

Merkursoft

General Terms and Conditions and Privacy Notice

for the Merkursoft backoffice system with XML import, AI functions, accounting and
invoicing

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English translation based on the German draft. Before publication or contractual use, the wording should be reviewed against the final German legal version and the applicable company details.

Part A - General Terms and Conditions

These General Terms and Conditions govern the use of the software and backoffice services provided by Merkursoft for business customers. They replace older versions, in particular earlier versions under the names MERKUR-SYSTEMHAUS, MERKUR-SYSTEM-HAUS, Merkur-Systemhaus or Merkursoft UG.

1. Provider, scope and customer group

The provider of the services is Merkursoft, Kernerweg 22, 89520 Heidenheim a. d. Brenz, Germany, email: info@merkursoft.de. Where an authorised representative must be specified, the person named in the legal notice or offer shall apply.

These Terms apply to all contracts for the provision of the Merkursoft backoffice system, in particular for functions such as XML import, master data management, invoicing, accounting support, reports, document management, AI-supported assistant functions as well as support and additional services.

The offer is directed exclusively at entrepreneurs within the meaning of Section 14 of the German Civil Code (BGB), in particular small businesses, self-employed persons, travel agencies, service providers and comparable commercial users. Consumers within the meaning of Section 13 BGB shall not become contractual partners unless expressly agreed otherwise.

Deviating, conflicting or supplementary terms of the Customer shall only become part of the contract if Merkursoft expressly agrees to their applicability in text form.

2. Subject matter of the contract and service description

Merkursoft provides the Customer with a web-based backoffice system as Software-as-a-Service. The specific scope of services is determined by the respective offer, order confirmation, product description, price list or individual agreement.

The software supports business processes. It does not replace legal, tax or business advice. The Customer remains responsible for professionally checking results, bookings, invoices, tax information, imports and reports and for complying with statutory requirements.

Merkursoft may further develop, improve or technically adapt functions, provided that this does not materially impair the main contractual service agreed.

3. Conclusion of contract, setup and access

A contract is concluded by acceptance of an offer, order confirmation, provision of access, signing of a contract or use after corresponding activation.

The Customer receives access data or sets up user accounts itself. The Customer is obliged to use secure passwords, treat access data confidentially and grant user rights only to authorised persons.

Actions performed via a customer account shall be deemed actions of the Customer, provided the Customer is responsible for the misuse. The Customer shall notify Merkursoft without undue delay if unauthorised access or a security incident is suspected.

4. Customer obligations

The Customer is responsible for the accuracy, lawfulness and completeness of the data entered, imported or processed by the Customer.

The Customer ensures that it is entitled to process personal data, business documents, XML data, invoices, booking data, payment data and other content.

The Customer must not misuse the software, in particular not for unlawful content, unauthorised access, malware, spam, circumvention of security measures or actions that impair the stability, integrity or security of the systems.

The Customer is obliged to comply independently with statutory information, consent, retention, accounting and documentation obligations.

5. XML imports, interfaces and third-party systems

Where the software supports XML imports, interfaces or data transfers from third-party systems, Merkursoft only owes the technical processing of the provided data formats as described in the offer.

The Customer is responsible for ensuring that imported data has been lawfully collected, is correct and is provided in the correct format. Incorrect, incomplete or changed third-party formats may lead to import errors or differing results.

Merkursoft assumes no responsibility for the availability, accuracy or lawfulness of data or services of third parties unless Merkursoft itself provides them or is responsible for them.

6. Invoicing, accounting and tax responsibility

The software can support the Customer in invoicing, document management, accounting workflows, reports and preparatory activities.

Merkursoft does not provide tax advice, legal advice or audit services. The Customer remains responsible for the formal and substantive accuracy of its invoices, bookings, tax filings, retention obligations and evidence.

The Customer must check documents and suggestions generated by the software before use, dispatch or posting. This applies in particular to tax rates, mandatory information, payment information, customer data and legal requirements.

7. AI functions

Merkursoft may provide AI-supported assistant functions, for example for data extraction, classification, summarisation, plausibility checks, text generation, suggestions, automation or support with XML imports and backoffice processes.

AI results are machine-generated suggestions. They may be incomplete, outdated, incorrect or misleading. The Customer is obliged to check AI results before using them for business, legal, accounting, tax or customer-related purposes.

The Customer may only enter into AI functions data that it is authorised to process. Special categories of personal data within the meaning of Art. 9 GDPR may only be processed if there is a valid legal basis and this is necessary for the specific purpose.

Merkursoft does not make decisions based solely on automated processing that have legal effect on the Customer's end customers. Where the Customer uses AI results in relation to its customers, the Customer is responsible for transparency, review and lawful use.

