

# Software Terms of Use

## 1 General

- 1.1 The transfer of the software described in the quote only comes about via the acceptance of these Terms of Use. The Customer shall not have the right to use the software beforehand. The general terms and conditions of the Customer shall find no application, unless expressly agreed to by KISTERS.
- 1.2 KISTERS supplies the Customer with software products in accordance with these Software Terms of Use created by KISTERS. The software products supplied (number, modules, etc.), as well as the prices for their use result from the underlying quote.
- 1.3 The software products supplied by KISTERS shall be provided at the currently recognised standard of research and technology, as well as any other standards recognised by the IT sector.
- 1.4 In the case of the transfer of software products which have not been created by KISTERS, the licence conditions of their respective manufacturer shall apply. Open Source licenses shall not be included in the provision under these Terms of Use.
- 1.5 These Terms of Use shall apply to all – also future – deliveries of software by KISTERS, even if these deliveries are made without these Terms of Use. Any other contractual stipulations shall only be effective if expressly accepted by KISTERS in writing.

## 2 Transfer

- 2.1 The right of use of the software products by the Customer begins with the transfer of use, and is granted to the Customer subject to full payment of the usage price listed in the quote. The transfer of use shall be effected, at the discretion of KISTERS, via
  - delivery of the software products on portable data media,
  - making the software products available to the Customer for retrieval via the Internet (e.g. FTP server)or
  - granting the right of use by way of signature of the quote "KISTERS Software Products", where software products have already been delivered.
- 2.2 The installation and commissioning of the software products, even if these are provided within the scope of warranty or software services, are the responsibility of the Customer. This obligation also includes carrying out thorough testing of the software products to ensure that they are free of defects and usable for the intended purpose, before they are put into operation.
- 2.3 Where a third party is commissioned for installation and commissioning, prior written consent of KISTERS and a written undertaking by the third party to keep the software products and documentation confidential shall be required. KISTERS shall not unreasonably withhold consent.
- 2.4 The Customer shall ensure that software products, whose reproduction and documentation is carried out without prior written consent of KISTERS, are not made accessible to third parties, regardless of the technical means used. The Customer shall oblige all employees with access to the software products and/or documentation accordingly. In accordance with Article 15 of the German Stock Corporation Act, third parties within the meaning of this Contract shall not be deemed to be companies affiliated with the Customer (group companies).
- 2.5 After payment of the full purchase amount, the Customer is entitled to the non-exclusive (simple) right of use and the unlimited right to use of the software products within the scope stated in the quote and in accordance with these Terms of Use. The granting of rights of use in accord-

- ance with this clause 2.5 shall also apply to versions, updates and upgrades delivered in the future. The duration of use may otherwise be limited by KISTERS, e.g. in case of provision of a demo version.
- 2.6 Where the Customer wishes to pass on the software products listed in the quote to a lessor, and lease them back from said lessor, such transaction shall require the express consent of KISTERS. The Customer shall inform KISTERS of his intent in good time, and advise the lessor accordingly.
- 2.7 The Customer must not reverse engineer or reverse translate (decompile) the software products provided by KISTERS, or remove parts of the program. If the decompilation of a machine program is necessary in order to obtain the information required to establish the interoperability of an independently created computer program with the software products, and if this information is neither published nor otherwise readily available, and if the Customer has not obtained such decompilation from KISTERS within a reasonable period of time following a relevant written request, the Customer shall have the right to decompile within the limits of Article 69e of the Federal Copyright Act.
- 2.8 The Customer may create backup copies to the extent necessary for the intended use of the software products. The backup copies must only be used if the original software product was deleted.
- 2.9 KISTERS shall inform the Customer of system requirements (hardware, third-party software, etc.) for the use of the software products. KISTERS cannot guarantee that the software products will be utilisable with other system requirements.
- 2.10 Once a year, KISTERS shall be entitled to conduct an audit at the Customer's premises to ensure that the Customer uses only the number of KISTERS software products licensed. KISTERS shall carry out the audit at their reasonable discretion and avoid restrictions in the Customer's operations as far as possible.

### **3 Updates/Upgrades**

- 3.1 If the Customer enters into a maintenance agreement with KISTERS, he shall be entitled to the updates/upgrades and updated version(s) of the software products supplied by KISTERS.
- 3.2 The Customer shall not be obligated to return the software and data carriers in the older version when the Customer receives an update from KISTERS. The Customer is not entitled to forward the old version of the software to third parties.

