GÜHRING

General Terms and Conditions
for Software Use
as of December 2020

1. General, scope

(1) These terms of use or the current terms of use shall apply exclusively; these can be found on the author's homepage at www.guehring.com. Terms of use of the customer, differing from or conflicting with the author's terms of use are not recognized by the author, unless the author has explicitly agreed to their validity in writing. These terms of use shall also apply if the author makes delivery to the customer unconditionally, despite being aware of terms of use of the customer differing from or conflicting with the author's terms of use.

(2) These terms of use shall also apply for all future transactions with the customer, insofar as these are legal transactions of a related kind.

(3) All agreements that are made between the author and the customer for the purpose of executing this contract, are set down in writing in this contract.

(4) Open source products are provided by the author, if necessary on the basis of separately agreed license terms, which may especially contain divergent regulations for rights of use and liability.

(5) The author's written order confirmation is decisive for the scope of service.

2. Offers, offer documents

(1) The offers provided by the author are subject to change and non-binding, unless expressly stated otherwise. The purchase order placed by the customer is a binding offer. This offer can be accepted by the author within a two week period.

(2) In the interest of technical progress, the author reserves the right to make programming changes up until delivery, however these shall not unreasonably prejudice the interests of the customer.

(3) The author reserves rights of ownership and copyright in illustrations, drawings, calculations and other documents and samples. This also applies for written documents which are designated as "confidential". The customer requires the author's express written consent before passing them on to third parties. If the author does not accept the customer's offer within the period specified in para. 1, these documents must be returned to the author immediately.

(4) If documents (e.g. specifications, documentation, function and interface descriptions etc.) have to be provided by the customer, the customer shall guarantee that the author's use of these documents or working documents drawn up by the customer will not infringe any proprietary rights of third parties. However, if the rights of third parties are affected, the customer shall release the author from all claims in their internal relationship. The author is not under any obligation to check that the documents provided by the customer are free of rights without a concrete reason.

3. Delivery item

(1) The software's characteristics and functions are conclusively stated in the license schedule and the enclosed functional specifications. The details thus provided are to be regarded as performance specifications, not as guarantees. A guarantee is only given if it has been expressly termed and warranted as such. Unless otherwise agreed in writing between the parties, the software will be delivered in the current version at the date of delivery.

(2) The author has no obligation to provide additional software characteristics. The customer may also not derive any such obligation from other public descriptions or advertisements, unless the author has assured this in writing. This assurance may only be given by the au-

thor's management or by the management of the Gühring Service Division.

(3) The author is entitled to entrust third party service providers and assistants with the provision of parts of the service spectrum.

(4) It is the responsibility of the customer to inform himself about the essential functional features of the software before placing the order. If the software does not meet his requirements, he shall bear the risk. If the customer has any doubts about the functional features of the software before placing the order for the software licenses, he is free to seek advice from a member of staff of the relevant business division of the author.

(5) Any test versions of the software installed for the customer during the initial business contact must be completely deleted by the customer without being asked after completion of the test phase. Extension of the test phase is only possible with the author's written consent.

(6) The source code of the software is not part of the contract and is not provided by the author. The author retains ownership of the source code.

4. Special programming and interfaces

(1) Before ordering special programming elements for extending functions or adapting the software to specific customer requirements, the customer must prepare a requirement specification together with the author, which describes the task in detail. Acceptance of such programmed software elements by the customer is based exclusively on this requirement specification.

(2) In the case of special programming elements, the author is entitled to reject requirements that go beyond the agreed requirement specification (see para. (1)) or to charge the customer for these separately.

(3) When programming interfaces between the software and other IT systems of the customer, it is the customer's responsibility to provide the author with the necessary information about the IT system to be connected to the software (e.g. the interface description). The customer is also responsible for ensuring the necessary communication between the author and the supplier of the IT system to be connected.

(4) The customer is obliged, within four (4) weeks after the programmed software components or interface have been installed on his IT system, to test these and to confirm to the author whether he approves the software components and interface, or if improvements are required. The acceptance must be documented in an acceptance report signed by the customer and the author. The author is entitled to invoice the customer immediately after acceptance.

