Terms of Use

for Zaikio Apps

Zaikio GmbH, based in Mainz, Germany („**Zaikio**") operates a cloud-based platform for the print media industry („**Zaikio Platform**"). Among other things, Zaikio also offers software there for business customers („**Customers**"), who can subscribe to and thus use it via a subscription model („**Apps**"). For this purpose one or more plans are available per App, which may be associated with different usage fees and functionalities („**Plan**"). When subscribing to an App, the Customer selects one of these plans.

These Terms of Use form the legal framework for the cooperation between Zaikio and the customer with respect to the use of the Apps provided by Zaikio.

1. Licensor's liability: providing the Apps

1.1. Zaikio hereby grants the Customer a non-exclusive and non-transferable licence for Apps on the Zaikio Platform. The Customer is not entitled to grant any sub-licences to the Apps. The licence shall remain valid until the end of the usage relationship and is limited to the scope of functionalities defined in the selected plan.

1.2. The Customer can access the Apps hosted by Zaikio through an internet connection.

1.3. A free Zaikio account is required to use the Apps.

1.4. The functionality of the Apps and system requirements are available in the Zaikio App Store (www.zaikio.com).

1.5. Zaikio agrees to make the Apps available to Customer through a third-party server. To the extent appropriate, Customers can store data on the server for further use whilst using the Apps. A server uptime of 99% on average over a year can be expected. This excludes any previously announced maintenance intervals.

1.6. Zaikio shall provide free support to the Customer during its normal business hours (Monday to Friday 9:00-17:00 CET, except on public holidays in Mainz, Germany) Enquiries are received and answered in German and English via a live chat application selected by Zaikio. Enquiries will be answered within a reasonable time. Zaikio will make every reasonable effort to answer the questions asked.

1.7. Customer App customisations, consulting, integration and services are available only when ordered separately.

1.8. Zaikio is entitled to change Apps, in particular to adapt it to reflect changes in technology. Zaikio shall notify Customers of any significant changes that alter the overall functionality of Apps at least two weeks in advance in a written form (e.g., email).

2. Customer's obligations: notice of defects, use by third parties

2.1. If the functionality of the Apps is disrupted in some way, the Customer must notify Zaikio without delay, indicating the circumstances under which the malfunction occurred, its impact, and any possible causes. The Customer will rely on qualified employees to make such notification.

2.2. The Customer is not entitled to make the Apps available to third parties for use. Exceptions are made for his employees or freelance consultants, provided that they are included in the number of users agreed.

3. Customer's obligations: reproduction and copyright

3.1. The Customer may not reproduce the Apps unless such is required in order to use it for (for example, uploading it to the memory).

3.2. The Customer may not make changes to the Apps. This does not apply to changes such as may be necessary to eliminate faults when Zaikio is delayed or refuses to eliminate the same or otherwise unable to do so due to the opening of insolvency proceedings, for example.

4. Term and termination

4.1. The usage relationship shall begin with the order placed by the Customer in the Zaikio App Store or in a Zaikio App.

4.2. The usage relationship shall run for an indefinite period of time, unless otherwise agreed in supplementary documents to this usage relationship. The usage relationship can be terminated at any time with immediate effect.

4.3. In the event of a termination, Zaikio shall invoice the usage fee of the App used for the current month only pro rata until the day of the termination.

4.4. The Customer may terminate the usage relationship via the Zaikio platform, in particular in the Zaikio admin interface („Zaikio Hub").

4.5. Once the usage relationship is terminated, the Customer shall cease any and all use of the Apps and destroy all copies of the same. At the end of the term, the data on the server(s) will be deleted 4 weeks after the end of the term; the Customer must back up the data before such time via API.

5. Fees, feature set, and right of retention

5.1. The Customer undertakes to pay Zaikio for the services of the Apps in accordance with §§ 1.1 and 1.4 for the functional scope and usage fee agreed in the selected Plan.

5.2. The fee is based on the conditions set out in the chosen Plan. The fee can be designed as a flat rate, a transaction-based fee, or a mixture of both.

