

Terms of Use for LOLYO Enterprise and LOLYO 2go

1. Scope of Application

1.1. cycoders GmbH (hereinafter referred to as "cycoders") offers its Customers/Licensees (hereinafter the "Customer/Licensee" or simply "Customer") the LOLYO employee app as a mobile intranet in the LOLYO Enterprise and the LOLYO 2go variants. The use of the employee app is subject to the present Terms of Use exclusively.

1.2. Agreements deviating from these Terms of Use are only effective if cycoders has expressly acknowledged them in writing. The Customer's/Licensee's general terms and conditions are expressly excluded for the present legal transaction and the entire ongoing business relationship.

1.3. The services offered by cycoders are aimed exclusively at entrepreneurs and no contracts are concluded with consumers.

2. Subject of performance

The subject of the contractually agreed services to be provided by cycoders is the provision against payment of server-based software (Software as a Service, or SaaS for short) and smartphone applications for the Customer's use. As far as the transfer of the use of the software is concerned, cycoders grants the Customer/Licensee the right to its own use in accordance with the present Terms of Use and the individual offer for the term of contract.

3. Conclusion of contract

3.1. For a contract for LOLYO Enterprise to become effective, it is necessary for the Customer to sign the order in the company's name and for cycoders to confirm the order.

3.2. LOLYO 2go will exclusively be acquired online by the Customer via the LOLYO 2go link on the website; the contract is concluded by the Customer's online booking. cycoders shall confirm the Customer's order by e-mail and transmit these Terms of Use to the Customer.

3.3. Changes and amendments of the contract and/or the Terms of Use shall be confirmed in writing by cycoders to be effective.

4. Scope of services

4.1. LOLYO Enterprise

The use of LOLYO Enterprise includes the provision of the software (apps and backend), the server hosting by cycoders, and the set-up and adaptation of the software by cycoders in accordance with the customer requirements agreed with the Customer. The included features of LOLYO Enterprise are described on the website under PRICING.

LOLYO Enterprise has a passive interface for the Customer to connect its third-party systems itself. However, cycoders can also be commissioned by the Customer to develop an interface for the active exchange of data between LOLYO Enterprise and the third-party system for an additional fee. The services ordered by the Customers to this end will be charged on the basis of the currently applicable hourly rates of cycoders. The Customer shall provide the interface description of the third-party system to cycoders for such an additional order.

4.2. LOLYO 2go

The use of LOLYO 2go includes the provision of the software (apps and backend) and the server hosting by cycoders. The included features of LOLYO 2go are described on the website under PRICING.

4.3. LOLYO demo app

The demo app makes possible the single use of LOLYO 2go for a period of thirty (30) days from the moment of activation by means of the confirmation link that cycoders sends to the Customer in its e-mail confirmation. The use is permitted for test purposes only. The demo app will end automatically after thirty (30) days without the need for specific termination by the Customer. The demo app with all its data will be fully and irretrievably deleted by cycoders after the period of thirty (30) days. The Customer has the option of upgrading the LOLYO demo app before the end of the thirty-day test period by placing an online order for LOLYO 2go to be able to continue using the data.

5. SaaS/Cloud (Hosting)

Unless otherwise agreed, cycoders will take over the hosting. The hosting includes in particular the provision of the server infrastructure by cycoders or a third-party commissioned by it, the maintenance and repair of the server hardware by cycoders or a third-party commissioned by it, the coverage of the operating costs of the server hardware, the installation of updates and upgrades of the licensed software – provided that adaptations made specifically for the Licensee do not make the installation more difficult –, the installation of updates and upgrades of the system software, the making of backup copies of the data files, and the provision of memory and traffic.

Failures of third-party providers (= providers of services) shall not be at the expense of cycoders (e.g. server/internet) and cycoders assumes no liability for loss of earnings, etc.

On-premise solutions: The initial installation will be made with the support from cycoders as defined in the offer submitted to the Customer. The Customer is responsible for securing the server and for backup and recovery.

6. Provision of services

cycoders provides the services to the Customer via internet access for the purpose of the Customer's internal communication. The Customer itself grants its employees access to this service via a smartphone app or via the web browser. The Customer can carry out the maintenance of the service (provision of content, determination of access data, management of user data, etc.) in the administration area of LOLYO and via common web browsers and a smartphone app.

