are not responsible for the delivery/performance delay.

(2) If the expense increases and the cause lies within the Customer's area of responsibility, JustRelate may also demand remuneration for its additional expense.

(3) JustRelate shall only fall into default upon a reminder from the Customer in text form, unless a fixed-date transaction (*Fixgeschäft*) is given. The agreement on binding delivery dates requires an express agreement in text form.

(4) If the Customer withdraws from the contract in addition to asserting claims for damages due to default, or if it asserts damages instead of performance, it must have set a reasonable grace period for JustRelate after expiry of the performance period. However, liability on the part of JustRelate is excluded if the damage would have occurred even if the delivery date had been met.

(5) Guarantees in the legal sense by JustRelate are only given if a guarantee agreement is made in text form using the term "Guarantee".

(6) Claims for defects by the Customer expire within one year from the transfer of risk. This does not apply insofar as the law mandatorily prescribes longer periods, as well as in cases of injury to life, body, or health, in the event of an intentional or grossly negligent breach of duty by JustRelate, and in the case of fraudulent concealment of a defect. The period begins at the time of the transfer of risk. The statutory provisions on the suspension of expiry, suspension, and restart of periods remain unaffected.

(7) The parties are aware and agree that, according to the state of the art, it is not possible to exclude software errors under all application conditions. The Customer only has warranty claims regarding software if reported defects are reproducible or can be demonstrated by machine-generated outputs. The interaction of the software provided or modified by JustRelate with hardware or software created by third parties or already in use or to be used by the Customer and/or other compatibilities is only owed by JustRelate insofar as this is explicitly part of the contractual performance.

(8) If the performance of JustRelate has a material defect, JustRelate must be given two opportunities for subsequent performance (*Nacherfüllung*) within a reasonable period, unless JustRelate has definitively refused to remedy the defect. JustRelate has the right to choose between the types of subsequent performance. The remedy of the defect shall take place, at the option of JustRelate, at the Customer's premises or at JustRelate.

(9) The Customer must support JustRelate as far as necessary in remedying defects, in particular, at the request of JustRelate, by making available the criticized software as well as other information and documents similar for error diagnosis, such as third-party software, memory dumps, error logs, etc. The Customer must report defects in a comprehensible form, specifying the information expedient for defect detection in text form.

(10) The warranty expires for performance results that the Customer has modified, unless the Customer proves in connection with the defect report that the modification is not causal for the defect.

(11) JustRelate may demand remuneration for its expense for the defect examination insofar as a claim for defects by the Customer proves to be unjustified, or insofar as additional expense is attributable to the fact that the Customer modified the performance results or did not integrate them into its internet services in accordance with the instructions of JustRelate.

10 Grant of Rights

- (1) All rights to designs, proposals, tender documents, and intermediate results remain with JustRelate unless agreed otherwise.
- (2) JustRelate grants the Customer, under the condition of full payment of the remuneration by the Customer, the usage rights to the performance result (final result) required for the respectively agreed purpose of use. Subject to a deviating agreement made in text form, the remuneration only covers the grant of simple, non-exclusive usage rights for the purpose of use, form of use, and usage period in accordance with the original order. Any further use, in particular in or on media not explicitly included, in a different geographic area, in a modified form (insofar as the modification is not required for the use in accordance with the agreement), and/or in a different period, requires an express additional grant of rights. The transfer of usage rights and sublicensing require the consent of JustRelate in text form. JustRelate remains expressly entitled to continue to use the performance results and the insights, methods, and information obtained within the framework of providing the services, while safeguarding the Customer's business and trade secrets, and to leave them to third parties. The grant of exclusive usage rights by JustRelate requires an express agreement in text form.
- (3) In the event of unauthorized use, the Customer is obligated to pay reasonable remuneration for such use, whereby all further claims and rights of JustRelate remain unaffected.
- (4) All grants of rights are subject to the condition precedent of full payment of the remuneration owed for the total performance. No partial rights are granted upon partial payment. Grants of rights become ineffective as long as the Customer falls into default with any ongoing remuneration for the respective performance result.
- (5) JustRelate may also utilize rights of third parties (third-party licensed material such as software, digital images, etc.) for the services. The Customer may use this third-party licensed material only in connection with and within the framework of the agreed use of the services of JustRelate. The Customer shall indemnify and hold JustRelate harmless from any and all claims and rights of third parties due to exceedances of the usage rights for which the Customer is responsible.

