

GENERAL TERMS AND CONDITIONS

1. General

- 1.1 These General Terms and Conditions apply to any agreement ("**Service Agreement**") between Baqend GmbH with registered seat in Hamburg, registered with the commercial register at the Local Court of Hamburg (*Amtsgericht Hamburg*) under no. HRB 132601 ("**Baqend**") and its customers (each a "**Customer**").
- 1.2 These Terms and Conditions do not apply, if the Customer is a consumer within the meaning of section 13 German Civil Code (*BGB*).
- 1.3 Unless otherwise agreed, the General Terms and Conditions in the version valid at the time of the conclusion of the Service Agreement shall also apply to similar future agreements between Customer and Baqend without Baqend having to refer to them again in each individual case. In the event of material changes to the General Terms and Conditions, these shall only become part of the respective agreement if Baqend has referred to these changes when concluding the new contract.
- 1.4 In case of any deviation between these General Terms and Conditions and a "*Service Order*" or in German "*Service Auftrag*" provided by Baqend (both referred to as "**Service Order**") or any other agreement between Baqend and a Customer which is individually agreed in writing, the provisions of the Service Order or the written agreement shall prevail unless expressly provided for otherwise.
- 1.5 Any Standard Business Terms of the Customer do not apply, regardless of whether Baqend has expressly objected to them or not. This shall also apply if Baqend renders services/its performance without reservation.

2. Binding Offers, Conclusion of Service Agreement

- 2.1 All offers made by Baqend to a Customer are subject to potential changes and non-binding in nature, unless expressly marked by Baqend as binding. This especially (but not exclusively) applies to all descriptions, advertisements and other offerings provided by Baqend on its own homepage or on third-party homepages or if Baqend provides the Customer with catalogues, product descriptions or technical documentation in advance of any order.
- 2.2 A Service Agreement is concluded when Baqend accepts an offer of the Customer as specified in the following:
- 2.3 The Customer submits a binding offer by (i) signing and submitting Baqend's Service Order (or in German "*Service Auftrag*") to Baqend, or (ii) by submitting an offer via any online ordering process provided on Baqend's or any third-party's website (each an "*Online-Offer*"), if Customer thereby has gone through this ordering process in full and has agreed to these General Terms and Conditions no matter whether by clicking a button, ticking a checkbox or enabling a similar instrument before completing the process. By signing and submitting the Service Order as well as by concluding the online ordering process, the Customer agrees to be bound by the Service Order or Online-Offer and these General Terms and Conditions in their entirety without limitation.
- 2.4 Baqend accepts a Customer's offer either expressly by countersigning and submitting of the Service Order or implied by performing at least one of the services listed in the Service Order or Online-Offer, as the case may be.
- 2.5 In any case a Service Agreement is concluded when (i) both parties have signed the same Service Order or (ii) have signed identical copies of a Service Order and exchanged them. The exchange of a scanned pdf-document is in each case sufficient.

3. Baqend Services

3.1 Service Orders

The scope and specifications of any service to be provided by Baqend under a Service Agreement (each a "**Service**") is exclusively determined by the respective Service Order or Online Offer or any mutual amendment thereof.

3.2 Speed Kit Implementation and Processing

Baqend undertakes to implement its Speed Kit ("Speed Kit") for Customer and to keep it functional during the Term of the Service Agreement.

Baqend's Speed Kit employs browser technology in combination with server infrastructure and innovative caching algorithms to optimize user experience of Customer's website at the user's end by allowing for improved page load times. Customer is not provided a copy or any other direct possession of Speed Kit. Instead Customer is provided with the necessary script-tags and files to access Speed Kit.

The implementation of the Speed Kit is carried out by Baqend. Customer is obliged to follow the onboarding steps as provided by Baqend and to perform any contributing action defined therein.

Technical data, specifications and performance data in public statements regarding the Speed Kit, in particular in advertising material and/or on Baqend's website etc., do not constitute a statement of quality (keine Beschaffenheitsvereinbarung) regarding the Speed Kit if not explicitly referred to in writing.

3.3 Services

Baqend undertakes to perform further services (e.g. special support services etc.) only to the extent as they are indicated and specified in the respective Service Order, Online Offer or any mutual amendment thereof.

