

(last updated on 14 November 2017)

1 Scope of application

1.1 These General Terms and Conditions of Business (hereinafter the “General Terms”) are the exclusive legal agreement between minubo and the Customer (as defined below) and govern the use of the minubo web application and of any other services, software, data and other materials made available through the minubo Internet homepage, e.g. www.minubo.com (hereinafter the “Website”), all of which may be updated from time to time at minubo’s own discretion (hereinafter collectively referred to as the “BI Solution”). Moreover, they govern the integration of the Customer’s software with the BI Solution.

1.2 For the purposes of these General Terms, “Customer” (hereinafter also referred to as “you” or “your(s)”) means the company, organisation or trader who purchases a subscription to the BI Solution. General Terms and Conditions of the Customer of the BI Solution shall not become part of the contract between the Parties, even if they are part of an order form or other communication from the Customer to minubo or any business partner of minubo. In the event of conflicts between these General Terms and a written offer from minubo signed by an authorised signatory for minubo, the provisions of the offer shall prevail.

1.3 In the event that you enter into an agreement within the scope of these General Terms on behalf of your company or any other organisation, you hereby represent and warrant that you are authorised to enter into such an agreement on behalf of that company or other organisation. minubo has the right to request evidence of your authority at its own discretion at any time. If the person acting on behalf of the company or any other employee of the company does not furnish the necessary evidence of authority to register, make bookings or use the BI Solution within a period of one (1) week of receipt of such request, minubo shall have the right to block the account and the company profile at any time.

1.4 Formation of contract for a free trial version

minubo offers the Customer, e.g. on the web page <https://app.minubo.com/register/demo.page>, to set up a free trial account for a limited time and scope of services upon the terms set out herein. The Customer shall enter the information requested into the registration form on that page and confirm its entries and accept the minubo General Terms by clicking the “Register” button. Once the registration is completed, the Customer shall receive a confirmation email for its trial account. The contract is formed by the Customer clicking the link in that email to confirm its email address or by entering the confirmation code from that email on the relevant page of the minubo website.

Use of the free trial account is limited to 30 calendar days from registration, unless otherwise displayed upon registration. minubo shall have the right to terminate access after expiry of that period.

1.5 Formation of contract for chargeable access

A contract for chargeable access to the BI Solution is formed by the Customer accepting a corresponding offer. Such an offer may comprise a wider scope of services than a trial account.

In the event that the Customer when setting up the trial account accepted General Terms other than those of the offer, the General Terms from the offer shall prevail at all times.

- 1.6 The information of the Customer required for the formation of a contract must be truthfully disclosed and must be promptly updated by the Customer if any change occurs to be able to ensure smooth use.

2 Subject matter of the contract

- 2.1 The subject matter of the contract is the use of the BI Solution by the Customer and the performance obligations of minubo and the Customer. On the Website, minubo offers its Customers the possibility to use the BI Solution. The contractual scope of services and the fees payable for this can be inferred from the offer. The relevant BI Solution shall be made available to the Customer via the Internet only.
- 2.2 minubo shall make all reasonable efforts to ensure that the BI Solution can be used by the Customer via the Internet. However, permanent availability cannot be guaranteed. In particular, downtime can be caused by maintenance and software updates, and there may be times when the BI Solution is unavailable due to technical or other problems outside minubo's sphere of influence (including, without limitation, negligence of third parties, etc.).