(5) If the author receives no feedback about possible defects within the four-week period (see para. (4)), the software component or interface shall be considered as accepted by the customer and the author is entitled to invoice the customer immediately.

(6) Unless stated otherwise here, all other regulations specified for the software in these General Terms and Conditions for Software Use shall also apply for the special programming elements and interfaces.

5. Remote maintenance

(1) To enable access by the author to the customer's server, the customer shall ensure the existence of a free power and network connection (Internet, email etc.) for remote maintenance and installation.

(2) The remote maintenance service shall be provided by the author within normal business hours. The author shall endeavor to carry out the support as quickly as possible. There is no right to execution of the service on a specific deadline.

(3) There is no right to provision of services. The author reserves the right to refuse to provide services without stating reasons or to schedule a later deadline. The following services are part of the remote maintenance service:
– Support and assistance with software installation
– Support with problems in applications
– Analysis and rectification of error situations
– Search for potential technical error causes

(4) It is the customer's responsibility to ensure that the use and processing of personal data on his IT equipment occurs in accordance with the valid data protection regulations. The data protection legitimacy of the remote maintenance by the author is the customer's responsibility. The author is obliged to comply with data protection and confidentiality regulations and is aware of the consequences of misuse of personal and confidential data.

6. Prices, terms of payment

(1) Unless stated otherwise in the order confirmation, the author's prices are "ex works", excluding packaging; this shall be charged separately, as will any freight that is desired. Transport-related and all other packaging according to packaging regulations are non-returnable and shall become the customer's property.

(2) The statutory VAT is not included in the prices; the statutory amount for the respective point in time is shown separately in the invoice.

(3) If the purchase price is calculated in a foreign currency, the customer shall bear the risk of the foreign currency against the euro from the time when the contract is concluded until payment.

(4) The invoices issued by the author are due without deductions within 30 days of the date of invoice. Payment is not effected until the entire amount is at the disposal of one of the author's accounts.

(5) If the customer does not pay within the term of payment, the author is entitled to demand interest to the amount of 9 percentage points over the base rate of the European Central Bank. The right is reserved to assert a higher amount of damages caused by the default.

(6) In the event of a significant deterioration in the customer's financial situation after the contract has been concluded (initiation of insolvency proceedings, rejection of insolvency proceedings due to lack of assets, deterioration in the asset level becoming known), the author can withhold delivery until the customer has paid, or provided appropriate collateral for the claim. If the customer does not provide any collateral within two weeks of being requested by the author or if he declares his unwillingness to complete a matching payment within the same time period, then the author is entitled to withdraw from the contract. In these cases as well as in the event of insolvency and cessation of payments by the customer, the payment shall become due immediately.

(7) The customer has a right of set-off only if his counterclaims have been legally determined, are undisputed or have been acknowledged by the author. Furthermore, he shall only be entitled to a right of retention if his counterclaim is based on the same contractual relationship, this has been agreed to in writing or it has been legally determined. The commercial right of retention according to § 369 HGB (German Commercial Code) is excluded.

(8) If no fixed price agreement has been made, the right shall be reserved to alter prices as appropriate on grounds of changed wage and salary costs, material costs and selling costs for deliveries which ensue four (4) or more weeks after the contract is concluded.

7. Delivery period

(1) Commencement of the delivery period specified by the author requires the clarification of all technical and commercial issues. The delivery period is then specified as precisely as possible, to the best of the author's knowledge.

(2) Furthermore, compliance with the delivery obligation, which begins to run on receipt of the order confirmation by the customer, is subject to the timely and proper fulfillment of the obligations on the customer (provision of documents and approvals, releases, receipt of agreed advance payment etc.). The right to raise objection to non-fulfillment of the contract is reserved.

(3) The delivery period shall be appropriately extended for measures taken in the context of industrial disputes, particularly strike and lock-outs, as well as in the event of unforeseen obstacles that lie outside the influence of the author, insofar as such obstacles can be shown to have a significant influence on the production or delivery of the item to be supplied, and force majeure. If these circumstances occur with a subcontractor of the author, the above shall apply accordingly. The same shall apply if the aforementioned circumstances occur during an existing delay. The author shall inform the customer of the beginning and expected end of such obstacles as soon as possible in important cases. If these obstacles last longer than four (4) months or if they make rendering of the services permanently impossible, the author shall be entitled to withdraw from the contract wholly or in part. The customer shall not be entitled to any claims for damages on account of such a withdrawal.

