

## Licensing Terms and Conditions (Subscription License) of

### Darmstadt Graphics Group GmbH

#### 1. Scope of Application

1.1 These Licensing Terms and Conditions (Subscription License) shall apply to all deliveries, services and offers of Darmstadt Graphics Group GmbH, Fraunhoferstrasse 5, 64283 Darmstadt, Germany (hereinafter referred to as "**Provider**") for the temporary licensing of software and the provision of related services.

1.2 These Licensing Terms and Conditions (Subscription License) are an integral part of all contracts concluded by the Provider with its contractual partners (hereinafter referred to as "**Customer**") for the temporary licensing of software and the provision of related services. They shall also apply to all future contracts of such nature, even if they are not separately agreed again.

1.3 Terms and conditions of the Customer or third parties shall not apply, even if the Provider does not separately object to their application in individual cases. Even if the Provider refers to any correspondence that contains or refers to the terms and conditions of the Customer or a third party, this shall not constitute an acceptance of those terms and conditions.

1.4 All offers of the Provider are subject to change and non-binding, unless they are expressly marked as binding or contain a specific acceptance period. The Provider may accept orders or commissions from the Customer within (14) days of receipt.

1.5 The legal relationship between the Provider and the Customer shall be governed solely by the concluded Licensing and Service Quotation (the "**Licensing and Service Quotation**") including these Licensing Terms and Conditions (Subscription License) and, where relevant, any other documents referred to in the Licensing and Service Quotation (hereinafter collectively referred to as the "**Subscription Agreement**").

#### 2. Subject of the Subscription Agreement

2.1 The subject of the Subscription Agreement is the temporary provision of the software products described in the Licensing and Service

Quotation together with user documentation (the "**Software**").

2.2 The Software is provided to the Customer as an "on premise" solution. The Provider does not perform any hosting service, e.g. as part of a Software-as-a-Service model, to the Customer.

2.3 The Customer shall receive the Software, in object code form only, and the user documentation. The Customer shall not be entitled to the source code of the Software.

2.4 The Subscription Agreement shall apply, if applicable, in addition to all other software licensing, software maintenance and other service contracts between the Provider and the Customer.

#### 3. Delivery of the Software

3.1 The Provider shall provide the Customer with a copy of the Software on a suitable data carrier.

3.2 Indications on the time of delivery are not binding, unless fixed delivery times have been expressly agreed in writing by the Provider in the Licensing and Service Quotation.

3.3 The delivered items must be carefully examined by the Customer immediately after delivery to the Customer.

3.4 With regard to obvious defects or other defects, which would have been recognizable by an immediate careful inspection, such defects shall be deemed to have been approved by the Customer if the Provider does not receive a written notice of defects within seven (7) working days of delivery.

3.5 With regard to other defects, the delivered items shall be deemed to have been approved by the Customer if the notice of defects is not received by the Provider within seven (7) working days after the time at which the defect became apparent; however, if the defect was already apparent at an earlier point in time during normal use, this earlier point in time shall be decisive for the commencement of the notice period.

3.6 Insofar as any defects are deemed to have been approved in accordance with the above provisions, the Customer may not assert any warranty or other claims on account of such defects.

#### **4. Rights of Use**

4.1 All rights to the provided Software, to work or training results, studies and adaptations as well as other rights to any materials made available to the Customer hereunder are and shall remain the exclusive property of the Provider.

4.2 The Provider grants the Customer a non-exclusive, non-transferable and nonsublicensable right, limited to the term of the Subscription Agreement, to use the Software at the location specified on the Licensing and Service Quotation in the Federal Republic of Germany.

4.3 The right of use is limited to the number of copies of the Software agreed in the Licensing and Service Quotation.

4.4 The Customer's right of use is limited to the use of the Software as described in the service description. The permitted use includes the installation as well as loading, displaying and running of the installed Software. The Customer may only use the Software for the number of workstations specified in the Licensing and Service Quotation.

4.5 The Licensing and Service Quotation also specifies the hardware and Software environment, in particular the operating system for which the Software is released. If the Customer makes changes to the hardware and/or software environment or operating system existing at the time of delivery of the Software, the Provider shall not assume any warranty or liability for the continued functionality of the Software.

4.6 The Customer may use the Software on any hardware available to him, provided that it complies with the above specifications. However, if the Customer changes the hardware, it must delete the Software from the previously used hardware. If the Customer wishes to use the Software on several hardware configurations at the same time, e.g. by several employees, it must purchase a corresponding number of program packages.

4.7 The Customer is not entitled to transfer the copy of the Software provided to him or the backup copy, if any, to third parties. In particular, the Customer is not permitted to sell, lend, lease or otherwise sublicense the Software or to reproduce or make the Software publicly available.