3 Grant of rights

- 3.1 Under these General Terms and subject to payment of the remuneration pursuant to clause 6, minubo grants the Customer a non-transferable, non-exclusive licence, excluding the right to sublicense, to access and use the BI Solution online for internal business purposes of the Customer throughout the term of the contract (as defined below in section 9.2). This licence shall be subject to the restrictions of the contract and, if applicable, such restrictions on use as may be specified during the online registration process for a subscription to the BI Solution or in a written contract. This licence shall not include the right to store or run a copy of the BI Solution on systems to which the Customer has access for whatever legal reason.
- 3.2 The Customer shall not (and shall not allow any third party to):
 - 3.2.1 to reverse engineer or decompile the source code of any software included in the BI Solution. If the Customer needs any information to allow interoperability the BI Solution with other software, minubo shall disclose the interface information to the Customer, provided, however, that minubo shall have the right to do so only in return for a separate confidentiality agreement signed by an authorised signatory of the Customer;
 - 3.2.2 to copy, modify, adapt, translate or otherwise use, resell, distribute or sublicense the BI Solution beyond the limits expressly permitted under these General Terms or a written contract between the Customer and minubo;
 - 3.2.3 alter any proprietary and/or copyright or other notices appearing on the BI Solution.
- 3.3 As between minubo and the Customer, minubo is the owner of the BI Solution and any derivative works of the same, including all copyrights and other proprietary rights attaching to them. The Customer does not hold any rights to the BI Solution or any derivative works of it other than those expressly granted under these General Terms and those created by the

Customer itself, provided, however, that such derivative works created by the Customer may not be published without the prior written consent of minubo.

- 3.4 The BI Solution may include software or information from suppliers of minubo. Such software or information may be subject to terms specified by the respective suppliers which are applicable exclusively to that software or information and apply also in relation to the Customer, provided that minubo must have informed the Customer of those terms and of the software or information they apply to.
- 3.5 The Customer grants minubo the non-exclusive, unrestricted right to use the logo, the trademark names and in particular the company name of the Customer on the minubo Website as a reference and in press releases or other advertising materials throughout the term of the contract. Unless otherwise agreed in writing, the Customer grants minubo the right to alter images and logos and to use them so that minubo is allowed to enlarge or reduce the size of logos and/or to convert coloured logos or images into black and white.

4 Management and ownership of data

- 4.1 In using the BI Solution and the contract services, the Customer shall comply with applicable law. Illegal content or data infringing the rights of third parties may not be uploaded to the BI Solution and/or made available to others or distributed through the BI Solution.
- 4.2 minubo shall have the right to delete data without prior notice if they violate the law or if any third-party rights are infringed. In this context, the Customer shall be under an obligation to perform all acts of cooperation without undue delay, in particular at the request of minubo. The Customer shall bear the costs of its acts of cooperation.
- 4.3 The Customer itself shall be responsible for the data and content made available to it. minubo does not check whether data and content are accurate or whether they are free from or susceptible to viruses.
- 4.4 The Customer agrees that
 - 4.4.1 the BI Solution may copy data the Customer stores in the BI Solution ("User-Stored Data"), and
 - 4.4.2 that the BI Solution may copy data the Customer stored on its own systems or on the systems of a third-party provider to which the Customer allows the BI Solution access via an application programming interface ("API") or by other means ("Data stored on Third-Party Systems"), and that it may change and return such data. In this case, the Customer shall ensure that any third-party terms of use do not constitute an obstacle to these activities.
- 4.5 As between the Customer and minubo, the Customer is the owner of the User-Stored Data and of the Data stored on Third-Party Systems (hereinafter collectively referred to as "Customer Data"). The Customer grants minubo the unrestricted right to use the Customer Data for the purpose of processing in the BI Solution (hereinafter referred to as the "Generated Data").
- 4.6 The Customer grants minubo the unrestricted right to use the Customer Data for the purpose of preparing anonymised and consolidated statistics from minubo's customer base (hereinafter referred to as "**Consolidated Data**").

