

**tocario GmbH General Terms and Conditions
for Software Transfer (Use & Licensing)**

§ 1 Applicability

- (1) These general terms and conditions (hereinafter "**software conditions**") apply to the temporary provision of software (licensing) by us, tocario GmbH, to you as a customer or partner (hereinafter "**customer**") on the basis of a partnership contract with the customer or an offer that we propose to the customer. Our software installation terms apply for providing installation services. Our software maintenance terms apply for the provision of software maintenance services.
- (2) Our software conditions shall apply exclusively. Conflicting, supplementary, or deviating conditions of the customer from these software conditions are not part of the contract unless we have expressly consented to their application. Our software conditions also apply if we perform a service with the knowledge of conflicting or deviating conditions of the customer.
- (3) Our software conditions only apply if the customer is an entrepreneur (§ 14 BGB), a legal entity under public law or public-law special fund.

§2 Subject matter of the contract

- (1) Content and scope of the services that we provide and the concrete service description are in accordance with the partnership contract or our offer.
- (2) We grant the customer the software specified in the partnership contract or our offer software (hereinafter "**software**"), including the associated application documentation as in the partnership contract or our offer in the language specified therein (hereinafter "**application documentation**") (software and application documentation, hereinafter "**contract objects**") limited to the term of the agreed conditions of use.
- (3) The source code of the software is not part of the contract.
- (4) Unless otherwise agreed, the software is delivered in the current version at the time of delivery.
- (5) The service description in accordance with the partnership contract or our offer is decisive for the quality of the software delivered by us. We do not owe software beyond these conditions. In particular, the customer cannot derive such an obligation from other representations of the software in public statements or in advertising by us and our employees or distributors, unless we expressly confirm in writing software beyond these conditions.
- (6) We reserve the ownership and/or all (copyright) rights of use of all of the offers made by us and cost estimates as well as pictures, brochures, catalogues and other documents we provide to the customer. The customer may not make these items accessible to third parties, disclose them, use them themselves or through third parties, use or reproduce them without our express consent.

§ 3 Delivery and service time; force majeure

- (1) We effect delivery by either (i) granting the customer one (1) copy of the programme of the software on machine-readable media including digital application documentation or (ii) provide the software and application documentation on a network and notify the customer or (iii) install the software on the basis of an agreement concluded separately with the customer and give them the digital application documentation.
- (2) To comply with delivery dates and the transfer of risk, the time is decisive for physical shipping in which we hand over software and application documentation to the carrier, in providing the date on which the software and user documentation on the net is accessible and this is communicated to the customer or installation at the time when we install the software for the customer and hand over the application documentation and this is communicated to the

customer. If the software or application documentation is damaged or destroyed after transfer of risk, we deliver replacement copying and shipping costs against reimbursement. Sentences 1 and 2 shall apply for deliveries as part of follow-up services.

- (3) We will inform the customer of service delays as soon as we have knowledge of them. Service delays due to force majeure, strikes, or lockouts in third party companies or in our factories (in the latter case only if the labour dispute is legal), administrative orders, legal prohibitions, general telecommunication interference or other circumstances beyond our control (hereinafter "**force majeure**") or circumstances within the control of the customer, e.g. untimely provision of cooperative actions, delays by the customer attributable to third parties, etc., entitle us to postpone providing the agreed performances for the duration of the delay plus a reasonable lead time. If the force majeure is ongoing for more than three months, both parties are released from the service obligation. Our further (legal) claims or rights, in particular for default of acceptance by the customer shall remain unaffected.
- (4) For customer claims for damages or compensation of wasted expenditure in the case of delivery delays or inability, the provisions of § 11 shall apply to the remainder.