7. Updates, maintenance and support

7.1. Software as a Service

The mobile intranet/LOLYO as Software as a Service is located on a server and is regularly maintained by cycoders with regard to security and availability. Regular updates are also carried out. The feature updates are installed by cycoders separately as needed.

7.2. Smartphone app

If updates become necessary due to changes of operating systems (iOS, Android), changes of the Conditions of Use/General Terms and Conditions on the part of Google and Apple, for compatibility reasons or for the provision of new features of the core system, these updates shall be ordered by the Customer individually and will be charged to the Customer depending on the time and effort involved. The apps are published by cycoders via the customers' developer accounts or the Apple Business Manager. cycoders is not responsible for the maintenance of the content of these accounts; this must be carried out by the Customer.

7.3. cycoders provides web-based support on the website at the SUPPORT link, and support requests can be submitted by e-mail to support@lolyo.net directly. The Customer can order additional support services, such as personal technical support or advisory support regarding the application or issues of internal communication. These additional services are subject to a fee.

8. Term of contract/Termination

8.1. The contract for LOLYO Enterprise and LOLYO 2go is concluded for an indefinite period of time and can be terminated by the Customer in writing with one month notice at the end of a month. The Customer can send the termination either by registered mail to the cycoders company address (cycoders GmbH, Parkring 2, 8074 Graz-Grambach, Austria) or by e-mail to hello@lolyo.net.

8.2. cycoders shall be entitled to terminate the contract with immediate effect for cause, in particular if the Customer/Licensee is in default of payment. Any voluntary additional services offered over and above the contractually promised services are not part of the contract and can be freely arranged and terminated by cycoders at any time. Upon termination of the contractual relationship, all outstanding payment obligations of the Customer/Licensee towards cycoders shall become due immediately. All licence rights of the Customer/Licensee expire at the end of the contract and the Customer/Licensee has to discontinue the use of the software. If the Customer/Licensee takes over the hosting himself/herself, s/he is obliged to fully delete the licensed software and all copies thereof irrevocably and to notify cycoders thereof in writing within ten days.

8.3. When the contractual relationship is terminated, the Customer/Licensee can order cycoders to extract the database content and transfer it to the Customer/Licensee at the latter's expense.

9. Prices and terms of payment

9.1. Prices and terms of payment LOLYO Enterprise

The Customer shall pay a one-off initial fee for LOLYO Enterprise for setting up and customisation of the software as specified in the offer. In addition to the one-off initial fee, the Customer will be charged a monthly license package fee as specified in the current scale of licence rates. The amount of the monthly license fees will be calculated depending on the number of employees. The higher the number of users the lower the license fee per user in the license package. Up to a number of 1000 users, the licenses are offered in 50-user-packages; beyond 1000 users, they are offered in 100-user-packages. The license packages are automatically booked in the LOLYO system based on the number of active users. A user will be counted as "active" as soon as s/he logs into the LOLYO system for the first time using his/her access data from a CSV import. A user, who is manually created via the LOLYO backend, shall be immediately counted as "active". The license fees will always be charged in full package rates as defined in the current license package scale or the scale defined in the individual contract. The price can be precisely calculated on the website under PRICING by clicking on the "Price Calculator" button. The one-off initial fee for set-up and customisation of the software system LOLYO Enterprise are due immediately at the start of the contract. Unless otherwise agreed, the start of the contract shall be the date on which the company signature is placed on cycoders order confirmation. Unless otherwise agreed, the license fee shall be charged monthly and its payment is due within eight (8) days from the date of invoice.

9.2. Prices and terms of payment LOLYO 2go

The Customer shall pay a monthly basic fee and a monthly license fee per member of staff for LOLYO 2go. The current prices are stated on the website under PRICING. The license fee is calculated and charged on the basis of the precise number of active users plus a monthly basic fee. The license fee amount per user is constant and independent of the total number of active users. A user is counted as "active" as soon as s/he logs into the LOLYO system for the first time with his/her access data from a CSV import. A user who is manually created via the LOLYO backend is immediately considered active. The accounting of the license per active user is done at the end of the month on the basis of the pro rata length of use.

The monthly basic and license fees are invoiced monthly and due within eight (8) days from the date of invoice.

9.3. Unless otherwise agreed, the prices are in euros plus statutory VAT. All offers are subject to confirmation and are without obligation.