3.4 Type of Contract

Baqend is not obliged to create a certain work or to reach a specific result by performing the Services as described above, if not explicitly agreed otherwise in writing. The Service Agreement is not to be considered a contract to produce a work (kein Werkvertrag) but a contract for services (Dienstvertrag).

4. Remuneration, Terms of Payment

4.1 The Customer undertakes to pay the fees agreed in the Service Agreement.

4.2 All payments are to be made within fourteen (14) days after receipt of the invoice by the Customer without any deductions (credit on Baqend's bank account decisive). All payments are to be made in Euro via SEPA bank transfer (SEPA-Überweisung) to a bank account indicated by Baqend (usually in the Service Agreement), if not explicitly agreed otherwise.

4.3 Customer is only entitled a right to set-off against remuneration claims of Baqend if and to the extent his counter-claims have been established by a final court decision or have explicitly been acknowledged by Baqend. The same shall apply for any right to retention.

4.4 Any assignment of claims under a Service Agreement by Customer is only valid with the prior written consent of Baqend.

4.5 In the event that Customer defaults on payment, Baqend reserves its right to block Customer's access to Baqend's platform or services agreed in the respective Service Agreement.

5. Customer's Responsibility, Liability and Idemnification

5.1 Customer agrees to use any products and services provided by Baqend with due care and in compliance with all applicable laws and any written guidelines or policies which Baqend delivers to Customer. This includes, in particular, the Customer's involvement in the implementation of Speed Kit.

5.2 Customer is responsible for the security of his passwords and for any use of his customer account(s) on Baqend's website/s. If Customer becomes aware of any unauthorized use of his password or of his customer account, he agrees to notify Baqend immediately. The Customer hereby warrants that any information he has provided to Baqend in the registration process is accurate and complete. The Customer undertakes not to submit false data or unauthorized data of third parties. In the event that any circumstances of the Customer relevant to the execution of the Service Agreement change, Customer undertakes to inform Baqend of such changes without undue delay or, if possible, to modify the information in Customer's account accordingly.

5.3 Customer undertakes not to use the products and services provided by Baqend to:

- a) publish, upload, post, email, transmit or otherwise make available to the public / third parties any content or material that
 - Customer does not have the right to make available;
 - is unlawful, harmful, vulgar, obscene, hateful, or racially, ethnically or otherwise objectionable;
 - infringes any intellectual property or other rights of Baqend and/or third parties;
 - includes any unsolicited or unauthorized advertising, promotional materials, surveys, junk mail, spamming, chain letters, or any other form of solicitation, commercial or otherwise, or
 - contains a software virus, trojan horse, worm, cancelbot, corrupted file, or any other computer file or software designed to interrupt, destroy, damage or limit the functionality of any computer hardware, software or other property; defame, harass, abuse, stalk, threaten or violate the legal rights of others such as rights of privacy and publicity;
- b) forge email headers or otherwise manipulate identifiers in order to disguise the origin of any content transmitted through the Services;
- c) download any file or content posted by another user/third party that Customer know, or reasonably should know, should not be legally reproduced, displayed, performed and/or distributed in such manner;
- d) interfere with or disrupt the Services, servers, or networks which support the Services, or disobey any requirements, procedures, policies or regulations of networks connected to the Services;
- e) violate any applicable local, state, national or international law and any regulations;
- f) harvest, collect, or store personal information or data of other Customers.

5.4 Customer is liable for ensuring that all statutory requirements, in particular those pertaining intellectual property rights, are observed when Baqend's platform or Services are used as intended.

5.5 In the event of fault notifications, unexpected behaviour or other problems of Services delivered by Baqend, the Customer undertakes to inform Baqend immediately where possible and no later than two working days after the incident.

5.6 In case of a breach of any of the above-mentioned obligations by Customer and during the time of the non-compliant condition, Baqend is entitled to interrupt all Services with immediate effect or to block access to the Speed Kit Service or any other application under this Service Agreement of the Customer. Baqend expressly reserves the right to seek further damages. In case of material and/or repeated violations or if the Customer does not remedy the breach within a reasonable period of time, Baqend is entitled to exercise the right to extraordinary termination without notice period.