§ 4 Cooperation and information obligations of the customer

- (1) The customer is informed of the essential functional features of the software and bears the risk of whether this corresponds to their wishes and needs; if they have any doubt they are advised by our employees or third-party experts prior to signing the contract.
- (2) Establishing a functioning - including taking into account the additional load adequately dimensioned by the contractual products - hardware and software environment for the contractual items is the responsibility of the customer. tocario provides the customer with a document with standard infrastructure requirements for this. If there are any deviations from the standard requirements, tocario must release these changes.
- (3) The software tested by tocario for code quality will be thoroughly tested before use by the customer for defects and usability in the existing hardware and software configuration. This also applies to software that the customer receives under warranty.
- (4) The customer notes the instructions we have given for the installation and operation of the software; the customer will check our current information periodically on our accessible website tocario.com and take this into account during operation. The customer receives proactive information at an email address specified by the customer for recording patches.
- (5) Insofar as we are responsible for more obligations with respect to providing software and user documentation, the customer acts thereon to the extent necessary without charge by providing staff, offices, hardware and software, data, and telecommunications facilities, for example.
- (6) The customer grants us access to the software by remote data transmission for troubleshooting.
- (7) We are entitled to check whether the contractual products are used in accordance with the provisions of this contract. To this end, we may ask the customer for information, esp. about the duration and scope of use of the contractual items, as well as insight into the hardware and software of the customer. For this purpose, we shall be granted access during normal business hours to the customer's business premises.
- (8) The customer bears all consequences and costs arising from a breach of these obligations.

§ 5 Data backup by the customer and our liability for loss of data

- (1) The customer shall make appropriate arrangements in accordance with the Appendix service description (components and responsibilities) in the event that the software works completely or partially incorrectly (e.g. daily backup, fault diagnosis, regular checking of the data processing results). In particular, the customer will perform data backup of all system and application data immediately before any intervention and/or access by us or a third party

commissioned by us. The backups must be stored in such a way that the data can be restored at any time.

- (2) If the customer does not explicitly indicate in advance, we can assume that all of the customer's data with which we come into contact is secured.
- (3) In the case of data loss, we are not liable to the extent that the damage is due to the fact that the customer has neglected their obligation under para. 1 to perform backups and thereby ensure that lost data can be recovered with reasonable effort. In other respects, § 11 applies.

§ 6 Scope of use

- (1) We grant the customer a simple, limited to the duration of the software licence agreement, non-transferable and non-sublicensable right to use the contractual items in accordance with the provisions in the partnership agreement or our offer and (additionally) single or multi-user usage in these software conditions. This right of use may simultaneously be exercised only by the maximum number of individuals for whom the customer has paid according to the remuneration in § 7. In the case of multi-use, § 7 para. 7 applies.
- (2) The customer is not entitled to forward the software to third parties. In particular, the customer is not permitted to sell, give away, lend, rent, sublicense, or otherwise reproduce the software publicly or make it accessible.
- (3) Copies of the software are permitted only insofar as this is necessary for contractual use. The customer may make backups of the software according to the technology regulations to the extent necessary. Backups on removable media must be designated as such and shall be affixed with the copyright notice of the original media.
- (4) The customer is only authorised to make changes, additions, and other revisions of the software within the meaning of § 69c no. 2 of the Copyright Act insofar as the law permits this as indispensable. Before errors are resolved by the customer or a third party, the customer must first allow us to attempt to resolve the error. The customer is not entitled to their own use and exploitation rights for such work - beyond the usage rights granted under this contract.
- (5) The customer is only entitled to decompile the software within the limits of § 69e UrhG and only if we have not provided the necessary data and/or information within a reasonable period after a written request to achieve interoperability with other hardware and software.
- (6) If we grant the customer supplements (e.g. patches, bug fixes, additions to the user documentation) or a new edition to the contract (e.g., update, upgrade), that replace prior contractual items ("legacy software") these are subject to the provisions of these software conditions as part of troubleshooting in accordance with § 11.
- (7) If we provide a new version of the contract, the authorities of the customer granted under this contract expire in terms of the legacy software without our express return request as soon as the customer uses the new software productively. We grant the customer a three-month transition phase in which both versions of the contractual items may be used jointly.
- (8) Any duplication or reworking of the application documentation is - subject to para. 4 and 5 (if the documentation is built into the software) - not permitted.