5 Confidentiality of confidential information and passwords

- 5.1 The Customer shall be responsible for maintaining the confidentiality of the passwords of its users. The Customer shall instruct its users to keep their passwords confidential and not to disclose or allow them to be disclosed to any third parties and shall take the necessary precautions to maintain the confidentiality of passwords. In the event of any actual or suspected breach or loss of such data, the Customer shall notify minubo without undue delay by email to contact@minubo.com.
- 5.2 “Confidential Information” means any information disclosed (whether orally or in writing) by one Party (the “Disclosing Party”) to the respective other Party (the “Receiving Party”) that is expressed to be confidential or should reasonably be considered to be confidential given its nature and the circumstances of its disclosure.
- 5.2.1 Confidential Information of the Customer shall include Customer Data, and
- 5.2.2 Confidential Information of minubo shall include the BI Solution and Consolidated Data, and
- 5.2.3 Confidential Information of each Party shall include the terms and conditions of this Agreement and all order forms (including prices) as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such Party.
- 5.2.4 However, Confidential Information shall not include information that
- 5.2.4.1 is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party,
- 5.2.4.2 was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party,
- 5.2.4.3 is received from a third party without breach of any obligation owed to the Disclosing Party, or
- 5.2.4.4 was independently developed by the Receiving Party without breach of any obligation owed to the Disclosing Party.
- 5.3 The Receiving Party shall use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care)
- 5.3.1 not to use Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and,
- 5.3.2 except as otherwise permitted in writing by the Disclosing Party, the Receiving Party shall limit access to Confidential Information of the Disclosing Party to those of its employees and contractors who need such access for the purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein.

- 5.3.3 Neither Party shall disclose any terms or conditions of this Agreement or any other contractual agreements, e.g. order forms, to third parties other than its affiliates, legal advisors and accountants without the prior written consent of the respective other Party.
- 5.3.4 In the event of disclosure by a Receiving Party, the Receiving Party shall remain liable to the Disclosing Party for ensuring that the confidentiality of Confidential Information is maintained, including by third parties to whom the Receiving Party disclosed such Confidential Information. Exceptions to this rule are set out in clause 12.
- 5.3.5 The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party does not contest the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing access to such Confidential Information.

6 Fees

- 6.1 There are no fees associated with the use of the free trial version.
- 6.2 The Customer shall pay minubo the applicable fees for use of the BI Solution as detailed in the order form. If the term of this Agreement is extended, minubo shall have the right to adjust the fee for use of the BI Solution based on the size of the Customer's business according to the scale agreed on the order form or, in the absence of such an agreement, according to the scale published by minubo on its Website, if applicable.
- 6.3 The fee shall be calculated on a monthly basis and shall be paid quarterly in advance. The fee shall be due and payable immediately on the date of issue of the invoice and must be paid without discount within 15 calendar days of the date of the invoice.
- 6.4 All fees, other remuneration and prices stated above are exclusive of VAT at the applicable rate. VAT at the applicable rate shall be charged separately.
- 6.5 The Customer shall have a right of set-off or retention only if a claim is uncontested or has determined by final and non-appealable judgement. The Customer may assign claims arising from this Agreement to third parties only with the prior written consent of minubo.
- 6.6 If the Customer defaults on payment, minubo shall have the right to deny the Customer access to the BI Solution for as long as the default continues. In this case, the Customer shall continue to be obliged to pay the remuneration. Once payment has been made, the Customer shall again be given access. minubo reserves the right to make further claims based on default of payments.

7 Warranty

- 7.1 Free trial version

Any warranty for defects is excluded if the BI Solution is used on a free trial basis.

- 7.2 Chargeable use of the BI Solution and other chargeable services of minubo
- 7.2.1 minubo accepts liability only for defects of the services of minubo or its vicarious agents [*Erfüllungsgehilfen*].
- 7.2.2 A defect shall be deemed to exist if suitability of the services for the use agreed by contract is affected or significantly reduced. If a defect makes the services completely unsuitable for the use agreed by contract, the Customer shall be released from its obligation to pay the fees for the contractual service concerned until the defect has been remedied. If they are rendered partially unsuitable, the remuneration shall be reduced to an appropriate amount until the defect has been remedied. The obligation to pay for contractual services not affected by the defect shall continue to apply.
- 7.2.3 The Customer shall notify minubo without undue delay of any defects of the contractual services. In doing so, the Customer shall specify how and in what circumstances the error or defect occurred and shall actively assist minubo, without charge, in remedying the defect and shall in particular make available all necessary documents, data, etc. minubo requires to analyse and remedy the defects.
- 7.2.4 If analysis of an error message reveals that the error occurred within the Customer's sphere of influence, minubo shall have the right to charge the cost of analysis of the error message to the Customer at minubo's then applicable rates. This shall not apply if the Customer, despite the exercise of due care, was unable to recognise that the error occurred within its own sphere of influence.
- 7.2.5 The Customer cannot claim damages for defects of the services of minubo or its vicarious agents which occur before or after formation of the contract and for which minubo or its vicarious agents are not responsible.
- 7.3 Any other claims and rights of the Customer based on defects of the contractual services not expressly conferred on the Customer by this clause 7 – Warranty are hereby contracted out, unless the Customer is entitled to them under mandatory law.