9.4. cycoders is entitled to increase the fees for using the software in a reasonable manner and shall notify the Customer thereof one month in advance at the latest. In this event, the Customer/Licensee is granted a special right of termination. The increase is considered reasonable if it does not exceed 5 percent per year since the day the Customer/Licensee began using the service. Discount deductions are only permissible upon prior separate agreement.

9.5. In the event of default of payment, cycoders is entitled to charge interest on arrears at the statutory rate. cycoders shall also be entitled to charge the Customer a EUR 10 reminder fee.

9.6. The Customer agrees to transmission of invoices in electronic form (PDF, e-mail). Dispatch by standard mail can be requested and is subject to a fee.

10. Customer's duties

10.1. The Customer shall ensure that an account is installed with the app stores for publishing its individual apps (Developer Account Google Play Store, Apple Business Manager Account) and grant cycoders access to these accounts with the rights required for publication.

10.2. The Customer shall supply to cycoders the necessary data that is required for the installation of the LOLYO system and the development of the individual apps (company code for the LOLYO system URL, design templates including logos and images for the app icon and splash screen, text for the app stores) in good time after the effective date of the contract. cycoders will submit to the Customer a design proposal for the app icon and the splash screen before their publication in the app stores, and the Customer has to approve this proposal in writing. If further corrections are made after this written approval by the Customer, the Customer shall bear the additional costs incurred.

10.3. The Customer agrees to comply with all conditions of the third-party providers selected by it that apply for the use of the mobile app (e.g. Apple Store conditions) and for other services of third-party providers which the Customer uses in connection with the LOLYO app.

10.4. The Customer is responsible for updating the operating systems and web browsers used by it, because the full functionality of the LOLYO software can only be guaranteed on common and modern operating systems and web browsers. The Customer shall guarantee that the server meets the minimum requirements of LOLYO.

10.5. The Customer is the controller of the personal data processed by it in the framework of using the LOLYO APP within the meaning of Article 4 number 7 GDPR. This means that the responsibility for the legal admissibility of the collection, processing and use of personal data in the context of the use of the LOLYO APP shall be with the Customer only, and the Customer shall hold cycoders harmless and indemnified from third-party claims in the event of a breach.

11. Warranty/Maintenance/Changes

11.1. The service description valid at the time of conclusion of the contract that is made available to the Customer before conclusion of the contract shall be exclusively decisive for the quality of the services provided by cycoders. cycoders is not obliged to offer any quality beyond this description and does not provide any warranty for this either. It is the responsibility of the Customer to check within the framework of using the LOLOY demo app whether the app is applicable and suitable for the purposes required by it.

Troubleshooting is subject to the following:

- the Customer/Licensee describes the error sufficiently in the error message and the error can be ascertained by cycoders;
- the Customer/Licensee submits to cycoders all documents/information required for troubleshooting;
- the software has not been manipulated by the Customer/Licensee or any third-party that can be associated with it.

11.2. In the case of warranty, improvement shall in any case have priority over price reduction or rescission of contract. In the event of a justified notice of defects, the defects shall be remedied within a reasonable period of time, with the Customer/Licensee permitting cycoders to take all measures that are required for the examination of the error and for the correction of the error.

11.3. The presumption of defectiveness pursuant to Sec. 924 Austrian Civil Code shall be deemed excluded.

11.4. Furthermore, cycoders does not assume any warranty for errors, malfunctions, defects or damage that are due to incorrect operation, changes in operating system components, interfaces and parameters, updates of third-party software (e.g. web browser), the nature of the required hardware and software of the Customer, failure of telecommunications networks and/or data lines, the use of unsuitable organisational means and data carriers to the extent these are specified, abnormal operating conditions (in particular any deviations from the installation conditions). cycoders does not guarantee full functionality on all operating systems and web browsers.

11.5. To the extent that the subject of the contract is the modification or supplementation of existing programs, the warranty refers to the modification or supplementation. The warranty for the original program will not be renewed thereby.

11.6. Warranty claims shall become statute-barred six (6) months after handover. The Customer shall notify us of any defects immediately, in detail and in writing.

11.7. cycoders is entitled to carry out maintenance work without prior announcement. This may lead to temporary limited accessibility of the services.

12. Liability

12.1. cycoders shall only be liable to the Customer/Licensee for damage for which it is demonstrably responsible and only in cases of intent or gross negligence. In the event of slight negligence, cycoders shall only be liable for personal injury. This also applies mutatis mutandis to damage that is attributable to third-parties consulted by cycoders.

