

GENERAL TERMS AND CONDITIONS FOR SOFTWARE

1. Contractual parties and contractual object

- (a) These General Terms and Conditions (hereinafter: GTC) apply to all contracts concluded between us, the

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Local court in Hamburg HRA 110500
Managing Director: Sven Mahn

(hereinafter SMIT) and you as user concluded contracts. These GTC apply only if the user is an entrepreneur (§ 14 BGB), a legal entity under public law or a special fund under public law within the meaning of § 310 (1) BGB.

- (b) This Agreement governs the user's acquisition and use of SMIT products and the software maintenance by SMIT. The exact user (hereinafter: User) and the exact product (hereinafter: Product or Software) are put in concrete terms in the order.
- (c) The deviating terms in the User's general terms and conditions do not become a contractual component, even if SMIT does not separately object to them, unless SMIT expressly recognizes them in writing.
- (d) In case of continuous obligations (particularly the rental of Software for use in the cloud and the Software's maintenance and support), the current terms and conditions of SMIT apply. In case the terms and conditions change, the User will be notified of the change via e-mail. If he does not object to the change within four weeks, the change is deemed to have been accepted. If he objects, SMIT is entitled to contractual termination to the end of the month by giving a four-week notice.

2. General licensing conditions

- (a) This Licensing Agreement expressly includes only the product developed by SMIT as supplementary module to Microsoft products. It includes no license to use Microsoft products. So that the User can fully use the Product, he needs a license for the respective Microsoft product, which must be acquired separately from Microsoft or its sales partners.
- (b) The User is not allowed to pass on the Software to third parties in a way that goes beyond the cases governed in this Agreement, especially to lend it, rent it, and sublicense it or make it available to the public, unless SMIT has expressly allowed this beforehand in writing. If a culpable violation occurs, the User commits himself to pay a contractual penalty amounting to 6,000.00 euros. SMIT reserves the right to claim further damages in the individual case.
- (c) The User may use the Software only to process his own data for his own purposes in his own company.
- (d) If the User's company or holding company changes, SMIT must be notified immediately.

3. Software for local installation

The provisions in this section apply to Software Products expressly provided to the User for installation on his hardware.

- (a) Upon this contractual conclusion, the User acquires a simple, non-exclusive, temporally and spatially unlimited, non-transferrable and non-sub-licensable right of use on the Software specified in the order.

- (b) A downloadable copy of the Software and the documentation are provided to the User. The Software can only be used after the User has authenticated it through an activation code sent separately to him.
- (c) The right to reproduce the subject of the license is limited to the installation of the subject of the license on a computer system that belongs directly to the licensee for fulfilling the utilization purpose and to a reproduction necessary for the loading, displaying, running, transferring and storing of the Software and for the right to make a backup copy from the subject of the license by a person authorized for doing this acc. to Section 69d Paragraph 2 of the Copyright Act. If the User makes a backup copy for this upon submitting the legal requirements, he must visibly affix the "Backup copy" notice and the copyright notice of Sven Mahn IT GmbH & Co. KG on it. The backup copy may not be passed on to third parties.
- (d) The right to process the subject of the license is limited to the reception or restoration of the agreed upon functionality of the subject of the license.
- (e) The right to decompile the subject of the license is granted only under the condition of Section 69e Paragraph 1 Nos. 1 to 3 of the Copyright Act and within the framework of Section 69e Paragraph 2 Nos. 1 to 3 of the Copyright Act.
- (f) If SMIT expressly grants the User a test license, it applies notwithstanding Paragraph (a) in a temporally limited way and expires on the expiration date. The User must delete all Software copies in his possession when the license expires.

4. Software for use in the cloud

The provisions of this section apply to Software Products provided to the User exclusively for use in the cloud.