8. Fees, invoices and default in payment

The fees are based on the agreed offer, price list or contract. All prices are exclusive of the applicable statutory VAT, where VAT applies.

Recurring fees shall be invoiced in advance for the agreed billing period unless otherwise agreed. One-off fees are due upon performance of the service or as agreed.

Payments are made by bank transfer, SEPA direct debit or another agreed payment method. If the Customer is in default of payment, the statutory default rules apply. After a prior reminder and setting of an appropriate deadline, Merkursoft may temporarily block access if the Customer is in arrears with material amounts and the blocking is proportionate.

In the event of chargebacks or failed payments, Merkursoft may request reimbursement of the actual costs incurred and attributable to the Customer.

9. Availability, maintenance and support

The specific availability, response times and support services are set out in the respective service description or in a separate service level agreement. Without a separate agreement, Merkursoft endeavours to provide appropriate availability in line with the state of the art.

Maintenance work, security updates, technical adjustments and system maintenance may temporarily lead to restrictions. Merkursoft will carry out planned maintenance work outside usual business hours where reasonable, or announce it in advance.

Disruptions must be reported by the Customer without undue delay and as specifically as possible. The Customer shall reasonably assist with error analysis, in particular by describing the disruption, affected users, time, screenshots and relevant logs.

10. Data backup, data export and contract end

Merkursoft takes appropriate technical and organisational measures to secure the systems. The Customer remains responsible for its own professional review and, where technically possible, for exporting business-critical data.

After the end of the contract, Merkursoft will give the Customer the opportunity to download exportable customer data for an appropriate period, provided there are no outstanding payment obligations or legal obstacles.

After expiry of statutory or contractual retention periods, Merkursoft may delete data. Details on the return or deletion of personal data are governed by the Data Processing Agreement.

11. Rights of use

For the contract term, Merkursoft grants the Customer a simple, non-exclusive, non-transferable right to use the software within the agreed scope for the Customer's own business purposes.

Transfer, sublicensing, rental, publication, imitation, decompilation or any other use outside the contractual purpose is only permitted insofar as mandatory law allows it or Merkursoft expressly approves it in text form.

All rights to the software, documentation, user interface, database structure, workflows, AI functions, trademarks, concepts and other protected components remain with Merkursoft or the respective rights holders.

12. Rights to customer data and content

The Customer retains all rights to its data and content. Merkursoft processes customer data only for contract performance, security, troubleshooting, billing, according to the Customer's instructions or where a statutory obligation exists.

The Customer shall indemnify Merkursoft against third-party claims arising from content, data or instructions provided by the Customer being unlawful or infringing third-party rights, insofar as the Customer is responsible for the cause.

13. Data protection and processing on behalf of the controller

For personal data that the Customer processes in the system for its own purposes, the Customer is generally the controller within the meaning of the GDPR. Merkursoft acts in this respect as processor under Art. 28 GDPR.

For this processing, the parties shall conclude a separate Data Processing Agreement including technical and organisational measures and a subprocessor arrangement. Without a required Data Processing Agreement, personal customer data must not be processed productively.

Under this version, hosting is provided by Hetzner Online GmbH, Industriestr. 25, 91710 Gunzenhausen, Germany. Changes to subprocessors are communicated in accordance with the Data Processing Agreement.

14. Liability

Merkursoft has unlimited liability in cases of intent and gross negligence, injury to life, limb or health, assumption of a guarantee and under mandatory statutory provisions, in particular the German Product Liability Act.

In the event of simple negligence, Merkursoft shall only be liable for breach of material contractual obligations. Material contractual obligations are obligations whose fulfilment is essential for the proper performance of the contract and on whose compliance the Customer may regularly rely. In this case, liability is limited to the typical and foreseeable damage under the contract.

For data loss caused by simple negligence, Merkursoft is liable only to the extent of the damage that would also have occurred if the Customer had performed proper and regular data backups, provided the Customer was obliged or technically able to back up the data.

Any further liability is excluded to the extent permitted by law.

15. Warranty and service disruptions

The statutory warranty rights apply insofar as these Terms do not contain permissible deviating provisions.

Merkursoft will remedy reported and reproducible defects within a reasonable period. The Customer must describe defects in a comprehensible manner and cooperate in error analysis.

There are no defect claims for disruptions caused by improper use, non-approved third-party software, incorrect customer data, changes made by the Customer or external systems, unless Merkursoft is responsible for them.

16. Contract term and termination

The term and notice periods are set out in the respective offer or contract. If nothing has been separately agreed, the contract runs for an indefinite period and may be terminated in text form with one month's notice to the end of a calendar month.