(4) Partial deliveries may not be refused by the customer. Should payment of a partial delivery be delayed, the author may discontinue further processing of the order.

(5) Delivered software shall be accepted by the customer even if it contains minor defects, without prejudice to any rights from § 6.

(6) If the customer is in default of acceptance or culpably breaches other duties to cooperate, the author shall be entitled to demand compensation for any damages thus incurred, including any additional costs. Further claims shall remain reserved.

(7) If installation of the software is delayed by the customer, he shall be charged 0.5 % of the invoice amount for each month, starting one month after notification of readiness for installation.

(8) If the prerequisites of paras. (4), (6) and (7) are fulfilled, the risk of unintended destruction or deterioration of the purchased item shall be transferred to the purchaser at the time when he has defaulted on acceptance or payment.

(9) The author shall be liable in accordance with the statutory provisions, if the respective contract of sale specifies fixed-date delivery as defined by § 286 para. 2 no. 4 BGB (German Civil Code) or § 376 HGB (German Commercial Code). The author shall also be liable in accordance with the statutory provisions, insofar as the customer is entitled to claim cessation of his interest in continuing the performance of the contract as a result of a delay in delivery for which the author is responsible.

(10) The author shall furthermore be liable in accordance with the statutory provisions, insofar as the delay in delivery is based on intentional or grossly negligent breach of contract for which the author is responsible; the author shall also be responsible for any fault on the part of his representatives or agents. Insofar as the delay in delivery is not due to an intentional breach of contract for which the author is responsible, his liability for damages shall be limited to the foreseeable, typically occurring damages.

(11) The parties are aware that the contractual software may be subject to export and import restrictions. In particular, there may be licensing requirements and the use of the software or related technologies may be subject to restrictions abroad. The customer shall adhere to the 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 regulations. The contractual fulfillment by the author is subject to the condition that this fulfillment is not hindered by any national and international provisions of export and import law, or any other statutory provisions.

8. Warranty, liability

(1) The customer is obliged to check the software immediately after receiving it, within the scope of his usual business activities, and to report any defects in the software promptly in writing (text form is sufficient), with exact details of the individual defects asserted. Otherwise the software shall be considered as approved, and the warranty shall not apply for these defects. Unless the defect was not apparent during the inspection. The same shall apply if such a defect becomes apparent subsequently.

(2) The author warrants that the software displays the agreed properties and that the customer can use the software without violating rights of third parties. If data processing is performed by the author via remote maintenance tool for the software for the purposes of remote support, troubleshooting and consultation after release has been given by the customer, this is only done for support of the software. All other components, e.g. operating system, network and software installed by the customer are excluded. Properties shall be deemed as guaranteed only if they have been submitted and confirmed in writing.

(3) In the case of a defect the author is entitled, at his option, to rectify the defect or to make a substitute delivery. The author can also fulfil his obligation of supplementary performance by making updates with an

automatic installation routine available for download or by offering the customer telephone support.

(4) If the supplementary performance is unsuccessful or if the author refuses to carry it out, the customer shall be entitled to choose whether to demand that the contract be rescinded or the price reduced.

(5) Defect claims do not apply if there is only a minor impairment of usability, reprogramming by the customer or third parties, incorrect operation or installation by the customer etc.
Likewise, limited or non-functionality of the software on the customer's special computer system and/or limited or non-functionality with third-party programs do not constitute a defect.

(6) The warranty does not apply for defects based on the fact that the software is used in a hardware and/or software environment that does not meet the requirements.

(7) Modifications to the software by the customer shall render the warranty invalid.

(8) The period of limitation for warranty claims is twelve (12) months, starting from handover.

(9) In the event of unjustified notifications of defect which lead to extensive subsequent checks, any checking costs can be charged to the purchaser.

(10) The author's liability – irrespective of the legal grounds – is limited to damages which the author or his assistants have caused wilfully, by gross negligence or, by breaching obligations essential for fulfillment of the contractual purpose, slight negligence. The obligations essential for fulfillment of the contractual purpose are obligations whose breach would put the contractual purpose at risk and on whose fulfillment the customer may rely.