4.8 If the Customer violates any of the above provisions, all rights of use granted within the scope of the Subscription Agreement shall become immediately invalid and automatically revert to the Provider. In this case, the Customer shall immediately and completely discontinue the use of the Software, delete all versions or copies of the Software installed on his systems and delete the backup copy, if any, or hand it over to the Provider.

4.9 The Customer may not use the Software to provide computer center services for third parties.

4.10 The Software may only be copied to the extent necessary for its intended use within the scope of the right of use granted to the Customer; backup copies must be marked with the Provider's copyright notice.

4.11 The Customer may not connect, extend or change the Software with other software than those for which the corresponding interfaces are provided without the consent of the Provider. Decompilation of the Software is permitted within the framework of the provisions of the German Copyright Act and only if the Provider does not provide the information and/or documents necessary to establish interoperability of the Software with other programs free of charge within a reasonable period following a written request by the Customer.

4.12 Any extension of the Customer's right of use beyond the scope determined above - in particular use by third parties - requires a separate written agreement with the Provider.

4.13 The Customer is obliged to take suitable measures to protect the Software from access by unauthorised third parties, in particular to keep all copies of the Software in a protected place.

4.14 Copyright notices, serial numbers and other features serving the identification of the program may not be removed or changed under any circumstances. The same applies to a suppression of the screen display of corresponding features.

#### **5. Subscription Fee, Invoicing and Payment**

5.1 For the provision of the Software under the Subscription Agreement, the Customer shall pay to the Provider the remuneration agreed in the

Licensing and Service Quotation (the "**Subscription Fee**").

5.2 The Subscription Fee must be paid annually in advance. The first invoice is issued after the Software has been made available.

5.3 All agreed prices are net price plus the statutory value added tax.

5.4 Invoices issued by the Provider are due for payment immediately after receipt of the invoice without deduction, if not agreed otherwise in the Subscription Agreement.

5.5 Without prejudice to further rights, the Provider is entitled to withhold services in the event of default of payment by the Customer until the amounts due have been paid by the Customer.

5.6 If the Customer defaults on a payment in whole or in part, all claims that the Provider has against the Customer from the business relationship with the Customer shall become due.

5.7 A set-off of claims of the Customer against claims of the Provider is - with the exception of undisputed or legally binding claims - not permitted.

5.8 An assignment of claims against the Provider is only permitted with the written consent of the Provider.

## 6. Warranty

6.1 Under the Subscription Agreement, the Provider is obliged to provide the Software to the Customer in a condition suitable for use in accordance with the specifications of the Subscription Agreement and to maintain the Software in this condition during the term of the Subscription Agreement (cf. Sec. 535 German Civil Code (*BGB*)).

6.2 The Provider shall not be responsible for any changes or deterioration of the Software caused by the use by the Customer (cf. Sec. 538 German Civil Code (*BGB*)).

6.3 If, during the term of the Subscription Agreement, a defect in the Software becomes apparent or a measure to protect the Software against an unforeseen danger becomes necessary, the Customer shall notify the Provider thereof without delay. The same shall apply if a

third party claims a right to the Software. If the Customer fails to notify the Provider accordingly, the Customer shall be obliged to compensate the Provider for the resulting damage. Insofar as the Provider was unable to remedy the situation as a result of the failure to notify, the Customer shall not be entitled (i) to assert any rights to reduce the Subscription Fee, (ii) to claim damages or (iii) to terminate the Subscription Agreement without setting a reasonable deadline for remedy (cf. Sec. 536c German Civil Code (*BGB*)).

6.4 Not subject of the Subscription Agreement and not covered by the agreed Subscription Fee are all services which are not explicitly mentioned in the Subscription Agreement. This includes in particular the following services, unless such services are subject of the Provider's obligations under Sec. 6.1 above:

- a) Changes to the Software that are not subject matter of the Subscription Agreement, in particular adaptation to new products and services as well as to changed operating procedures of the Customer;
- b) Adaptation of the Software to a changed hardware and/or Software environment of the Customer, including new program versions (e.g. new releases, updates/upgrades) of third-party Software used in the system;
- c) Elimination of malfunctions that have occurred due to improper operation of the Software by the Customer, force majeure, interventions by third parties or other influences not caused by the Provider;
- d) Other adaptations, additions and extensions of the Software according to Customer requirements;
- e) Consulting and/or training of the Customer,
- f) Correction of errors resulting from improper use of the Software or user errors,
- g) Provision of database updates or upgrades,
- h) Provision of operating system updates or upgrades,

- i) Telephone support for processing questions about the content of the Software,
- j) Installation of Software updates, support with installation questions about the Software,
- k) Travel costs of any kind,
- l) Additional and extension programs for the Software,
- m) Programs to be created individually and their maintenance,
- n) Hardware and hardware parts, hardware extensions, fault diagnosis and elimination of hardware faults,
- o) Support for products supplied by third parties if they are not explicitly included in the Subscription Agreement.