### **4 Liability for material defects**

- 4.1 The agreed quality of the software products provided by KISTERS shall be based on the corresponding documentation created by KISTERS. Any other description of the quality, e.g. in public statements (e.g. e-mails or presentations), in advertising, in beta versions, in third-party product descriptions, etc., shall not constitute a description of the agreed quality.
- 4.2 The software products are free of material defects if they have the agreed quality as described in the documentation at the time of transfer of risk.
- 4.3 The Customer must notify KISTERS of any defects as soon as they are discovered.
- 4.4 Should the Customer claim a defect, the Customer shall prepare a detailed description of the defect and make it available to KISTERS. KISTERS shall support the Customer in his search for the fault and cause of the error; if an error is not reproducible and occurs in the most recent program version provided, or if the error cannot be proven to be attributable to the software products provided, KISTERS shall be entitled to invoice the Customer for services provided at applicable current rates.
- 4.5 KISTERS shall remedy the fault or defect in the software product within a reasonable period of time. KISTERS shall be free to choose the method of remedy.

- 4.6 If a defect is not remedied within a reasonable period of time or circumvented in a manner that is reasonable for the Customer, the Customer's right to reduce the usage price or to withdraw from the software transfer agreement for the software product shall remain unaffected.
- 4.7 The limitation period for defects in the software products supplied by KISTERS is 12 months and begins with the transfer of the software product.

## 5 Payment Terms

- 5.1 Billing by KISTERS or an authorised distributor shall occur with or immediately after each delivery. The invoice amount is to be paid without deductions including VAT immediately after receipt of the invoice.
- 5.2 In the event of default in payments, 5% interest on arrears p.a. shall be deemed agreed. Should the Customer default in payments or if KISTERS revokes the usage agreement for good cause, KISTERS shall be entitled to demand the deletion of the software product.
- 5.3 The Customer is not entitled to withhold payments due to incomplete delivery, warranty or guarantee claims, or other defects.
- 5.4 Payment constitutes acceptance of the subject matter of the contract as being in accordance with the contract.

## 6 Liability

- 6.1 KISTERS shall be liable for personal injury for which they are culpable up to EUR 1 million and, in the event of damage to property for which they are culpable, shall reimburse the cost of restoring said property up to an amount of EUR 1 million per loss event. In the event of damage to data storage media, the obligation to compensate shall not include the cost of recovering lost data and information. In the event of data loss, KISTERS shall only be liable for the expenditure required to restore the data, provided that the Customer has correctly backed up the data.
- 6.2 Any claims for defects, damages or reimbursement of expenses incurred by the Customer other than those expressly mentioned in these GTC – based on the contract, tort or any other legal grounds, and specifically claims for business interruption, loss of profit, consequential harm caused by a defect, and loss of information and data – shall be excluded, unless liability is mandatory, e.g. under the Product Liability Act or in cases of intent, gross negligence or breach of fundamental contractual obligations. Compensation for damages or expenses due to breach of material contractual obligations shall, however, be limited to foreseeable damage typical for this type of contract, unless intent or gross negligence can be proven. Material contractual obligations are those, whose fulfilment characterises the contract and on which the Customer may reasonably rely.
- 6.3 KISTERS shall not be held responsible for service restrictions and delays, specifically due to force majeure (e.g. mobilisation, war, rioting) or similar events (e.g. strike, lockout, computer viruses or hacker attacks).
- 6.4 Insofar as the contracting parties have agreed on a lump-sum compensation for a defect of a service as part of the SLA, the agreed provisions in the SLA shall apply to reduction, compensation for damages, and reimbursement of expenses due to the defect.
- 6.5 Claims and rights against KISTERS shall lapse 12 months after completion of the service provisioning or premature termination of the Contract, unless liability is mandatory, e.g. under the Product Liability Act or in cases of intent, gross negligence or breach of fundamental contractual obligations.
- 6.6 If a third party asserts claims against the Customer for the infringement of industrial property rights or copyrights (hereinafter: IPR) by the services supplied by KISTERS, and if the use of these services is impaired or prohibited as a result, KISTERS shall be liable as follows: KISTERS shall, at their discretion and expense, either modify or replace the services in such a way that they do not infringe these IPR, but still substantially comply with the agreed specifications, or