(11) In cases of a slightly negligent breach of obligations essential for fulfillment of the contractual purpose, the amount of the author's liability shall be limited to the damages typical of comparable transactions of this type, which were foreseeable at conclusion of contract or at the latest when the breach of obligation was committed.

(12) Any further liability for damages (e.g. slight negligence in the case of non-essential obligations, direct, indirect or consequential damages) as defined in para. (9) and para. (10), is excluded – irrespective of the legal grounds – insofar as legally permissible.

(13) Insofar as the customer is entitled to claim damages in lieu of performance, the author's liability shall be limited to the compensation of foreseeable, typically occurring damage.

(14) The author is not responsible for any data errors, data losses or misleading representation of data that occur, so that liability outside the German Product Liability Act is excluded. This shall also apply for damages resulting from incorrect data or data representation.

(15) The customer must assure himself of correct data transmission. He is responsible for correct operation of the software.

(16) The author cannot accept liability for consequences of changes and modifications, which the customer or a third party appointed by him has made to the software.

(17) The customer is responsible for the correctness of his documents and information. He must ensure that these are accurate, and that they correspond to the true circumstances. If this is not the case, the additional costs incurred must be reimbursed by the customer.
The author shall not be liable for claims of third parties if these came into being as a result of instructions or specifications (e.g. based on information, samples) provided by the customer.
The customer shall assume the warranty vis-à-vis the author that the production and delivery of the software programmed in accordance with the customer's instructions and specifications do not violate proprietary rights of third parties.
Insofar as the author is not liable under the abovementioned clauses, the customer shall indemnify the author against all claims of third parties.
The author shall only be liable for defects in the material supplied by the customer if the author should have identified the defects by exercising due care.

(18) Insofar as the liability for compensation is excluded or restricted vis-à-vis the author, this shall also apply in respect of the personal liability for compensation on the part of the author's blue-collar and white-collar employees, associates, representatives and vicarious agents.

(19) Claims for damages under the German Product Liability Act, due to absence of a quality guarantee and due to damage to life, limb or health or based on other mandatory statutory provisions, shall remain unaffected.

(20) For all claims against the author for damages or compensation for futile expenses in cases of contractual and non-contractual liability, a period of limitation of twelve (12) months shall apply. This shall not apply for liability based on intent or gross negligence or in the case of personal injuries or under the German Product Liability Act. It shall take effect at the latest five (5) years after the claim arises.

(21) If the author gives advice or recommendations, this shall be done without any obligation to do so and to the exclusion of any liability, provided that these are not part of the scope of performance incumbent upon the author under the contract.

9. Rights of use

(1) On full payment of the fee the customer shall be granted a non-exclusive, non-transferable right to use the software, unlimited with regard to time and place and subject to revocation at any time. The contractual software may be used simultaneously on only as many workstations as licenses were purchased by the customer. The permitted use includes the installation of the contractual software, loading into the working memory and the intended use by the customer. In all other respects, the number of licenses as well as type and scope of use are specified in the license schedule. Under no circumstances shall the customer be entitled to hire out or to otherwise sub-license the purchased contractual software, to communicate it or make it accessible to the public or provide it to third parties for a fee or free of charge, e.g. by means of Application Service Providing or as "Software as a Service", through either wired or wireless technology. The author shall remain the owner of the software.

(2) If the customer uses the software to an extent that exceeds the purchased rights of use in terms of quality (type of use permitted) or in terms of quantity (quantity of use purchased), the customer shall be obliged to immediately purchase the necessary rights of use against payment. If he fails to do so, the author shall assert the statutory rights to which he is entitled.

(3) All rights in the software – in particular copyright, the rights to inventions and proprietary rights – shall remain vested exclusively in the author, even if software has been generated through specifications or collaboration of the customer. The customer only has the non-exclusive entitlements to the software as specified in para. (1) and (4).

(4) The customer may create a backup copy, insofar as this is necessary to secure his own use. The note "backup copy" and the copyright notice with the author's name must be permanently affixed.

(5) The features serving to identify the software, such as e.g. copyright notices and serial numbers, may not be removed or changed.