5.7 Customer agrees to indemnify and hold Baqend, its affiliates, subsidiaries, officers, agents, partners, employees, and licensors harmless from any claim or demand, including reasonable attorney's fees, made by any third party due to or arising out of Customer's content or Customer's use of Baqend's platform and/or Services, Customer's breach of this agreement or Customers alleged violation of any other rights of a third party.

6. Baqend's Liability

6.1 All claims for damages on the part of the Customer shall be excluded unless resulting from (i) injury to life, body or health or breach of material contractual obligations (cardinal obligations) or (ii) intentional or grossly negligent breach of duty by Baqend, its legal representatives or its vicarious agents (Erfüllungsgehilfen). Material contractual obligations are obligations whose fulfilment is necessary to achieve the objective of the Service Agreement.

6.2 If material contractual obligations are breached, Baqend shall only be liable for the foreseeable damage that is typical for contracts of this kind if said damage was caused by simple negligence. The Customer is not entitled to claim damages for lost profits (entgangene Gewinne) according to section 252 German Civil Code (BGB). The aggregate amount of damages Customer may claim in connection with a breach of duty under this agreement shall be limited to the amount of remuneration payable during the initial Subscription Term. The restrictions in this paragraph do not apply to the extent the damages are based on an injury to life, body or health.

6.3 Insofar as the customer has contributed to the damage through his own culpable breach of duty or obligation, he must allow his contributory negligence to be proportionately offset against the damage. If the customer has predominantly caused the damage through his breach of duty or obligation, Baqend's liability is excluded. The same shall apply insofar as the customer has failed to avert or reduce the damage by taking suitable measures or to draw Baqend's attention to the impending damage. A breach of duty in this sense shall be deemed to be, in particular, any breach of the duties and obligations within the meaning of Sec. 5 of these General Terms and Conditions.

6.4 The restrictions of Sec. 6.1 and Sec. 6.2 shall also apply for the benefit of Baqend's legal representatives and vicarious agents if claims are asserted directly against them.

6.5 The provisions of the German Product Liability Act (Produkthaftungsgesetz) or any other mandatory statutory provision of German law shall remain unaffected by the provisions of this Sec. 6.

7. Term and Termination

7.1 Term and termination of the Services ("Subscription Term") are provided for in the respective Service Agreement.

7.2 In all other cases the Subscription Term is twenty-four (24) months. It periodically prolongs for another term of twelve (12) months, if not terminated by one party with three (3) months prior text form notice (e.g. notification via e-mail is sufficient) to the end of each term.

7.3 The right to terminate the Service Agreement for good cause (außerordentliche Kündigung) shall remain unaffected.

8. Rights of Use

8.1 Customer is granted a non-exclusive, territorially unrestricted, non-transferrable and non-sublicensable, revocable right to use the Speed Kit Service for his own business operations for the contractual purposes upon full payment of the remuneration according to Sec. 4 for the relevant payment period during the applicable Subscription Term.

8.2 The permitted use of the Speed Kit Service includes online-access by website visitors to Customer's website subject to the respective Service agreed. The Customer is entitled to access the Speed Kit Service to the extent necessary for the fulfilment of the contractual purposes.

8.3 Furthermore, Customer is not entitled to use the Speed Kit Service, in particular to reproduce, distribute, publish, edit, decompile or carry out other types of reverse engineering of the Speed Kit Service, unless Customer is entitled to do so according to Section 69e German Copyright Act (§ 69e UrhG). Customer shall have no right to make copies of the Speed Kit Service and is not entitled to make copies and/or the Speed Kit Service available to third parties, in particular lend, rent, sell or otherwise grant third parties rights to use the Speed Kit Service, except for the permitted use by website visitors.

8.4 In no event shall Baqend be required to make available the source code of the Speed Kit Service or any other software used for the performance of the Services under any Service Agreement.