- (a) Scope of the license
 - (1) The User acquires no ownership on the Software. All rights, except those granted through this Agreement, remain with SMIT. The right of use granted is temporally limited to this contractual term; in case of a test license, to the duration of the test period, and ceases when this Agreement ends.
 - (2) SMIT sets up an own Software module for the User so he can use the Software for the duration of his right of use. For accessing this module and using the Software beyond this, the license issued to the User applies under the conditions listed in this section.
 - (i) If necessary, SMIT provides licenses for various roles and with different authorizations. The licenses available for the respective Software Product are readily seen in the current price list.
 - (ii) The User receives a configuration license. For the simultaneous use of the Software module by several persons authorized to access, the User must acquire additional rights of use under the current applicable conditions set by SMIT. Additional licenses are issued in the name of the persons authorized to access and are not transferrable.
 - (iii) The current price list applies.
 - (3) Internet access is required for use of the Software. The User receives no physical copy of the Software and of the documentation. Moreover, the User can be required to rent storage space in the cloud provided by SMIT so the Software module can then be set up there. This entails additional costs according to the current price list.
 - (4) The User is only entitled to process or decompile the Software if this is legally permissible and only if the information needed for this is not made accessible by SMIT (where appropriate, at the User's request).
 - (5) SMIT will provide the Software as follows: Via the respective Microsoft store page.
 - (6) If these licensing conditions are violated, all rights of use of the User Page expire immediately. The User must cease using it at once.

- (b) Warranty
 - (1) During the contractual term, SMIT guarantees that the contractually agreed upon quality of the Software will be maintained and that a contractual use of the Software does not oppose third-party rights. SMIT will eliminate the material defects and defects in title that occur in the rental object within a reasonable time period.
 - (2) The User commits himself to report Software defects to the licensor in writing as soon as they are discovered. Material defects are reported by describing the time when the defects occurred and the particulars.
 - (3) The User commits himself to perform a backup of his data once a day. SMIT is not liable for the data loss caused by violating this obligation.
- (c) Term
 - (1) This Agreement is concluded for an indefinite period of time. Both parties can terminate it in writing to the end of the month by giving a one-month notice. The notice of termination is allowed at the earliest one month after the start of the Agreement.
 - (2) Individual additional licenses acc. to Section 3 a) (2) (ii) can be cancelled to the end of the month by giving a one-month notice.
 - (3) The right to an extraordinary cancellation due to an important reason remains untouched.
 - (4) The cancellation can only be done in writing, via e-mail or fax.
 - (5) If the customer is granted a trial license, this Agreement is limited to the trial period and ends automatically when the latter expires, without the need of a cancellation.

5. Software maintenance and support

Unless otherwise expressly agreed upon, SMIT provides the services described below for the User's licensed Software acc. to Section 3 or 4 under these conditions:

- (a) As part of this Maintenance Agreement and during the contractual term, the User receives from SMIT all published upgrades, updates and hotfixes for the Software licensed to him acc. to Section 3 or 4. An updated documentation is provided to the User within three months after publication of the upgrades, updates or hotfixes if they affect the operation of the Software.
- (b) The support services of SMIT are limited to questions and problems related to the Software sold and distributed by SMIT, not to those underlying the Microsoft software.
- (c) Support is provided exclusively by phone and e-mail as well as by means of remote access via TeamViewer. The User must install the corresponding program.
- (d) SMIT will charge the customer separately for support services that in the individual case go beyond the correction of Software-based errors acc. to Letter (a). The costs are based on the current price list.
- (e) Support inquiries are sent in German or English to SMIT via: helpdesk@svenmahn.de.
- (f) When an error that is not part of the warranty is reported, SMIT makes an offer to remove it.
- (g) SMIT can deny support services if the hardware, the operating system or the browser required to access the cloud does not meet the requirements of Microsoft products or the SMIT additional modules or if the Microsoft or SMIT Software is not up to date.
- (h) As far as necessary, the User cooperates in the provision of services by providing SMIT all information necessary for rendering the services owed by SMIT. In addition, the customer provides testing data, testing capacities and qualified employees where appropriate.
- (i) The User commits himself to perform a backup of his data once a day. SMIT is not liable for the data loss caused by violating this obligation.

6. Payment conditions

- (a) The prices based on the current price list apply to the services of SMIT within the framework of this Agreement. All prices are net plus sales tax.

- (b) In case of continuing obligations (especially licensing agreements acc. to Section 3 and maintenance agreements), SMIT is entitled to adjust the prices during the contractual term. This must be communicated to the User in writing at least three months in advance. An adjustment is allowed, at the earliest, 12 months after contractual conclusion or after the last adjustment. Notwithstanding No. 3 b), if the net price is adjusted by more than 3%, the User is entitled to terminate the Agreement when the adjustment takes place.
- (c) The fees for the continuing obligations are billed on a monthly basis.
- (d) All payments are due two weeks after the invoice is received.
- (e) If the Agreement is not concluded on the first of the month, the licensing fee is calculated in proportion to the length of the time involved.

