Terms of Service

Version 1.1 from 12/15/2022; Valid for existing customers from December 29, 2022

These general terms and conditions (GTC, agreement) apply to all contracts, as well as whenever we refer to them between the

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(IDENTsmart, we, us)

and customers with entrepreneurial status within the meaning of the German Civil Code, as well as corporations, institutes and institutions under public law. We expressly and definitively exclude contracts with consumers.

preamble

These GTC are divided into **a general part** (part 1), the provisions of which - express deviations in the other parts remain unaffected - apply to all contracts between the customer and IDENTsmart, **a special part** (part 2), which contains different regulations for certain contracts the provisions of the General Part and the **Maintenance and Support Agreement** (SLA) (Part 3).
Irrespective of the respective contract, these general terms and conditions are always deemed to have been agreed overall, even if certain contractual conditions for certain contracts are not relevant in individual cases. The services and offers, as well as all agreements concluded between the customer and IDENTsmart GmbH are exclusively governed by these conditions.

Part 1 - General part

§ 1 General and scope

IDENTsmart offers customers and their employees, or agents and representatives who receive the services described (customer), on its websites app.timerecording.com, identsmart.com and timerecording.com a time recording system and related services of the provider as a company. The services include the Internet-related application at the web address app.timerecording.com (software), the collection of applications and devices that the provider offers, including the software, smartphone app, terminals for time recording and application Programming Interface (API) (Systems) and Employee, Agent and Representative Services (Services).
The system will be made accessible via the Internet. Internet access, which is required to use the system, is not part of the services provided by IDENTsmart.

This agreement may only be accepted by persons authorized to represent the customer.

The agreement applies to all services that IDENTsmart provides to its customers. It also applies to future transactions between the customer and IDENTsmart (parties), even if no express reference is made to it. Terms of the customer that conflict with or deviate from these terms will not be effective unless IDENTsmart has expressly agreed to them in writing.

Customer agrees and permits that all notices, agreements, documents, information and disclosures related to Customer's specific access to the System (Account) may be delivered to it electronically. These can include:

- Agreements and regulations to which Customer agrees, including any updates to such agreements and regulations.
- Details of the account, its history, transaction receipts, confirmations, invoices and any other account or transaction information.
- Legal, regulatory or tax disclosures or statements that IDENTsmart is required to disclose for the Customer.
- Responses to claims or questions raised in connection with the account.

IDENTsmart provides the customer with this information via email to the contact email address specified in the account.

The customer is obliged to provide IDENTsmart with a correct and complete email address, contact information and billing information.

Section 2 Free Trial

The customer can test a trial account (test account) for a period of 60 days free of charge. By registering for the free account, there are no obligations or costs for the customer.

After the free account has expired (60 days), further use can be restricted or, after another 14-day waiting period, the account can be deleted by IDENTsmart, provided that the test period has not been extended by IDENTsmart.

IDENTsmart reserves the right to prohibit the customer from creating a free account or to limit the number of free accounts that a single customer can create and receive at the same time.

§ 3 Conclusion of Contract and Termination

The conclusion of the contract and the creation of a paid account come about with the optional acceptance of a written offer and with the absolutely necessary activation of the system by entering the complete company and payment data in the software. Billing for the full version begins on the day the contract is concluded, unless otherwise agreed in writing.

The agreement on the paid use of the account is concluded for an indefinite period. Termination can only take place at the end of the applicable license period, whereby the applicable notice period must be taken into account. The applicable notice period is 30 days to the end of a month for a one-year license period and seven days to the end of a month for a one-month license period, unless otherwise agreed.

Notice of termination can be sent in the following ways:

- Email to info@identsmart.com
- By post to the address given in the imprint (https://timerecording.com/impressum/)

After the termination has taken place, all the customer's payments that are still due will be determined as part of a final statement. These will be billed to the customer and are due promptly.

For its part, IDENTsmart expressly reserves the right to terminate a contract for serious reasons (abuse, unauthorized subletting, insolvency of the customer, etc.).

§ 4 Prices

The prices on the website **https://timerecording.com/zeiterfassungsterminal-preise/ apply.** stated prices, unless an individual offer is available. The prices listed for all products and services are net prices only.
IDENTsmart expressly reserves the right to change the listed prices during the term of the agreement, exclusively to adjust for inflation. If the contract contains a currency other than the euro, IDENTsmart expressly reserves the right to adjust the listed prices to currency fluctuations.