8 Liability

8.1 Free trial version

In respect of the free trial version, minubo's liability is limited to intent and gross negligence or absence of guaranteed qualities. In cases of gross negligence, minubo's liability shall be limited to typical and foreseeable damage. Any further liability is excluded.

8.2 Chargeable use of the BI Solution and other chargeable services of minubo

- 8.2.1 Any claims of the Customer are excluded unless expressly stated otherwise hereinafter. The Customer shall be entitled to claims for damages arising from injury to life, limb or health or breach of material contractual obligations (cardinal obligations) and liability for any other damage resulting from intentional or negligent breach of duty caused by minubo or its legal representatives or vicarious agents. For the purposes of this Agreement, cardinal obligations are obligations the very discharge of which is a prerequisite for the proper performance of the

contract and the achievement of its purpose, and on the discharge of which the Customer can, as a rule, rely.

- 8.2.2 In case of breach of a material contractual obligation, minubo shall only be liable for typical and foreseeable damage if such damage was caused by gross negligence, unless the Customer makes claims for damages based on injury to life, limb or health.
- 8.2.3 This shall be without prejudice to any liability for claims based on the German Product Liability Act [*Produkthaftungsgesetz – ProdHaftG*] and on guarantees, provided, however, that such a guarantee must be designated as a “guarantee” [*Garantie*] in order to be legally considered a guarantee.
- 8.2.4 minubo’s liability for loss of data shall be limited to such amount as would have been incurred for restoring the data from proper and regular backups taken.
- 8.2.5 In each case of slight negligence, minubo’s liability shall be limited to EUR 25,000 per damage event and EUR 75,000 for the entire term of the contract.
- 8.2.6 minubo does not accept any further liability. In particular, minubo shall not be liable for initial defects if the conditions set out in clauses 8.2.1 and 8.2.2 are not met or the defect was caused by a customisation of the BI Solution agreed by individual contract.
- 8.2.7 In the event that claims are made directly against minubo’s legal representatives and vicarious agents, the limitations on liability under these General Terms shall also apply in their favour.
- 8.2.8 Liability for damage arising from injury to the Customer’s life, limb or health and claims based under the German Product Liability Act shall be subject to the statutory limitation periods. In all other cases, claims shall fall under the statute of limitations one year after the date when the claim arose.

9 Term and termination

- 9.1 This Agreement is made effective by formation of a contract pursuant to clause 1.
- 9.2 The term of contracts for chargeable use of the BI Solution shall be as specified in the order form, i.e. 12 months, unless otherwise stipulated in the offer (hereinafter referred to as the “**Initial Term**”). The Initial Term shall automatically be extended by an equal period, at least, however, by 12 months, if neither Party objects to the extension of the contract at least three (3) months before expiry of the Initial Term or three (3) months before expiry of the extended term, respectively.
- 9.3 If the contract was entered into for an indefinite term, it may be terminated by either Party on three (3) months’ notice to expire at the end of a calendar year.
- 9.4 The term of the free trial is specified in clause 1.
- 9.5 Either Party may terminate the contract for good cause. For instance, minubo shall have the right to terminate the contract if the Customer violates these General Terms, e.g. by using the BI Solution beyond the scope agreed by contract and not ceasing to do so within a reasonable time limit set by minubo.

9.6 Notice of termination must be given in writing.

10 Effects of termination of contract; surviving provisions

10.1 In the event that the contract is terminated, minubo shall disable the accounts of the users of the Customer. The Customer shall be under an obligation to cease to use the BI Solution.

10.2 When the contract is terminated, all rights and licences granted to the Customer under these General Terms, including, without limitation, any rights to use the BI Solution, shall cease without undue delay.