The right to terminate for good cause remains unaffected. Good cause includes, in particular, serious or repeated breaches of contract, substantial default in payment, unlawful use or endangerment of system security.

Notices of termination must at least be in text form, for example by email, unless a stricter form has been validly agreed in the contract.

17. Changes to these Terms

Merkursoft may amend these Terms if there is an objective reason, in particular changes in law, technical changes, security requirements, expansion of the services or changed business processes.

Material changes will be notified to the Customer in good time in text form. If the Customer does not object within the notified period and continues to use the services, the changes shall be deemed accepted, provided that this consequence was expressly indicated in the notification. In the event of material disadvantages, the Customer may have a special right of termination.

18. Final provisions

German law applies to the exclusion of the UN Convention on Contracts for the International Sale of Goods, unless mandatory statutory provisions conflict with this.

The place of jurisdiction for merchants, legal entities under public law and special funds under public law shall be, where permissible, the registered office of Merkursoft.

If any provision of these Terms is or becomes invalid, the validity of the remaining provisions shall remain unaffected. The parties shall replace the invalid provision with a valid provision that comes as close as possible to the economic purpose.

Part B - Privacy Notice

This Privacy Notice provides information on the processing of personal data by Merkursoft when using the website, making contact, entering into a contract and using the Merkursoft backoffice system. It replaces older privacy texts dated 11 February 2019.

1. Controller

The controller within the meaning of Art. 4 No. 7 GDPR is: Merkursoft, Kernerweg 22, 89520 Heidenheim a. d. Brenz, Germany, email: info@merkursoft.de.

Where an authorised representative must be specified, the person named in the legal notice or offer shall apply. Privacy enquiries may be sent at any time to info@merkursoft.de.

2. Data protection role regarding customer data

For personal data that customers enter into the backoffice system, import into it or have processed there, the respective customer is generally the controller. This applies in particular to data of end customers, suppliers, employees, contacts, invoice, booking, travel, payment or communication data.

Merkursoft generally processes this data as processor under Art. 28 GDPR and only in accordance with the contract, the Data Processing Agreement, documented instructions of the Customer or statutory obligations.

The Customer is responsible for the lawfulness of data collection, the information of data subjects, required consents, erasure and retention periods and the handling of data subject rights vis-a-vis its end customers.

3. Processing categories

The following overview describes the most important processing activities. Depending on the booked scope of services, individual activities may not apply or additional activities may be added.

Overview of processing activities

Area	Data categories	Purpose and legal basis	Recipients / processors	Retention period
Website and server logs	IP address, date and time, accessed page, browser, operating system, referrer, status codes	Provision of the website, security and error analysis; Art. 6(1)(f) GDPR; technically necessary access under Section 25(2) TDDDG	Hosting via Hetzner Online GmbH, Industriestr. 25, 91710 Gunzenhausen, Germany	Usually 7 to 30 days; longer only in the event of security incidents
Contact by email or form	Name, company, email address, telephone number, message, attachments	Handling the request; Art. 6(1)(b) GDPR where contract-related, otherwise Art. 6(1)(f) GDPR	Merkursoft; email/hosting service providers	Until final handling of the request; where business-related, in accordance with statutory retention periods
Customer account and contract management	Master data, users, roles, login data, contract data, invoice data, payment status	Provision and administration of the customer account, billing and support; Art. 6(1)(b) and (c) GDPR	Merkursoft; hosting; payment service providers/banks where required	For the contract term; tax and commercial-law documents usually 10 years
Use of the backoffice system	User activities, settings, import logs, system messages, invoice/booking data, documents, XML import data	Provision of the SaaS functions, troubleshooting and security; Art. 6(1)(b) GDPR; for customer data usually processing on behalf of the controller under Art. 28 GDPR	Merkursoft as processor; Hetzner Online GmbH as hosting subprocessor	For the contract term; deletion or return after contract end in accordance with the agreement/DPA
AI functions	Inputs, document content, structured data, prompts, metadata, technical logs	Automated assistance for import, classification, summarisation, invoice/booking and backoffice processes; Art. 6(1)(b) GDPR or Art. 28 GDPR for customer data	Merkursoft; if external AI services are activated, AI service providers named in the subprocessor list	Only as long as required for the function and traceability; details per service in the product/subprocessor list
Support and error analysis	Contact data, ticket content, screenshots, system logs, affected data records insofar as provided by the Customer	Handling support cases, quality assurance and evidence; Art. 6(1)(b) and (f) GDPR	Merkursoft; where applicable support and hosting service providers	Usually up to 3 years after completion, unless longer statutory obligations apply
Newsletter / promotional communication	Email address, name, company, consent and dispatch data	Dispatch only with consent or statutory permission; Art. 6(1)(a) GDPR or Art. 6(1)(f) GDPR	Merkursoft; mailing service provider if used	Until withdrawal or objection; proof of consent up to 3 years

4. Cookies and comparable technologies

The website and the backoffice system use technically necessary cookies or comparable technologies to provide login, session, security, language settings and basic functions. These technologies are required so that the expressly requested digital service can be provided.