§ 5 Payment and Billing

A fee must be paid for using the fee-based offer from IDENTsmart TimeRecording and depending on the license type you have selected. This remuneration is always to be paid in advance by credit card and immediate transfer or on account. If the contract is extended, your credit card will be charged with the fee you have to pay or an invoice will be sent to the contact details provided.
-   If the customer has selected "credit card" or "instant transfer" as the payment method, the customer is responsible for ensuring that valid data is specified in the software at all times. All customers with the payment method "credit card" or "instant transfer" declare and guarantee that they are authorized to use the respective data and that all costs incurred can be offset against this payment method and cannot be rejected. If a debit is not possible due to the fault of the customer, IDENTsmart reserves the right to charge the customer for any additional costs and default interest.
-   If the customer has selected "on account" as the payment method, the customer ensures payment of the outstanding remuneration by the specified start date of the remuneration period.

In the event of default, entrepreneurial interest is deemed to have been agreed in accordance with Section 288 of the German Civil Code. If a customer is more than fourteen (14) days in arrears with payments, the IDENTsmart entitles the user to deactivate access to the system, terminate the agreement and collect the outstanding claims.
The customer can only offset against claims by IDENTsmart with undisputed or legally established claims.

§ 6 Terms of Use

IDENTsmart provides the customer with the system to cover the functionalities described in the scope of services (§ 7 scope of services) in such a way that the customer is able to use the functionalities. In the course of this agreement, IDENTsmart does not grant the customer the right to reproduce, edit, pass on or change the software in any way.
The customer is obliged to protect the access data for his account from unauthorized access by third parties. Customer is responsible for appropriate security and control in storing any ID, password, user identification number, API key, or other code required by Customer to use the Account. The customer will notify IDENTsmart immediately if unauthorized use of the account has occurred.
IDENTsmart is not liable for any damage incurred by the customer due to stolen or hacked passwords within the customer's sphere of influence.
The customer is prohibited from misusing the IDENTsmart system. The customer assures that he will not use any devices and facilities, software or other data in a way that could lead to changes in the system and/or affect the availability of the system.
If the customer violates these terms of use, IDENTsmart withdraws the customer's right to continue using the system without reimbursement of any costs.

§ 7 Scope of Services

Unless otherwise contractually agreed, the scope of services of the software is in **Part 2; Section 16 describes the product description** . IDENTsmart is entitled to change the agreed scope of services at any time if this results in an improvement in the software, a change in the legal situation requires this, such a change is expedient based on practical experience, or if the change is customary in trade and takes into account the interests of both parties is reasonable.
If IDENTsmart provides software or services free of charge in addition to the service offer, this is subject to revocation at any time and does not represent any liability for the future.

§ 8 data protection

Protection and security of data is an essential interest of both parties. The process of data processing is shown in the agreement on order processing (AVV).

§ 9 Obligation to examine and report

The customer undertakes to examine the software for obvious defects that an average customer would immediately notice and to report any defects within 2 weeks of commissioning with a detailed description of the defect. Non-obvious defects must be reported by the customer no later than 2 weeks after detection.
If the obligation to examine and report is violated, the software is deemed to have been approved with regard to the defect in question.

Section 10 Liability

IDENTsmart is not liable for damage caused by the actions of third parties, force majeure (e.g. fire and water damage, direct or indirect lightning strikes, etc.) or the effects of the customer or his employees.
In addition, IDENTsmart is not liable - insofar as legally agreed - under any circumstances for loss of profit, consequential damage, immaterial damage, savings not achieved, loss of interest, financial loss and claims of third parties from the title of product liability.
IDENTsmart is not liable for the content, correctness or completeness of data or content transmitted by the customer.
IDENTsmart assumes no liability for the system provided by IDENTsmart meeting all of the customer's requirements and achieving the desired economic success for the customer.
IDENTsmart is not liable for slight negligence. In the event of gross negligence, IDENTsmart is liable for any damage. The maximum amount of liability is limited to the agreed annual service fee or the agreed license costs.
If the customer violates legal provisions in connection with the use of the software, the customer indemnifies IDENTsmart against all resulting third-party claims.

Section 11 Compliance with Laws

Customer warrants that its use of the system and any data entered or uploaded will comply with all applicable laws and regulations and will not infringe the rights of any third party.
If Customer's registered office is in the European Union, or Customer provides access to the Service to someone in the European Union, Customer must understand and comply with the controller responsibilities described in the Data Protection Legislative Decree and the Data Processing Agreement fulfilled by IDENTsmart.

Section 12 Copyright

The software and all documents remain the property of IDENTsmart. If IDENTsmart makes adaptations to the software for the customer when executing this agreement, all resulting copyrights and rights of use to the developments remain with IDENTsmart.