10.3 The following provisions of these General Terms shall survive termination or expiration of this Agreement: clause 3 ("Grant of rights"), clause 4.5 up to the end of clause 4 ("Management and ownership of data"), clause 5 ("Confidentiality of confidential information and passwords"), clause 8 ("Liability"), clause 11 ("Miscellaneous") and this clause 10 ("Effects of termination of contract; surviving provisions").

11 Miscellaneous

11.1 The relationship between the Parties is that of independent contractors. This Agreement represents the entire agreement between the Parties and supersedes all prior agreements, discussions, representations and promises between them relating to its subject matter.

11.2 No waiver under this Agreement shall be effective unless it is in writing and signed by an authorised representative of the Party making the waiver.

11.3 The courts competent for minubo's registered office in Hamburg (Germany) shall have jurisdiction to adjudicate any dispute arising out of this Agreement.

11.4 This Agreement shall be governed by and construed in accordance with the laws of the Federal Republic of Germany, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

11.5 These General Terms may be amended by agreement between the Customer and minubo as follows: minubo shall submit the amended terms in text form before they take effect, specifying which provisions are to be amended and the date when the proposed amendments are to take effect. At the same time, minubo shall allow the Customer a reasonable time, at least two months, to advise whether or not it accepts the amended terms of use for its further use of the services. If no statement to the contrary is made within this time limit, which begins to run upon receipt of the notice in text form, the amended terms shall be deemed agreed. When the time limit begins to run, minubo shall specifically inform the Customer of this legal consequence, i.e. of the right to object, the time limit for objections and the effects of remaining silent. If the Customer accepts the amended General Terms, they shall take effect without undue delay after express acceptance or after expiry of the time limit referred to above. Once the two-month time limit has expired, the Customer will no longer be able to log in to the BI Solution without accepting the amended terms. If the Customer objects to the new General Terms by giving written notice to this effect to minubo, the General Terms hitherto agreed shall continue to apply to its contract. In this case, minubo reserves the right to terminate the contract by extraordinary notice.

12 Contracts with the involvement of partner companies of minubo

- 12.1 The following clauses shall prevail and apply, if applicable, in deviation from the other provisions of these General Terms, with respect to contracts entered into with the involvement of (e.g. through referrals from) partner companies or resellers (hereinafter collectively referred to as “Partner Companies”) of minubo.
- 12.2 Unless otherwise stipulated in this clause 12 “Contracts with the involvement of partner companies”, the other provisions of these General Terms shall apply
- 12.3 In the event that a Partner Company is involved, these General Terms shall stand as an independent contract between the Customer and minubo.
- 12.4 These General Terms shall likewise apply if the BI Solution is used through the service of a Partner Company, e.g. through that Partner Company’s website or app store.
- 12.5 As an alternative to the way described in clause 1.5, a contract for chargeable services of minubo can be entered into by the Customer’s acceptance of the offer the Partner Company submitted, provided that the offer is also signed by an authorised signatory of the Partner Company and these General Terms governing the provision of minubo’s services are included.
- 12.6 If expressly stipulated in the offer, the Customer shall pay the fees to the Partner Company with discharging effect. In this case, payments shall not be made to minubo directly, and no such payments shall have discharging effect.
- 12.7 minubo shall have the right to make the various data (as defined in clause 4 above) available to the Partner Company for processing and use at its discretion. The Partner Company may transfer the data stored by the Customer at the Partner Company or the data calculated by the Partner Company for the Customer to minubo for processing and use at its discretion, e.g. as part of Consolidated Data.
- 12.8 In deviation from clause 5.3.4 above, minubo does not accept responsibility for breach of confidentiality by the Partner Company. The Customer shall itself be responsible for entering into agreements to this effect with the Partner Company.
- 12.9 The limitations on liability under these General Terms shall also apply in the relationship of Customer to either Partner Company or the Reseller to the extent that claims of the Customer based on the services of minubo arise in this relationship. minubo declines all liability or warranty for acts or omissions of third parties, including, without limitation, of Partner Companies or Resellers, unless their services are expressly part of minubo’s contractual services to the Customer.