8.5 Baqend claims no ownership or control over any content or application owned by the Customer. Customer retains copyright and any other rights Customer already holds in the content and/or application. By submitting, posting or displaying content on or through Baqend's Services on the platform or website Customer gives Baqend a worldwide, royalty-free, and non-exclusive license to reproduce, adapt, modify, translate, publish, publicly perform, publicly display and distribute such content for the sole purpose of enabling Baqend to provide Customer with the Services. Furthermore, by creating an application through use of the Services, Customer gives Baqend a worldwide, royalty-free, and non-exclusive license to reproduce, adapt, modify, translate, publish, publicly perform, publicly display and distribute such application for the sole purpose of enabling Baqend to provide Customer with the Services. Customer further represents and warrants to Baqend that he has the right, title, and/or authority to grant such license.

9. Confidentiality

9.1 Customer and Baqend agree to keep all confidential information and know-how of the respective other party that relates to the business, financial condition, technology and / or products, customers, suppliers, or potential customers or suppliers of the respective disclosing party which becomes known to them during the initiation or performance of the Service Agreement strictly confidential and only to use such information for the contractually agreed purposes. Confidential information for the purpose

of this provision shall mean all forms and type of financial, business, scientific, technical or engineering information and know-how, including, but not limited to, specifications, designs, techniques, processes, procedures, methods, compilations, inventions and developments, products, equipment, samples, algorithms, computer programs (whether as source code or object code), data, marketing and customer information, vendor information, personal information, projections, plans and reports, any other data, documentation, or information related thereto, as well as improvements thereof, whether in tangible or intangible form and whether or not stored, compiled or memorialized in any media or in writing, which is marked as such or is to be seen as confidential because of its nature. Both parties agree at the request of the respective other party to require their employees to sign an appropriate confidentiality declaration and to present this to the other party. The parties shall not seek to register intellectual property rights in respect of confidential information of the other party.

- 9.2 If confidential information within the above definition is requested by a public authority, the respective other party shall be informed without delay and before the information is supplied to the public authority. Any revelation of confidential information shall be strictly limited to the extent the public authority has the right to demand revelation.
- 9.3 The rights and obligations under Sec. 9.1 and Sec. 9.2 shall not be affected by the termination of the Service Agreement. Both parties agree at the request of the respective other party to return or destroy confidential information of the other party upon the termination of this Agreement, to the extent that such information still exists.

10. Data Protection

- 10.1 Baqend processes personal data of the Customer's users provided in the context of the provisioning of the services, including the setting up a user account with Baqend. These personal data are processed by Baqend as a controller in order to provide the Services and in order to enable the users to use the Software and to provide the user account. The legal basis for such data processing is Art. 6 (1) lit. b) GDPR. With regard to the rights of the persons concerned and other information duties in this respect, reference is made to the Baqend Privacy Policy, accessible at <https://www.speed-kit.com/privacy>.
- 10.2 In the course of using Speed Kit on its website, Customer may process personal data of its website visitors. Customer is the data controller of such personal data and Baqend is a data processor. Such data processing is subject to the Baqend Data Processing Addendum, accessible at <https://www.speedkit.com/legal>. The Data Processing Addendum shall be part of the contract and is herewith expressly incorporated into the contract by the parties.

11. Final Provisions

- 11.1 Any amendment or addendum to the Service Agreement or these General Terms and Conditions must be in text form (e.g. e-mail, messengers) in order to be effective, unless a stricter form is required by mandatory law. This also applies to any amendment to this form clause.
- 11.2 Where a German term is inserted in brackets, it alone (and not the English term to which it relates) shall be authoritative for the purpose of the interpretation of the relevant English term in these General Terms and Conditions.
- 11.3 The Service Agreement and any other commercial relationship between Baqend and Customer is governed by the laws of the Federal Republic of Germany.
- 11.4 If the Customer is a merchant within the meaning of section 1 German Commercial Code (Handelsgesetzbuch - HGB), the exclusive place of jurisdiction for all disputes concerning rights and obligations arising from this contract, including its validity, shall be Hamburg.
- 11.5 Any invalidity or impracticability of one or more than one provision of these General Terms and Conditions will not affect the validity of the other provisions of these General Terms and Conditions. The same applies if a necessary provision has been omitted from the General Terms and Conditions. The invalid or impracticable provision will be replaced or the omission will be remedied by a legally valid and practicable provision which, in the view of the parties, reflects in economic terms as closely as possible the essence and purpose of the invalid or impracticable provision or the omission.