§ 7 Remuneration and payment

- (1) Compensation for the services payable under this contract shall result from the partnership contract or our offer. If no fee has been agreed with the customer, our current price lists at the time of the commission apply.
- (2) Statutory VAT is not included in the price and is shown separately in the invoice on the day of invoicing in the applicably statutory amount.
- (3) Prices for shipment include transport and packaging for physical delivery. If the service is provided via the Internet, we bear the costs of making the software available on the net, the customer bears the cost of the download.

- (4) Unless otherwise agreed, compensation is due within 14 days from the date of the invoice. The date of payment is when we receive it.
- (5) In the case of delayed payment, the customer must pay interest at the rate of 9 (nine) per cent pa above the base rate. We may also charge the customer a fee of 40 euros. We reserve the right to assert higher interest rates and/or further damages. The fee according to sentence 2 is deducted from compensation payable if the damage is due to costs of prosecution. Any claims for default interest, in particular in relation to merchants according to § 353 HGB remain unaffected.
- (6) We are entitled to make outstanding deliveries or services only against advance payment or security or to provide them if circumstances become known after conclusion of the contract, which are suitable to reduce the creditworthiness of customers considerably and through which the payment of our outstanding claims by the customer is endangered from the respective contractual relationship.
- (7) The customer is only entitled to use the software beyond the usage rights in this contract with our prior written consent. For multi-use without our consent (esp. for simultaneous use of a larger number of users than agreed), we are entitled to charge the costs incurred for further use according to our current price list at the time, unless the customer can prove a significantly lower loss. Further (non-contractual) claims for damages remain unaffected.

§ 8 Protection of software and application documentation

- (1) Unless the customer is expressly granted rights under this contract, all rights to the contractual items (and all copies made by the customer) - especially the copyright, the rights to inventions and technical property rights - are ours. This also applies to processing the contractual items by us.
- (2) The customer shall take good care of the contractual items in order to avoid misuse. The customer will only make contractual items (whether unchanged or reworked) accessible to third parties with our prior written consent. Employees of the customer and other persons who are present for the contractual use of the contractual items are not considered third parties.
- (3) The customer is not permitted to change or remove our copyright notices, labels and/or control numbers or characters. If the customer changes or processes the contractual items, these notes and labels must be accepted in the amended version of the contractual items.

§ 9 Duration and termination

- (1) Unless otherwise regulated for the duration, the following applies: The contract is concluded for an indefinite period. The contract can be terminated with a period of six months to the end of each calendar year.
- (2) The software licence agreement may be terminated in writing by either party without notice for good cause. Good cause that entitles us to terminate particularly means if the customer violates our rights of use in such a way that they use the software beyond what this contract permits and does not remedy this after a warning from us within a reasonable period.
- (3) Termination shall be made in writing.
- (4) In the case of termination, the customer must abandon use of the software and remove all installed copies of the programme from their computers and return or destroy any back up copies immediately.

§ 10 Material and legal defects

- (1) The customer must notify us of any defects immediately and grant us access to the documents which give rise to the circumstances of the occurrence of the defect.
- (2) Defects are removed at our discretion by free repair or replacement.

- (3) We are only liable for defects of the provided software that were already present upon delivery to the customer if we are responsible for them.
- (4) The customer may otherwise only assert claims for damages in accordance with § 11.
- (5) Terminating the contract in accordance with § 543 para. 2 no. 1 BGB for not granting the contractual use is only permissible if we had reasonable opportunity to remedy the defect did not do this. Failure to undertake remedial measures can only be assumed if this is impossible, if it is seriously and finally refused by us, or unreasonably delayed or it is unreasonable for the customer for other reasons.
- (6) Termination due to an insignificant hindrance of the contractual use is excluded.
- (7) We are not liable for any defects, insofar as these are attributable to the customer, such as failure or loss of quality due to insufficient input data, unless the customer proves that the defect is not the result of this.
- (8) The obligation to comply does not include software adaptation to changing operating conditions and technical and operational developments, such as changes in the IT environment, in particular changes in the hardware or the operating system, adjustments to the functionality of competing products or production of compatibility with new data formats.