6.5 The above-mentioned services will be invoiced separately to the Customer, if ordered, according to the current price list of the Provider.

6.6 All or some of the above-mentioned services may be subject to a maintenance agreement executed separately between the

Parties.

## 7. Limitation of Liability

7.1 In case of wilful misconduct and gross negligence, the Provider shall be liable according to the statutory provisions of applicable law.

7.2 In case of simple negligence, the Provider shall only be liable for breach of material contractual obligations (material contractual obligations are obligations the breach of which endangers the purpose of the agreement and the fulfilment of which the Customer may reasonably rely on); in this case the Provider's liability shall be limited to the typical damages that were reasonably foreseeable. Therefore, indirect and consequential damages resulting from defects of the delivered goods and/or work are only eligible for compensation if such damages are typical and reasonably foreseeable and when the goods and/or work are used in conformity with its intended purpose.

7.3 The limitations of liability under this Section do not apply to

- a) damages resulting from injury to life, body or health;
- b) liability pursuant to the German Product Liability Act (*Produkthaftungsgesetz*);
- c) to the extent the Provider has fraudulently concealed a defect; and/or
- d) to the extent the Provider has assumed a guarantee for the condition of delivered goods and/or work (*Beschaffenheitsgarantie*).

7.4 The limitations of liability under this Section shall – subject to the provisions of the preceding paragraph – apply to (i) any liability claims for whatever legal reason but in particular due to impossibility, default, defective or incorrect delivery, breach of contract, breach of obligations in contractual negotiations and tort, as far as such claims are subject to fault, and (ii) any breach of duty by vicarious agents or any other person for whose conduct the Provider can be held liable according to the statutory provisions of applicable law.

7.5 In case the standard of liability is limited according to statutory provisions of applicable law (such as any limitation to the duty of care observed in own affairs), the above provisions shall not be deemed to create a higher standard of liability.

7.6 The strict liability for initial defects according to Sec. 536 a para. 1 German Civil Code (*BGB*) is excluded.

7.7 The Customer is obliged to back up data at intervals appropriate to the application. In the event of a loss of data for which the Provider is responsible, the Provider is only liable for the expenditure normally required for recovery.

## 8. Obligations of the Customer to cooperate

8.1 The Customer supports the Provider by making data available free of charge and by

ensuring the free use of office space, hardware, Software and telecommunications when providing services at the Customer's premises.

8.2 The Customer appoints a system administrator and a deputy who are the contact persons for the Provider for all questions regarding the implementation of the Subscription Agreement.

8.3 The Customer is solely responsible for regular and complete data backups according to the state of the art.

8.4 Within the scope of the detection and elimination of defects/faults, the Customer shall

a) to inform us immediately of any faults occurring in the Software,

b) to document the defects in such a way that they are reproducible for the Provider

c) to allow the Provider sufficient time for maintenance work, if necessary, and

d) to participate in the care service itself, if necessary (demonstrating the faults, granting access to the facility, providing personnel, etc.)

## 9. Data Protection

9.1 The parties shall observe the relevant data protection regulations, in particular the GDPR and the Federal Data Protection Act.

9.2 The parties oblige their employees to observe data secrecy in accordance with the GDPR and the German Federal Data Protection Act.

9.3 Insofar as the Provider processes personal data on behalf of the Customer, this shall be done on the basis of a data processing agreement to be concluded separately

## 10. Confidentiality

10.1 "**Confidential Information**" means any information, documents, items, materials, substances or electronic files disclosed by one Party to the other Party in written, electronic, oral or any other form, which is marked confidential by the disclosing Party or is by its nature to be treated as confidential.

10.2 The Parties undertake to treat the Confidential Information of the other Party as confidential and to use them exclusively for the purposes of the performance of the Subscription Agreement.

10.3 The disclosure of the Confidential Information of the disclosing Party by the respective recipient to third parties is only permitted to the extent that this is necessary for the performance of the Subscription Agreement provided that the third party has committed itself to confidentiality vis-à-vis the Party making the Confidential Information available to the third party or is bound to confidentiality for professional reasons. Legal disclosure obligations remain unaffected. The respective Party making the Confidential Information available to the third party shall be responsible for ensuring that the obligations of the Subscription Agreement are also observed by such third parties. The Party making the Confidential Information available to the third party shall be liable for breaches of the confidentiality obligations under the Subscription Agreement by such third parties as if they were its own breach.

10.4 Each Party undertakes to protect the Confidential Information of the respective other Party by taking appropriate security measures.

