



# General Terms and Conditions of Contract for the Leasing of Software (Purchase)

VÜ BITKOM

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## **1. Subject of the agreement**

- 1.1** Unless otherwise agreed, the qualities and scope of the software as well as the approved installation environment are found in the respective program description and supplemented by the installation manual.
- 1.2** The software is delivered in executable form (as object programs), including operating instructions (user documentation or online help) and the installation manual. The operating instructions and the installation manual can also be supplied to the customer electronically.

If the provider's software has interfaces with software that will not be supplied by the provider, § 69 d of the German Copyright Act (Urheberrechtsgesetz – UrhG) applies. Before decompilation, the customer shall first request the required information from the provider.

- 1.3** Unless otherwise agreed, the software is installed and placed in service by the customer. All additional services of the provider which are performed at the request of the customer (particularly application engineering, installation and demonstration of successful installation, instruction, training and consulting) are compensated on a time and materials basis.

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

- 2.1** With full payment of the agreed remuneration, the provider grants the customer the right to use the agreed software within the scope stated in the contract. If the scope is not stipulated in the contract, it is a basic, non-exclusive right for permanent use. This entitles the customer to only use the software on one computer, one user at a time. The right only comprises use for internal purposes of the customer.

Expanded use must always be stipulated by contract before it begins.  
Remuneration goes according to the scope of the right of use.

- 2.2** Rights of use may be assigned to third parties only upon full surrender of the customer's rights. The customer is obligated to impose on the third party the duties and usage restrictions which pertain to him. This expressly applies to the duties in section 3.5. If requested by the provider, the customer shall confirm in writing that its own use has been discontinued.
- 2.3** The customer may only copy software to the extent required for use as contracted. Copyright notices in the software may not be changed or deleted.
- 2.4** The provider is entitled to undertake appropriate technical measures to protect against non-contracted use. The use of the software on an alternate or successor configuration may not be material compromised through this.
- 2.5** Ownership of the leased copies remains reserved until the remuneration owed has been paid in full. If individual rights of use are granted in advance, they are always only provisional and granted by the provider subject to revocation at any time.
- 2.6** The provider may revoke usage rights of the customer if the customer materially violates restrictions of usage or other rules to protect against unauthorized use (see also sections 3.4 and 3.5). Before that, the provider shall set a deadline for the customer to undertake remedial action. The provider may revoke the rights without

setting a deadline in the event of recurring events or special circumstances which, in balancing the interests of both parties, warrant immediate revocation. After the revocation, the customer shall confirm to the provider in writing that the usage has been suspended. The provider will restore the usage rights after the customer has represented and assured in writing that there are no infringements of any kind against the usage rights and that previous infringements and their consequences have been resolved.

### **3. Duties of the customer**

- 3.1** The customer shall ensure that competent personnel will be available for the support of the provider and use of the software no later than the time of delivery.
- 3.2** The customer shall promptly inform the provider of changes in the environment for use. Section 1.1 remains unaffected.
- 3.3** The customer shall support the provider to the extent required to remedy defects, in particular by sending a data carrier with the software concerned and making equipment available if requested by the provider.
- 3.4** The customer acknowledges that the software, operating instructions and other documents—also in future versions—are protected by copyright. Source programs in particular are trade secrets of the provider. The customer shall take ongoing precautions to prevent source programs from becoming accessible to third parties without the provider's consent. The transfer of source programs needs the consent of the provider, which may not be withheld in contravention to good faith. The provider may deliver source programs only based on an express agreement.
- 3.5** The customer may not do anything that might encourage unauthorized use. In particular, the customer may not attempt to decompile the programs unless the customer is authorized under the second paragraph of section 1.2 to do so. The customer shall immediately notify the provider when the customer is aware that unauthorized access is threatened or has occurred in its area.

### **4. The customer's claims for defects**

- 4.1** The provider warrants that use of the software as contracted will conform to the agreements pursuant to section 1.1.

The limitation period for claims for defects begins upon delivery or, if the provider does the installation, upon completion of the installation. An expansion of the scope of use (section 2.1 paragraph 2) has no effect on the running of the limitation period.

Section 5 of AV BITKOM applies in supplement to defects of title.

Section 4 of AV BITKOM supplementally applies to material defects, subject to the following provisions in sections 4.2 - 4.4.

- 4.2** The customer has claims for defects only if reported defects are reproducible or demonstrable in another way by the customer. Section 2.3 of AV BITKOM expressly applies to the reporting of defects.
- 4.3** If the customer is entitled to claims for defects, the customer initially only has the right to a cure within a reasonable period. Cure involves either repair or the delivery of replacement software, at the option of the provider. The interests of the customer

shall be reasonably considered in making the election.

- 4.4** If the cure fails or cannot be effected for other reasons, the customer may reduce the remuneration in accordance with statutory requirements, rescind the contract and/or demand reimbursement of losses or expenses within the framework of section 6 of AV BITKOM.

If cure is delayed, section 3.4 of AV BITKOM applies to the provider's claims for reimbursement of expense and losses.

The customer shall exercise an election it has with regard to such claims for defects within a reasonable period, ordinarily within fourteen calendar days following the customer's opportunity to learn of the election.

## **5. Application of AV BITKOM**

The BITKOM General Terms and Conditions of Contract (AV BITKOM) apply in addition.