Section 13 Confidentiality

The parties undertake not to disclose any information which they have exchanged between themselves and which they know or can reasonably assume is to be treated as confidential, unless the other party is required to do so by law or regulation or by a court decision of this information.

§ 14 Changes to the General Terms and Conditions

IDENTsmart reserves the right to adapt or change the agreement. The customer will be informed of changes to the GTC in text form. If the customer does not object to the changed terms and conditions within two weeks after receipt of the notification, the changed terms and conditions are deemed to have been accepted.

§ 15 Final Provisions

The exclusive place of jurisdiction for disputes arising from or in connection with the contract is Munich, insofar as the contracting parties are merchants, legal entities under public law or special funds under public law and no exclusive legal place of jurisdiction is established.
All contracts are subject to the law of the Federal Republic of Germany, excluding the IPR and the United Nations Convention on the International Sale of Goods (CISG).
The parties agree on the written form for the validity of contracts.
If a provision of this contract proves to be ineffective, this does not affect the validity of the remaining contractual provisions. In this case and in the case of gaps in this contract that require regulation, the contracting parties will supplement the contract in such a way that the economic sense and purpose on which this contract is based is achieved as far as possible. The parties expressly waive the right to contest contracts due to error or shortening more than half.
The definitive version for the use of these terms and conditions is the version in German. All possible translations into other languages merely represent a convenience offer from IDENTsmart. In the event of a dissent between the German version and a translation, the German version shall prevail. This version of the General Terms and Conditions replaces all previous versions, parts of which are included.

Part 2 - Particular conditions for the individual components

§ 16 Product Description

IDENTsmart TimeRecording is a modular time recording system and is offered as SaaS (Software as a Service). The SaaS model is based on the principle that the software and IT infrastructure are operated by an external IT service provider and used by the customer as a service.
The software is accessed via a web browser or apps. In addition, employee data can be recorded via a card reading terminal (hardware component).

The SaaS model saves the service recipient a good part of the operating costs. The service provider takes over the complete IT administration and other services such as maintenance work and backups. IDENTsmart TimeRecording is offered in the modules according to the desired range of functions.

1. Timekeeping module

IDENTsmart TimeRecording is the solution for simple, cost-effective and secure personnel time recording. Pure attendance and absence times (arrive/leave, break) are recorded. In addition to the intuitive recording, employees also have the option of clearly viewing the times they have recorded at any time in a calendar and list view.

The hourly accounting of the IDENTsmart TimeRecording working time recording serves as the basis for the payroll accounting. Each employee can be assigned to a freely definable working time model. All working time models can be individually adjusted and include, among other things, flexitime, overtime and compensatory time regulations. Employees can view their hourly billing in IDENTsmart TimeRecording.

Thanks to the data export option, IDENTsmart TimeRecording can be easily integrated into existing administration systems (e.g. for payroll accounting).

Supervisors and administrators have the authorization to view and finally confirm or correct working times for the assigned employees.

The most important functions:

- Working time measurement
- Creation and use of various working time models
- Intuitive use in the web browser on the PC/Mac, on the smartphone/tablet or the terminal
- Freely configurable working time models
- Mapping of different types of employment (full-time, part-time, hourly wages, etc.)
- Flexibly adjustable break regulations to comply with legal requirements
- Optimum overview with hourly billing
- Status overview with live view of employee status
- Extensive evaluation functions
- Possibilities for data export

Further functions and adjustments must be taken from the current IDENTsmart website (https://identsmart.com/arbeitszeiterfassung/).

2. Vacation and absence management module

With vacation and absence management, IDENTsmart TimeRecording offers all the functions needed to efficiently process vacation, time off, illness and other absences. The functions are optimally integrated and therefore easy and intuitive to use and clear.

The automatic calculation of vacation entitlement according to previously defined rules is particularly advantageous.

The most important functions:

- Recording of vacation, compensatory time off, illness and other other absences
- Automatic calculation of holiday entitlement with entitlement intervals
- Free definition of other absence types according to the requirements
- Various configuration options for absence types with description, time credit, etc.
- Any public holiday calendar can be integrated
- Extensive evaluation functions and data export
- Intuitive use in the web browser on a PC/Mac or on the go on a smartphone/tablet

Further functions and adjustments must be taken from the current IDENTsmart website (https://identsmart.com/arbeitszeiterfassung/).

§ 17 Basic Services

IDENTsmart TimeRecording offers comprehensive services during the contract period. These services include ensuring smooth technical operation, ongoing updates and include the defined support services. The exact service description is described **in part 3 of our maintenance and support agreement (SLA)** .