7. Right of retention

If the User is in arrears with his payment obligations, SMIT is entitled to block the User's accesses to the Software in the cloud until payment is received.

8. Warranty

- (a) Claims for warranty lapse one year after the Software is activated in the case of Software for installation.
- (b) Claims for warranty for services related to the maintenance of the Software lapse one year after the corresponding program has been delivered.
- (c) The above-mentioned warranty exclusions do not apply to claims due to willful intent or gross negligence and to claims due to injury to life, limb or health.
- (d) The product description is not subject of any warranty if this was not expressly agreed upon in writing.

9. Confidentiality

- (a) "Confidential information" is all the information and documentation of the other party identified as confidential or considered confidential due to the circumstances, especially information about operational processes, business relationships and know-how.
- (b) The parties agree to remain silent about confidential information. This obligation continues even after this Agreement has ended.
- (c) Excluded from this obligation is such confidential information that
 - (1) was verifiably already known to the recipient when the Agreement was concluded or known from a third party afterwards, without this causing the violation of a confidentiality agreement, statutory regulations or official orders;
 - (2) was publicly known when the Agreement was concluded or was made known to the public afterwards, as long as this is not based on a violation of this Agreement;
 - (3) must be disclosed owing to statutory obligations or an order of a court or authority. As far as permissible and possible, the recipient obligated to the disclosure will inform the other party beforehand and give him the opportunity to act against the disclosure.
- (d) The parties shall only grant access to confidential information to those consultants who are obligated to professional secrecy or on whom the respective obligations of this Agreement's confidentiality obligations have been imposed. Moreover, the parties shall disclose the confidential information only to those employees that must know it for implementing this agreement and require them – within the scope permissible by labor law – to maintain secrecy also after they have left the company.
- (e) Any culpable violation of these provisions brings about a contractual penalty amounting to 6,000.00 euros. Further claims of the injured party remain untouched by this.

10. Liability

- (a) SMIT is liable without restriction
 - for willful intent or gross negligence,

- or injury to life, limb or health,
 - acc. to the provisions of the Product Liability Act, and
 - to the extent of a warranty provided by the licensor.
- (b) In case of a slightly negligent violation of an obligation that is essential for achieving the contractual purpose (a major obligation), the licensor's liability amount is limited to the damage that is foreseeable and typical according to the type of the questionable business.
- (c) There is no further liability of the licensor. In particular, the licensor is not liable for initial defects, provided that the prerequisites of Section 1, 2 are not present.
- (d) The above-mentioned liability limitation also applies to the personal liability of the licensor's employees, representatives and bodies.
- (e) In case of a data loss, SMIT is liable only for the recovery of the data that would also have been lost with regular backups according to the User's obligation from Section xx.
- (f) If a defect is caused by the defectiveness of a supplier's product and he does not become a vicarious agent of SMIT, but SMIT merely passes on a third-party product to the User, the latter's claims for defects are initially limited to the assignment of the claims of defects of SMIT against his supplier. This does not apply when the defect is caused by an improper handling of the supplier's product for which the User is responsible. If the User cannot assert his claims for defects against the supplier out of court, then the subsidiary liability for defects of SMIT remains untouched.

11. Mention as reference customer

If the User is an entrepreneur within the meaning of Section 14 of the German Civil Code (BGB), he grants SMIT the right to mention his company as reference customer for marketing purposes. SMIT becomes entitled to use the company's logo for this as well. The User assures to be entitled to the granting of these rights. The User is entitled to revoke these rights in writing with future effect.

12. Final provisions

- (a) This Agreement is governed by German law to the exclusion of the UN Sales Law, unless the User is a consumer and the national law of his country of residence opposes it.
- (b) The place of performance and exclusive – also international – place of jurisdiction for all disputes from this Agreement is SMIT headquarters, as far as the User is a merchant, legal entity under public law or a special fund under public law. The same applies if the User is an entrepreneur within the meaning of Section 14 of the BGB.
- (c) Amendments to this Agreement need to be in writing. This also applies to amendments to this written form clause. This does not apply if the User is a consumer within the meaning of Section 13 of the BGB.
- (d) If individual provisions of this Agreement become invalid, the Agreement nonetheless remains valid. The statutory provision replaces the invalid provision. The same applies in case of a loophole.