5.3. Payment shall be made via the Zaikio platform, using the payment method deposited and selected by the Customer. The terms of use of the Zaikio platform shall apply.

5.4. Zaikio is entitled to block the services defined in §§ 1.1 and 1.4 of these Terms of Use for as long as the Customer is in arrears in the payment of the invoice provided that such legal consequence was noted in the warning provided the Customer and once the grace period granted therein has expired.

5.5. Zaikio reserves the right to change Plans and fees with six weeks' notice sent in written form, including email. Such a change may not exceed the monthly fee on the customer side by more than 5 percent in the following month under the same conditions. In the event of an increase of more than 5 percent, the Customer may terminate the usage relationship in accordance with § 4.2.

6. Plan change and obligation to provide information

6.1. The Customer may, at any time and with direct effect, change the Plan of the App in the Zaikio Hub in order to adapt its use to increased or decreased requirements.

6.2. The Customer shall provide Zaikio on request with information that is necessary to clarify the actual volume of use that cannot be derived programmatically, and shall permit appropriate testing procedures.

7. Warranty

7.1. With regard to the granting of the possibility of use according to §§ 1.1 and 1.4, the warranty provisions of §§ 535 et seq. BGB; Zaikio must therefore keep the App in a condition suitable for use in accordance with the usage relationship, in other words, to eliminate defects in particular. The no-fault liability for damages per §536a para. 1 Alt. 1 BGB is hereby excluded.

7.2. The Customer is obliged to have a qualified staff member examine the Apps and its functionality immediately upon being issued the licence and to notify Zaikio in written form (including email) of any defects, describing them fully.

7.3. If the Customer fails to notify Zaikio, the Apps shall be considered to have been approved, unless the defect in question is not detectable during the required examination.

8. Liability

8.1. Zaikio has unlimited liability

    (a) in case of intent or gross negligence

    (b) for injury to life, limb or health

    (c) according to the regulations of the product liability law and

    (d) to the extent of a guarantee assumed by the seller.

8.2. If Zaikio is found liable for the breach of an essential contractual obligation as defined above such as has not been caused by its gross negligence or intentional act, the liability shall be limited to those damages that the Customer would reasonably expect based on the circumstances known at the time the usage relationship was signed.

8.3. Zaikio is responsible for the loss of data only if Zaikio's culpability has been established and likewise only to the extent described above and also only to the extent such loss would have been unavoidable even if the Customer had undertaken all appropriate precautions, including the making of any back-up copies.

8.4. Any further liability is hereby excluded.

8.5. his limitation of liability also applies to the personal liability of employees, representatives, and boards/organs of Zaikio.

9. Other provisions (reference list, right to make changes, applicable law)

9.1. The Customer agrees that Zaikio may publish its name as a reference client and use its situation as part of a case study or blog article. The Parties will coordinate the content to be published.

9.2. Each Party may only offset invoices only with such claims as are undisputed or court-ordered.

9.3. Both Parties undertake to keep confidential any and all knowledge concerning business secrets and data security measures acquired in the course of this usage relationship.

9.4. Zaikio reserves the right to make changes and amendments to these Terms. Any changes will be announced to the Customer in advance by e-mail. Changes are considered approved, if the Customer does not object to them in text form (e.g. e-mail) within one month after the announcement of the respective change. Zaikio will specifically point out this consequence when announcing the changes.

9.5. Any Customer Terms and Conditions that conflict with these do not apply.

9.6. If any provision of these Terms of Use is or shall become invalid or unenforceable either in whole or in part, this shall not affect the validity or enforceability of the remaining provisions. The invalid or unenforceable provision will be replaced by one which is valid or enforceable such as comes closest to the intention of the original one. The same applies to any loopholes in these terms.

9.7. In the event of dispute between the parties related to these agreements, they agree that the courts in Mainz shall have jurisdiction. German law applies exclusively with the exclusion of the UN Sales Convention.