§ 18 Optional Services

1. Online consultation

During the online appointment, an experienced IDENTsmart TimeRecording employee will actively support you and demonstrate how to use the IDENTsmart TimeRecording solution.
Your advantages:
- Contact person
- Use of the know-how of IDENTsmart TimeRecording experts
- Less effort when setting up the account
- Optimal configuration

2. Terminal ID800

Simple terminal for recording arrival/departure/break bookings. The terminal is supplied complete including power supply and mounting material.
- Identification by chip (card or key fob)
- Display: Color LCD with touchscreen and backlight
- Connection via WLAN

A more detailed description can be found on the current IDENTsmart website (https://identsmart.com/arbeitszeiterfassung/).

Part 3 - Maintenance and Support Agreement (SLA)

§ 19 General

This SLA describes the services and availability of user support, as well as the services and availability in technical operation that the customer can expect to use IDENTsmart TimeRecording during the contract period.

1. Scope of User Support

IDENTsmart takes over support services for the customer within the scope of using IDENTsmart TimeRecording. The following activities related to the use of IDENTsmart TimeRecording by IDENTsmart are to be understood as support services:

- Support for the operation of general system functionalities
- Assistance in managing users and permissions
- Support in the analysis of data (time bookings, leave requests, etc.)
- Support for quality assurance of data collection
- Implementation of configuration adjustments provided that these can be mapped with standard functions

All other support services, such as the supervision of commissioned individual extensions or interfaces, are generally excluded from ongoing support.

Also excluded from user support are:

- Errors arising from the customer using the product in a manner inconsistent with IDENTsmart's training, knowledge base, or other instructions
- Unauthorized changes to the configuration or setup made by the customer
- Cases where the customer prevented IDENTsmart from servicing the product
- Errors caused by third-party products
- Errors caused by the customer, in particular by changing parts of the software or by adding, deleting or improperly assigning user rights

2. Ticketing and Service Hours

IDENTsmart provides the customer with a support contact form (https://timerecording.com/support/) or email address. All support requests are recorded and processed in a ticketing system to map the service & support process.

The supervised operation takes place on weekdays [as follows: Monday - Thursday 09:00 - 17:00, Friday 09:00 - 13:00 (CET/CEST)]. Public holidays in Germany and Austria that fall during the week do not count as working days.

3. Response Time and Troubleshooting Time

The following table defines the reaction steps that are carried out by IDENTsmart and which IDENTsmart uses to process the error correction. The times given apply from the time IDENTsmart accepts the error.

The response time and troubleshooting time depend on the severity of the fault and the associated prioritization:

classification	criteria	Response time [*]	Troubleshooting time [*]
Level 1 (Critical)	IDENTsmart TimeRecording is not available	Within 1 hour	Within 6 hours
Level 2 (Medium)	IDENTsmart TimeRecording is available, but essential functions can only be used to a limited extent	Within 24 hours	Within 7 working days
Level 3 (Easy)	IDENTsmart TimeRecording is available, but usability is slightly impacted	Within 72 hours	Depending on the availability of updates

*The information on response times and troubleshooting times refers to the period of supported operation. Periods outside of supervised operations pause for the specified period of time. The troubleshooting time is also considered to have been met if the customer is provided with a reasonable workaround until a final problem solution is possible.

Support requests that are not related to errors in the product will be processed within 12 hours (period of supported operation) after receipt of the message, but no later than 3 working days.

4. Availability

IDENTsmart guarantees an annual average availability of IDENTsmart TimeRecording of 99%, in which the provided service was not affected by downtime. "Downtime" is defined as the period of time in minutes during which the Service is affected by a fault classification Level 1 (Part 3- 4. Response Time and Troubleshooting Time). If the security of network operation or the maintenance of network integrity is at risk, IDENTsmart is entitled to temporarily restrict access to the service as required. Periods in which a disruption occurs due to the following events or circumstances are generally not considered downtime, such as:

- the customer reported a fault even though there was no fault
- Periods in which scheduled maintenance work is carried out
- a disruption caused by events that lie outside IDENTsmart's area of responsibility, such as impairments by DoS attacks, the customer's Internet connection to the IDENTsmart TimeRecording data center

5. Backups

The data on the IDENTsmart servers is backed up daily. In the event of a software failure and any associated data loss, IDENTsmart imports the last available backup. This can lead to certain data that has not yet been backed up having to be entered later.

6. Releases and ongoing updates

Product releases take place in a continuous integration and delivery process. With these ongoing releases, known errors are eliminated and new or improved functions are made available for the products used by the customer.
IDENTsmart endeavors to make releases available to all customers in a timely manner, but the customer has no right to the availability of a release at a specific point in time.