

*The German Association for Information Technology, Telecommunications and New Media [Bundesverband Informationswirtschaft, Telekommunikation und Neue Medien e.V.] - BITKOM - recommends on a non-binding basis that its members use these General Terms and Conditions for transactions that do not involve consumers. It is left to the addressees' discretion to follow this recommendation or to use other General Terms and Conditions.*

## **BITKOM Contractual Conditions for the Licensing of Software (Sale) - VÜ BITKOM -**

### **1. Subject matter**

- 1.1 The nature and the performance of the software and also the released deployment environment shall be determined by the pertinent program description, additionally by the operating instructions, unless otherwise agreed.
- 1.2 The software shall be provided in an executable form (as object programs) including operating instructions (user documentation or online help) and the installation guide. The operating instructions and the installation guide can also be made available to the customer electronically.

In so far as the provider's software contains interfaces to software it does not supply, Section 69 d German Copyright Act (*Urheberrechtsgesetz*) shall apply. Prior to decompilation, the customer shall first request the required information from the provider.

- 1.3 The software shall be installed and commissioned by the customer. The provider can carry out the installation instead of the customer. All support services rendered by the provider at the customer's request (in particular preparation for use, installation and demonstration of successful installation, familiarization, training and consulting) shall be remunerated as incurred, unless otherwise agreed.

### **2. Rights of use to software and protection against unauthorized use**

- 2.1 The provider shall grant the customer upon complete payment of the remuneration owed the right to use the agreed software to the extent defined in the Agreement. If the extent is not agreed in the Agreement, it shall be a single, non-exclusive right of use for an unlimited period of time. This shall entitle the customer to have the software used on one computer by one individual user at a time. The right of use encompasses only the use for the customer's internal purposes.

Extended use must always be contractually agreed before its start. The remuneration shall be based on the extent of the right of use.

- 2.2 The customer may transfer the right of use per software to another user if it refrains from using the software itself.
- 2.3 The customer may copy software only in so far as this is required for contractually compliant use. Copyright declarations in the software may not be changed or deleted.

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- 2.4** The provider shall be entitled to take suitable technical actions to protect against contractually noncompliant use. The use of the software on an alternative or subsequent configuration may not be materially impaired as a result.
- 2.5** Ownership of the licensed copies remains reserved until complete payment of the remuneration owed. Until such time, all rights of use shall always be provisional and granted by the provider subject to revocation at any time.
- 2.6** The provider can revoke the customer's right of use if the customer breaches restrictions on use or other provisions to protect against unauthorized use to a material extent (see also Clauses 3.4 and 3.5). The provider shall first set the customer a deadline (*Nachfrist*) to remedy the situation. In the event of repetition or in particular circumstances that with due regard to the interests of both parties justify immediate revocation, the provider shall be entitled to revocation without the setting of a deadline. The customer shall confirm to the provider in writing that it has ceased to use the software after such revocation.

**3. Duties of the customer**

- 3.1** The customer shall ensure that at the time of delivery at the latest there is expert personnel available for the support of the provider and for the use of the software.
- 3.2** The customer shall promptly (*unverzüglich*) inform the provider about changes in the deployment environment. This shall be without prejudice to Clause 1.1.
- 3.3** The customer undertakes to support the provider in so far as required for rectifying faults, in particular to provide a data storage medium with the corresponding software tools and equipment on demand of the provider.
- 3.4** The customer hereby accepts that the software together with the operating instructions and further documents - also in future versions - are copyright protected. In particular source programs (*Quellprogramme*) are company secrets of the provider. The customer shall ensure without time limit that source programs are not accessible to third parties without the provider's consent. The transfer of source programs shall require the provider's consent, which may not be refused without good cause (*Treu und Glauben*). The provider has a duty to supply source programs only where expressly agreed.
- 3.5** The customer may not undertake anything that could facilitate unauthorized use. In particular it may not attempt to decompile the programs unless authorized to do so under Clause 1.2 Para. 2. The customer shall promptly (*unverzüglich*) inform the provider if and when it becomes aware that within its scope there is a risk of or has been unauthorized access.

**4. Customer's warranty rights (*Mängelansprüche des Kunden*)**

- 4.1** The provider warrants that subject to contractually compliant use the software meets the agreements as per Clause 1.1.

The time period (*Verjährungsfrist*) for warranty claims shall commence with the delivery or - if installed by the provider - with completion of installation. Extension of the scale of use (Clause 2.1 Para 2) shall have no effect on the warranty period.

Legal faults (*Rechtsmängel*) shall be governed in particular by Clause 5 BITKOM General Terms and Conditions (AV BITKOM).

Material faults (*Sachmängel*) shall be governed in particular by Clause 4 BITKOM General Terms and Conditions (AV BITKOM) accordant to the subsequent regulations in Clauses 4.2 to 4.4.

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- 4.2** The customer shall have warranty claims only if reported faults are reproducible or otherwise demonstrable by the customer. The reporting of faults is governed in particular by Clause 2.3 BITKOM General Terms and Conditions (AV BITKOM).
- 4.3** If the customer is entitled to warranty claims, it shall initially have only the right to subsequent performance within a reasonable period of time. The subsequent performance (*Nacherfüllung*) includes either repair or provision of replacement software at the provider's discretion. The provider shall pay due heed to the interests of the customer when making the choice.
- 4.4** If the subsequent performance fails or cannot be carried out due to other reasons, subject to the statutory preconditions the customer can reduce the remuneration, rescind the Agreement and/or demand damages or compensation of expenses in the scope of Clause 6 BITKOM General Terms and Conditions (AV BITKOM).

If the subsequent performance is delayed, the damages or compensation of expenses owed by the provider shall be governed by Point 3.4 BITKOM General Terms and Conditions (AV BITKOM). Damages or compensation of expenses shall be governed in particular by Point 6 BITKOM General Terms and Conditions (AV BITKOM).

The customer can exercise any choice it has with respect to warranty claims within a reasonable period of time, as a rule within 14 calendar days.

**5. Validity of BITKOM General Terms and Conditions (AV BITKOM)**

In addition, the BITKOM General Terms and Conditions (AV BITKOM) shall also apply.

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*The contractual terms and conditions are based on non-binding terms recommended by BITKOM e.V. and approved by the Federal Cartel Office.*

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