§ 11 General liability

- (1) We are liable - for whatever legal grounds - for damages or reimbursement of expenses in accordance with the following provisions in subparagraph (a) and (b):
 - (a) In the case of intent or gross negligence, we are liable without limitation. In the case of minor negligence, we are only liable for damages resulting from the breach of a contractual obligation (obligation whose fulfilment makes proper execution of the contract possible and the fulfilment of which the customer regularly relies and trusts); in this case our liability is limited to the replacement of typical foreseeable damages.
 - (b) The liability exclusions and limitations arising in subclause (a) do not apply for damages resulting from injury to life, limb or health, and in the case of liability under the Product Liability Act.
- (2) If the liability towards us is excluded or limited, this also applies to the personal liability of our legal representatives and agents.

§ 12 Confidentiality and data protection

- (1) The parties are obliged to keep confidential all knowledge of confidential information and trade secrets gained as part of contract negotiations and execution permanently and to only use it for the purpose of implementing this contract. Our trade secrets also include subjects of the contract and the services provided under this contract.
- (2) The customer will only make trade secrets accessible to employees and other third parties to the extent necessary to exercise the usage authorisation granted to them. The customer will instruct all persons to whom they grant access to the trade secrets of our rights regarding the software and the obligation to their confidentiality and obligate these individuals to confidentiality and use of the information only to the extent in accordance with point 1, provided that the persons concerned are not obligated to confidentiality for legal reasons other than those in the previous scope.
- (3) The foregoing obligations do not apply to trade secrets that (i) were already apparent or known to the other contracting party at the time of their transfer; (ii) became known to the party at no fault of the other party after their transfer; (iii) became accessible to third parties in a lawful way and without limitation with respect to confidentiality or use after transfer by the party to the other party; (iv) that developed independently by a party without use of the trade secrets of the contracting party, (v) that were published in accordance with the law, governmental order, or judicial decision as long as the publishing party informs the contracting party thereof immediately and supports them in the defence of such orders or

decisions; or (vi) as far as the contractual party is permitted to use or disclose the trade secrets due to mandatory statutory provisions or on the basis of this contract.

- (4) We comply with privacy regulations, esp. when we are granted access to the business or hardware and software of the customer. We ensure that our subcontractors also comply with these provisions, esp. obligations to maintain data confidentiality before accepting activities. We do not aim to process or use personal data on behalf of customers. If the customer cannot exclude our access to personal data, the customer is obliged to submit in advance an agreement to us according to the requirements of § 11 BDSG.

§ 13 Export and import control

- (1) The parties are aware that the services from this contract may be subject to export and import restrictions. In particular, there may be permit requirements and the use of the software or related technologies may be subject to restrictions abroad.
- (2) The customer will comply with applicable export and import control regulations of the Federal Republic of Germany, the European Union, and the United States of America, as well as all other relevant provisions.
- (3) Our contract fulfilment is subject to compliance that there are no obstacles on the basis of national and international regulations of export and import laws and any other legal requirements.

§ 14 Final provisions

- (1) The customer may transfer rights and obligations arising from or in connection with this contract only with our prior written consent to third parties.
- (2) Place of performance is at our headquarters in Stuttgart.
- (3) If the customer is a merchant as defined by the HGB, a legal entity under public law or public special assets, jurisdiction is our headquarters in Stuttgart for any disputes arising from the business relationship between us and the customer. We are also entitled to take legal action at the customer's location as well as at any other permissible place of jurisdiction.
- (4) The relations between us and the customer are exclusively subject to the laws of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods dated 11 April 1980 (CISG) does not apply.
- (5) If any individual provision of these software conditions are or becomes invalid, the validity of the remaining provisions will not be affected.

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