- indemnify the Customer against licence fees for the use of the services vis-à-vis the third party, or take back the services against reimbursement of the remuneration paid by the Customer less an amount that takes into consideration the time of use of the services rendered.
- 6.7 Prerequisite for KISTERS' acceptance of liability under Clause 6.6 is that the Customer notifies KISTERS immediately in writing of any claims by third parties for infringement of an IPR, does not concede the alleged infringement, and conducts any dispute – including any out-of-court settlement – only in agreement with KISTERS. If the Customer discontinues the use of the services for reasons of mitigation of damages or other important reasons, he shall be obliged to point out to the third party that the discontinuation of use does not constitute an acknowledgement of the infringement of the IPR.
- 6.8 Insofar as the Customer himself is responsible for the infringement of property rights, claims against KISTERS are excluded. The same shall apply insofar as the IPR is based on special specifications of the Customer, is caused by an application not foreseeable by KISTERS, or is caused by the fact that the part/work result is modified by the Customer, or is used with work results not supplied by KISTERS.
- 6.9 Further claims of the Customer due to an infringement of third party IPR are excluded. The Customer's statutory right to cancellation for good cause remains unaffected.

## **7 Data security**

- 7.1 KISTERS may store personal data of the Customer as part of data collection and processing. KISTERS shall only use this data for processing purposes and as a legal basis when preparing quotes, processing orders and for sales activities with the Customer (Art. 6 para. 1 b p. 1 lit. b GDPR). For the purpose of order processing, the required data, including name, delivery and invoice address, as well as further details of an order, are required and must be provided by the Customer. KISTERS will use contact information like e-mail address or telephone number to confirm an order and schedule appointments.
- 7.2 Recipients or categories of recipients of personal data are KISTERS employees in the areas of system support, system administration, project management, consulting, sales and marketing, as well as any subcontractors and service providers used for the provision of services, and the tax consulting company contracted by KISTERS. These subcontractors and service providers process the data as contracted processors and exclusively on the instructions of KISTERS, and are obligated to comply with applicable data protection regulations. All contracted processors have been carefully selected and will only have access to personal data to the extent and for the time required to perform these services.
- 7.3 It may be necessary to transfer personal data to recipients in third countries as part of order processing. KISTERS use EU standard contract stipulations for this purpose, and the Customer can view the relevant document on request.
- 7.4 In compliance with Art. 13 GDPR, KISTERS are obligated to inform the Customer whenever his data is collected. The names and contact information of the contact persons responsible at KISTERS shall be made available to the Customer for that purpose. The protection officer in charge at KISTERS is Dr. Heinz-Josef Schlebusch, Pascalstraße 8+10, 52076 Aachen, Germany, Phone: +49 2408 9385 -0, E-mail: datenschutz@kisters.de.
- 7.5 Legal retention obligations under German law allow KISTERS to store personal data within the scope of GDPR. An exception to the basic obligation to delete applies if the processing of personal data is necessary for the fulfilment of an obligation under German law or EU law (Art. 17 (3) (b) GDPR). The data will be deleted on request in accordance with the retention obligations under German law. Documents required by tax law or commercial law must be stored for a minimum of 10 years. Other business notes must be kept for at least 5 years.
- 7.6 Upon request, KISTERS will be happy to provide information about whether and which of the Customer's data is retained. In accordance with Art. 15 - 21 GDPR, the Customer has the right to information, correction, deletion, restriction of processing, as well as the right to object to

processing and data transfer. The Customer furthermore has the right to revoke consent at any time without affecting the lawfulness of the processing carried out on the basis of consent until revocation. Customers may complain to the competent supervisory authority in accordance with Art. 77 GDPR if they are of the opinion that the processing of their personal data is carried out unlawfully.

## **8 Non-Disclosure**

- 8.1 Business secrets of the Customer in the meaning of Article 2 of the Federal Trade Secret Law shall be protected by KISTERS with appropriate confidentiality measures, and shall be released to the Customer immediately after the end of the Contract upon request, unless there is a contractual and legal necessity for the retention of such business secrets at KISTERS.
- 8.2 The Customer shall treat business secrets and other information obtained through KISTERS as confidential during the term of the Contract and beyond, as long as and to the extent that such information has not lawfully become general knowledge, or that KISTERS have consented in writing to its disclosure in a specific case, and shall use such information only for the purposes stipulated in the contract.

## **9 Other**

- 9.1 Ancillary agreements require the written form. This requirement may only be waived in written form.
- 9.2 German law shall apply to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- 9.3 Place of performance is the registered office of KISTERS. The place of jurisdiction is Aachen.

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