10.5 The foregoing obligations shall not apply to information of which the receiving Party can prove that it (i) was or is available to the public in a lawful manner and in a manner not in breach of the provisions of the Subscription Agreement, (ii) was previously known to the receiving Party and was available to it without restriction, (iii) was disclosed to the receiving Party by a third party authorized to do so, or (iv) was developed by the receiving Party independently and without use of the Confidential Information disclosed by the disclosing Party.

10.6 The respective receiving Party undertakes to completely and permanently destroy all documents and records containing Confidential Information of the respective other Party or, in the case of electronic data, to permanently delete such data immediately after termination of the Subscription Agreement. This shall not affect any statutory storage and archiving obligations.

10.7 After termination of the Subscription Agreement, all rights and obligations of each Party with respect to the Confidential Information of the respective other Party shall continue to apply for a period of ten (10) years.

## 11. Term and Termination

11.1 The Subscription Agreement comes into force upon signature by both Parties.

11.2 The Subscription Agreement shall have the term agreed in the Licensing and Service Quotation. Insofar as no deviating agreement is executed under the Licensing and Service Quotation, the following shall apply: The Subscription Agreement shall have an initial term of one (1) year from the date of entry into force. Thereafter, the Subscription Agreement shall be automatically renewed for successive renewal periods of one (1) year each unless terminated by either Party with three (3) months' notice to the end of the Initial Term or the respective renewal period.

11.3 The right to terminate the Subscription Agreement for good cause remains unaffected.

11.4 A right to terminate for good cause shall be deemed to exist in particular if one party commits a breach of a material contractual obligation under the Subscription Agreement, provided that the other party cannot reasonably be expected to continue the Subscription Agreement for this reason. A prerequisite for termination under this provision is that the terminating party gives the other party a detailed written explanation of the reasons for termination, sets a reasonable period of at least thirty (30) days for the other party to eliminate the important reason for termination and expressly threatens termination if the important reason for termination is not eliminated in due time. The warning notice is not required if the breach of contract cannot, by its nature, be remedied.

11.5 Furthermore, a right to terminate for good cause shall be deemed to exist in particular if the other party suffers or threatens to suffer substantial losses in its economic circumstances, in particular if the other party itself files for the opening of insolvency proceedings against its assets or if insolvency proceedings are opened against its assets and/or the other party suspends payments;

11.6 Declarations of termination must be in writing to be effective and must be sent to the other party by registered mail/advice of receipt or postal delivery certificate or delivered personally.

11.7 With the termination of the Subscription Agreement all rights of the Customer to use the Software automatically end.

11.8 Each Party shall have the right to demand the return of the documents, materials and other items provided by the other party immediately after termination of the contractual relationship if and to the extent that they have not been used as intended or are intended to remain with the other party even after termination of the Subscription Agreement. Statutory storage and archiving obligations shall remain unaffected.

11.9 Claims of the Parties arising before the termination date shall remain unaffected by the termination of the Subscription Agreement.

11.10 The provisions of the Subscription Agreement, which, as intended, shall continue to apply beyond the termination of the Subscription Agreement, shall remain unaffected by the termination of the Subscription Agreement. This applies in particular to the confidentiality obligations agreed under the Subscription Agreement.

## 12. Final Provisions

12.1 Each Party shall bear its own costs incurred in connection with the execution and performance of the Subscription Agreement, unless expressly agreed otherwise in the Subscription Agreement.

12.2 The Subscription Agreement fully reflects the agreement between the Parties regarding the subject matter; no oral or other side agreements exist. Unless expressly agreed otherwise in the Subscription Agreement, all previous agreements between the Parties regarding the subject matter shall be fully replaced by the Subscription Agreement with effect from the effective date of the Subscription Agreement.

12.3 Amendments or additions to the Subscription Agreement shall require written form to be effective, unless a stricter form is required under mandatory law. The same applies to the waiver of this written form requirement. Unless expressly agreed otherwise in the Subscription Agreement, e-mails do not comply with this written form requirement. The written form requirement under the Subscription Agreement shall be deemed to have been met when the copy of a declaration is being transmitted by telecommunications (e.g. as an attachment to an e-mail) and that copy contains the signature of the person making that declaration, unless a stricter form is required under mandatory law.

12.4 Neither Party is entitled to transfer the Subscription Agreement or to assign rights or

obligations under the Subscription Agreement to a third Party without the prior written consent of the other Party.

12.5 The Subscription Agreement shall be governed by the laws of the Federal Republic of Germany, excluding the conflict of laws rules of private international law. The applicability of the UN Convention on Contracts for the International Sale of Goods (CISG) is excluded.

12.6 Exclusive place of jurisdiction for all disputes arising out of or in connection with the Subscription Agreement shall be the registered seat of the Provider, unless otherwise required by mandatory law.

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