11 Rights of Third Parties

- (1) JustRelate is not liable for the admissibility of performance results under competition law, nor for their suitability for obtaining industrial or other intellectual property rights. JustRelate does not warrant that performance results created by JustRelate, and in particular their use in the Customer's business area, do not infringe any industrial property rights (in particular trademarks, designs, patents) of third parties, and is released from liability for such infringements of rights. JustRelate does not owe a conflict search unless this has been separately agreed upon in text form.
- (2) If a service of JustRelate infringes rights of third parties, JustRelate will, at its own option and at its own expense:
 - * procure for the Customer the right to use the service, or
 - * design the service free of property rights, or
 - * take back the service at the invoice price (less a reasonable compensation for use).
- (3) If a third party asserts against the Customer that a service of JustRelate infringes its rights, the Customer must notify JustRelate immediately in text form.

12 Third-Party Services and Subcontractors

Third-party services are services or parts of services that are not to be provided by JustRelate. Insofar as JustRelate, in consultation with the Customer, commissions third parties with third-party services in its own name and for its own account, the Customer shall indemnify JustRelate from liabilities resulting therefrom. The liability of JustRelate for third-party services (including selection and instruction of the service obligors) is excluded, unless agreed otherwise with the Customer while observing the text form.

The Customer undertakes not to commission subcontractors of JustRelate for identical services, either itself or through third parties, for a duration of one year from the subcontractor's last activity

within the framework of a service provided by JustRelate for the Customer. For each case of culpable contravention, the Customer undertakes to pay a contractual penalty of €25,000, which shall be offset against further damage claims of JustRelate.

13 Other Liability

- (1) JustRelate is liable for intent and gross negligence according to the statutory provisions. Otherwise, JustRelate is liable to the Customer only in the event of a breach of a material contractual obligation (cardinal obligation) as well as for damages resulting from injury to life, body, or health, and for any assumed guarantees. Material contractual obligations are those whose fulfillment is necessary to achieve the objective of the contract and on whose compliance the Customer as a contracting party may regularly rely. In the case of a slightly negligent breach of cardinal obligations, liability is limited to the contractually typical and foreseeable damage, up to a maximum, however, of half the amount of the total remuneration for the order on the occasion of which the cause for liability exists, but not exceeding an amount of €25,000 per damaging event. Liability for lost profits is excluded.
- (2) Contractual damage claims of the Customer against JustRelate expire in one year from the accrual of the claim, unless shorter statutory limitation periods exist.
- (3) The limitations of the preceding paragraphs 1 and 2 also apply in favor of the legal representatives, bodies, and vicarious agents of JustRelate if claims are asserted directly against them, and analogously also to claims of the Customer for reimbursement of expenses.
- (4) The provisions of the Product Liability Act remain unaffected.

14 Miscellaneous

- (1) JustRelate stores and processes any personal data of the Customer insofar as this is necessary for contract processing and for the fulfillment of JustRelate's contractual obligations toward the Customer. The information pursuant to Article 13 of the EU General Data Protection Regulation, which is made available via our website at <https://www.etracker.com/datenschutz/>, applies to data processing.
- (2) German law applies. Insofar as the UN Convention on Contracts for the International Sale of Goods (CISG) adopted into German law would apply to foreign customers, it is excluded.
- (3) In the event that individual provisions of these conditions are invalid or become invalid, the validity of the other provisions shall not be affected thereby. The German version of these General Terms and Conditions shall apply exclusively to the interpretation of the contractual obligations.
- (4) If the Customer is a merchant (*Kaufmann*), a legal entity under public law, or a special fund under public law, or if the Customer does not have a general place of jurisdiction within the Federal Republic of Germany, Hamburg shall be the place of jurisdiction for all disputes arising from contractual relationships between the Customer and JustRelate.