Non-essential cookies, tracking, analytics or marketing services are used only if the user has previously given valid consent. Consent that has been granted may be withdrawn at any time with effect for the future.

The earlier wording according to which consent to cookies is declared by merely using the website is replaced by this differentiated provision.

5. Google Maps / Places and other third-party functions

Where Google Maps, Google Places Autocomplete or comparable third-party functions are used in individual modules, this is done only for the respective purpose, for example address search or location support.

Technical data such as IP address, location/address data and usage data may be transmitted to the respective provider. Details of actively used third-party functions must be made available in the product description, cookie/consent management or a separate service list.

6. AI functions and transparency

When AI functions are used, inputs, documents, import data, metadata and system context may be processed automatically in order to generate suggestions, classifications, summaries, extractions or other assistant services.

AI functions are intended to provide support. They do not make independent legally binding decisions by Merkursoft in relation to the Customer's end customers. The Customer must check results before using them and decides on their use itself.

Where external AI service providers are used, they are engaged in accordance with the Data Processing Agreement and the subprocessor list. Personal data should only be transmitted to AI functions to the extent necessary for the specific purpose.

7. Recipients and subprocessors

Personal data is disclosed to recipients only insofar as this is necessary for contract performance, operation of the systems, billing, statutory obligations, security purposes or enforcement of legitimate claims.

Hosting is provided by Hetzner Online GmbH, Industriestr. 25, 91710 Gunzenhausen, Germany. Other service providers may include email, support, payment, security, backup or AI services, provided they are required for the specific scope of services.

Where service providers process personal data on behalf of Merkursoft, Data Processing Agreements are concluded.

8. Transfers to third countries

Personal data is transferred to countries outside the European Union or the European Economic Area only if there is a suitable legal basis, for example an adequacy decision, EU Standard Contractual Clauses or explicit consent.

If third-party functions with a possible third-country connection are activated, the affected users or customers are informed about this in the product, privacy or consent information.

9. Retention period

Merkursoft stores personal data only for as long as this is required for the respective purposes or statutory retention obligations exist.

Contact and support data is regularly deleted once the request has been completed and no statutory retention or evidentiary obligations exist. Contract, invoice and booking documents are regularly stored in accordance with commercial and tax-law retention obligations.

Customer data in the backoffice system is returned or deleted after the end of the contract in accordance with the contract and the Data Processing Agreement, unless statutory obligations prevent this.

10. Data subject rights

Data subjects have the rights of access, rectification, erasure, restriction of processing, data portability and objection to certain processing activities in accordance with the GDPR.

Where processing is based on consent, consent may be withdrawn at any time with effect for the future. The lawfulness of processing until withdrawal remains unaffected.

Data subjects also have the right to lodge a complaint with a data protection supervisory authority. The competent authority may in particular be the authority of the habitual place of residence, workplace or registered office of Merkursoft.

For data that a Customer processes as controller in the backoffice system, data subject rights must generally be asserted against the respective Customer. Merkursoft supports the Customer within the framework of the Data Processing Agreement.

11. Security

Merkursoft uses appropriate technical and organisational measures to protect personal data against loss, destruction, unauthorised access, manipulation or disclosure.

These measures may include transport encryption, access controls, role and rights concepts, logging, backup procedures, authorisation concepts, security updates and organisational safeguards.

The Customer is obliged to appropriately protect its own user accounts, passwords, end devices and internal authorisations.

12. Updating this Privacy Notice

Merkursoft may update this Privacy Notice if the legal situation, technical processes, functions, service providers or business processes change. The current version is made available on the website or in the customer area.

Appendix - Notes before publication

Before publication, the following points should be reviewed internally or by legal counsel and supplemented where necessary:

- Confirm the legal form and authorised representative of Merkursoft and align them with the legal notice, invoices and trade/commercial register information.
- Create or update a separate Data Processing Agreement under Art. 28 GDPR, including TOMs, deletion concept and subprocessor list.
- Add a list of all service providers used: hosting, email, payment service providers, support, backup, AI providers, analytics/tracking tools.
- Configure the cookie/consent banner technically so that it matches this Privacy Notice.
- Align specific terms, prices, termination periods, support times and service levels with the offer/product page.
- For sector-specific data, such as travel, payment, health or identity document data, review additional data protection and security requirements.