Bitkom's contractual terms for transfering software (purchase) -VÜ Bitkom-

(VÜ Bitkom, Version 2.1.1)

1.   Subject matter of the contract

1.1   The software's nature and scope of performance as well as the approved operating environment result from the respective program descriptions, and additionally from the operating manual, unless agreed otherwise.

1.2   Software is supplied only in executable form, including an operating manual (user documentation or online help) and installation manual. The operating manual and installation manual can be provided to the customer electronically as well.

§ 69d of German copyright law applies insofar as the provider's software contains interfaces to software not be supplied by them. Before any decompilation, the customer shall first request the necessary information from the provider.

1.3   Unless agreed otherwise, the software shall be installed and commissioned by the customer. All the provider's further services rendered at the customer's request (especially preparation for use, installation and demonstration of successful installation, briefing, training and consultation) are remunerated according to expenditure.

2.   Rights to use software and protection against unauthorized use

2.1   After full payment of the agreed remuneration, the provider grants the customer the right to use the agreed software within the scope stipulated by the contract. If scope has not been agreed in the contract, then a simple, non-exclusive right of use in perpetuity is involved. This entitles the customer only to utilization of the software on one computer by a single user at any time. The right of use only encompasses utilization for the customer's internal purposes.

Extended use beyond this must always be agreed contractually before commencement of such use. Remuneration is based on the scope of the right of use.

2.2   Transfer of rights of use to third parties is only permitted if the customer completely relinquishes these rights. The customer is obliged to impose the obligations and restrictions of use relevant to them on the third party. This especially applies to the obligations as set forth in Item 3.5. On the provider's request, the customer shall confirm relinquishment of own use in writing.

2.3   The customer may only copy software if this is necessary for use according to the contract. Copyright notices in the software may not be changed or deleted.

2.4   The provider is authorized to take appropriate technical measures to prevent use contrary to the contract. Use of the software on an alternative or subsequent configuration must not be significantly affected by this.

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2.5 Ownership of transferred copies is reserved until the due remuneration has been fully paid. Any individual rights of use granted beforehand are done so only temporarily and can be freely revoked by the provider.

2.6 The provider can revoke the customer's right of use if they significantly breach the restrictions of use or other rules on preventing unauthorized use (see also Items 3.4 and 3.5). The provider shall set a grace period of remedy for the customer beforehand. In case of recurrence and in special circumstances which justify immediate revocation, bearing in mind the interests of both sides, the provider can also declare revocation without setting a period of notice. After revocation, the customer shall give the provider written confirmation that use has been suspended. The provider shall restore rights of use for the customer after they have submitted and warranted in writing that there are no more breaches of these rights of use, and previous breaches as well as their consequences have been eliminated.

3. Customer's obligations

3.1 The customer shall ensure that technically trained staff become available to support the provider and use the software no later than the time of delivery.

3.2 The customer shall promptly inform the provider about any changes in the operating environment. Item 1.1 remains unaffected.

3.3 Where necessary, the customer shall support the provider in remedying defects and, in particular, if requested by the provider, submit data carriers with relevant software besides supplying work equipment.

3.4 The customer acknowledges that the software as well as the operating manual and other documents - including their future versions - are protected by copyright law. These may also include trade secrets in whole or in part.

In particular, source programs are the provider's trade secrets, unless they are freely available or regulated otherwise by individual contractual agreements. The customer shall take ongoing precautions to ensure that source programs are not accessible to third parties without the provider's consent. The provisions in Item 2.6 of 'AV Bitkom' apply additionally.

Transfer of source programs requires the provider's consent, which may not be refused contrary to the principles of good faith. The provider shall submit source programs only on the basis of express agreements.

3.5 The customer must do nothing that might encourage unauthorized use. In particular, the customer must not attempt to decompile programs unless said customer is entitled to this as per Item 1.2, Paragraph 2. The customer shall promptly inform the provider if said customer becomes aware that unauthorized access is impending or has occurred in their sphere.

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4.   Customer's claims due to defects

4.1   The provider guarantees that the software, when used in accordance with the contract, complies with the agreements as stated in Item 1.1.

The statute of limitations for claims due to defects commences on delivery, or on completion of installation if this is performed by the provider. An extension to the scope of use (Item 2.1 Paragraph 2) does not influence the term of the statute of limitation.

Item 5 of the document titled 'AV Bitkom' applies additionally to defects of title.

Item 4 of 'AV Bitkom' applies additionally to material defects according to the following provisions of Items 4.2 – 4.4.

4.2   The customer may assert claims due to defects only if the reported defects can be reproduced or proven in another way by the customer. Item 2.3 of 'AV Bitkom' applies, in particular, to reports about defects.

4.3   If the customer is entitled to claims due to defects, said customer initially only has a right to supplementary performance within a reasonable period. Supplementary performance includes, at the provider's discretion, either remedy or delivery of replacement software. The customer's interests are to be considered adequately in the choice.

The customer shall enable installation and removal for the provider in the scope of supplementary performance, unless this is unreasonable for the customer. Before taking own measures to remedy defects, the customer shall consult the provider.

Any entitlement of the customer's to reimbursement of expenditure is limited to a reasonable extent, taking into consideration the value of the relevant performance in faultless condition and the significance of the defect.

4.4   If supplementary performance fails or cannot be implemented for other reasons, the customer can reduce remuneration in accordance with legal requirements, rescind the contract and/or request compensation for damages or expenditures - within the scope of Item 6 of 'AV Bitkom'.

If supplementary performance is delayed, Item 3.4 of 'AV Bitkom' applies to the provider's compensation for damages and expenditures.

The customer shall exercise a right of choice to which they are entitled regarding these claims due to defects within a reasonable period, generally within 14 calendar days from the time of being able to realize the customer's right of choice.

5.   Validity of 'AV Bitkom'

Bitkom's general contractual terms (document titled 'AV Bitkom') apply additionally.

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