12.2. Liability for indirect damage, such as loss of profit, loss of interest, loss of savings, consequential and pecuniary damage, damage from third-party claims, loss of data and programs and their restoration, costs associated with an interruption of operations or software errors, is expressly excluded.

12.3. Claims for damages within the scope of the company business shall become statute-barred six (6) months after discovery of the damage and the damaging party.

12.4. If cycoders performs the work with the assistance of third parties and warranty and/or liability claims arise against these third parties in this context, cycoders shall assign these claims to the Customer/Licensee. The Customer/Licensee will primarily hold these third parties liable in such a case.

12.5. If data backup has been explicitly agreed as a service to be provided, the liability for loss of data shall not be excluded in derogation of item 12.2 above, but only to the extent that cycoders is responsible for the loss of data due to proven negligent conduct. cycoders shall be liable in this case for restoration of data limited to a maximum of 10 percent of the order value per damage. Any warranty and damage claims of the Customer/Licensee that go beyond those stated in this contract – on whatever legal grounds – are excluded.

12.6. cycoders assumes no liability if an app is refused or subsequently deleted due to terms of use of third parties such as Google and Apple.

12.7. cycoders implements the design of the smartphone app (Enterprise or individual app) on the basis of the Customer's specifications. Designs are provided by the Customer either in full or in the form of a company logo and cycoders completes the development of the app only after the design has been approved by the Customer in writing. cycoders accepts no liability if the Customer determines later that the design does not meet its requests, or if the design violates any third-party trademark right or basic ethical and moral values. The Customer shall hold cycoders harmless and indemnified in any of the above cases.

13. Copyright and use

13.1. cycoders grants the Customer/Licensee a non-exclusive, non-transferable, in such a case right to use the software and the smartphone app for the duration of the contract to the extent of the number of licences acquired for its own internal business purposes. All other rights remain with cycoders. The source code of the software is not subject of this contract.

13.2. An non-exclusive right to use the LOLYO demo app is also granted without limitation of space, but limited in time to the period of 4 (four) weeks from the moment the Customer activated the demo app by clicking on the confirmation link..

14. Data protection and data security

14.1. To the extent that cycoders can access personal data of the Customer, cycoders shall only do so as a processor and processes data only to perform the contract with the Customer. cycoders concludes a data processing contract with the Customer. The Customer is the controller of the data provided by it within the framework of using the LOLYO app as defined in Art. 4 number 7 GDPR (refer also to item 10.5).

14.2. cycoders takes all necessary precautions to ensure the security of processing as specified in Art. 32 GDPR. All data processing activities will be exclusively performed within the EU and EEA.

14.3. For more information on data protection and data security refer to the Data security & GDPR link and the Privacy Statement on the website.

15. Force Majeure

cycoders shall be released from its service obligation if and to the extent the non-performance is due to force majeure events occurring after the conclusion of the contract. Force majeure events include for example war, civil war, terrorism, currency and trade restrictions, epidemics, pandemics, natural disasters, extreme natural events, explosion, fire, strike, lockout, embargo, sovereign intervention, failure of power supply, failure of means of transport, failure of telecommunication networks or data lines or information systems or energy, changes in legislation that affect the services after conclusion of the contract or other non-availability of services.

16. References

Subject to the written revocation of the Customer, which is possible at any time, cycoders shall be entitled to refer to its business relationship with the Customer on its own advertising vehicles and in particular on its internet site by displaying the Customer's name and company logo.

17. No set-off

Any set-off of alleged counter-claims of the Customer/Licensee against claims of cycoders is excluded.

18. Place of jurisdiction and applicable law

The competent court at the place of the registered office of cycoders in 8074 Raaba, Austria shall have jurisdiction for the purpose of deciding on all disputes arising from a contract or the present Terms of Use – including disputes concerning their existence or non-existence. These Terms of Use and any contracts are subject to Austrian law exclusively to the exclusion of the UN Convention on Contracts for the International Sale of Goods.

19. Severability

If one provision of these Terms of Use is or becomes ineffective or unenforceable in full or in parts, the legal effect or enforceability of the other conditions of fuse shall not be affected. cycoders and the Customer will replace the ineffective or unenforceable provision by an effective and enforceable one that comes closest in its content and intent to the ineffective or unenforceable provision.

20. Form requirements

Changes and amendments of these Terms of Use require the written form to be effective; the same applies to the waiver of the written form requirement.