(6) The customer shall not be authorized to change the program code in any way, even for the purpose of debugging. Decompilation of the software is not permitted.

(7) The costs for using improved versions of the software and their installation shall be borne by the customer. Additional costs (including maintenance and restoring costs) for interfaces of the software to other software products of the customer (e.g. programming costs) shall be borne by the customer.

(8) The customer is obliged to carry out updates or upgrades for a fee. He is only permitted to miss one update/upgrade. Otherwise he will lose his defect and warranty rights.

(9) In the event of seizures, illegal copies or other actions of third parties, the customer must inform the author in writing immediately. Should the third party not be in the position to replace court costs and out-of-court settlement costs resulting from a claim according to § 771 ZPO (German Code of Civil Procedure), the customer shall be liable for the losses incurred by the author.

(10) The customer may neither pledge the author's property nor assign it by way of security without the author's consent.

10. Obligations of the customer

(1) The customer is responsible for providing the working environment (hereafter IT systems) in accordance with the author's specifications. He is also responsible for their correct operation.

(2) The customer shall provide the support necessary for implementation of the software (e.g. employees, work areas, external data connection to the author) free of charge and to the extent required.

(3) Before the customer puts the software into operation, he shall test it thoroughly for defects and its applicability for the envisaged tasks. This

shall also apply for subsequent software updates or additionally purchased functionalities.

(4) The customer shall take adequate precautions (e.g. data backup, fault diagnoses, checking of results) shall be put in place by the customer for the event that the software might not work properly in whole or in part.

(5) The author's employees may always assume that all data with which they come into contact have been backed up by the customer, unless the customer indicates in writing in individual cases (text form is adequate) that this is not the case.

(6) Upon request, the customer shall enable the author to check that the contractual software is being used properly, particularly that the customer is using the program qualitatively and quantitatively within the limits of the licenses purchased by the customer. To this end the customer shall provide the author with information, allow the relevant documentation to be inspected and allow the author or an auditing company appointed by the author to check the hardware and software environment used. The author shall carry out the inspection, or have the inspection carried out by a third party bound to secrecy, at the customer's premises during the customer's regular business hours. The author shall ensure that the customer's business operations are disturbed as little as possible by the author's activity on site. If the inspection shows that the purchased number of licenses has been exceeded or other non-contractual use, the customer shall bear the costs of the inspection, otherwise these shall be borne by the author.

(7) The customer shall bear all disadvantages and additional costs resulting from a breach of his obligations.

(8) The customer must provide an email server to use the email functionality.

11. Data protection

(1) The parties mutually undertake to observe the legal provisions governing data protection, particularly the EU General Data Protection Regulation (GDPR), when performing the contract and to extend this duty to observe these provisions to their employees.

(2) The parties shall process the acquired personal data (e.g. name and contact details of the respective contact person) exclusively for the performance of the contact and shall protect such data by means of technical safeguards updated to the current state of the art (Art. 32 GDPR). The parties undertake to delete personal data as soon as its storage is no longer necessary. Any statutory storage obligations shall remain unaffected by this.

(3) If the personal data is processed for the purpose of order processing, the parties shall conclude an order processing contract in accordance with the legal provisions (Art. 28 GDPR).

12. Place of jurisdiction, place of performance

(1) Additional agreements, modifications and supplements beyond the scope of the present General Terms and Conditions for Software Use shall only be valid if they have been agreed in writing between the customer and the author.

(2) Any time limits imposed on the author shall only become effective once the customer has fulfilled his obligations, provided their fulfillment is mandatory for the time-limited activities to be performed by the author.

(3) Unless specified otherwise in the order confirmation, the place of performance shall be the registered office of the author.

(4) Provided the customer is a merchant, the author's registered office shall be the place of jurisdiction; we are however entitled to bring an action against the customer at his place of business. The negotating language shall be German.

(5) The law of the Federal Republic of Germany shall apply; the application of UN Purchase Law (CISG) is excluded.

(6) If any provision of these Terms of Use or a provision subsequently added to them should be or become wholly or partially ineffective or invalid or if an omission is discovered in these Terms of Use, the effectiveness of the remaining provisions shall not be affected.