

Software License Agreement on the Provision of Software



Preliminary Remarks

The licensee has purchased from the licensor test devices and/or additional components (hereinafter: contractual objects) on which the software created by the licensor is installed. Furthermore, the licensor provides the licensee with software which is necessary to control the contractual objects, to process test results of the contractual objects or to transfer them into the customer's own systems and which has further functionalities.

This Agreement regulates the provision of the software created by the licensor to the licensee. The provision of the open-source software to the licensee is not itself the subject matter of this Agreement; instead, it is based on the open-source software license agreements.

Section 1 Subject Matter of the Agreement

(1) The licensor shall provide the licensee with the software created by the licensor subject to the conditions of use agreed in this Agreement. The software shall be provided on a data carrier (e.g. DVD, USB stick, HD or similar).

(2) The licensor shall not be obligated to provide the software's source code.

Section 2 Scope of Use

(1) The licensor shall grant the licensee a non-exclusive right to use the software without any limitations in respect of time.

(2) The software may only be used in conjunction with the contractual objects. Using the software without using the contractual objects at the same time is not permitted.

(3) The licensee shall be authorized to make changes, additions, and any other modifications to the software in the sense of Article 69c, No. 2 of the German Copyright Act only insofar as the Act permits such actions because they are essential. Before the licensee rectifies any errors itself or has a third party do so, it shall grant the licensor two attempts to rectify the errors. Beyond the rights of use granted pursuant to this Agreement, the licensee shall not have any of its own rights of use or exploitation in respect of such modifications. In exchange for appropriate remuneration, however, the licensor may request the granting of an exclusive or non-exclusive right of use, with no restrictions in respect of place or time, together with the right to sublicense.

(4) The licensee shall only be entitled to decompile software within the limits set out by Article 69e of the German Copyright Act, and shall only be entitled to do so if the licensor – following a written request and with reasonable notice – has not provided the data and/or information necessary to ensure interoperability with other hardware and software.

(5) If, as part of improvement measures, the licensor provides the licensee with extensions (such as patches) or a new version of the software (such as an update or upgrade) that replaces the software previously provided (hereinafter referred to as the "old software"), then these extensions or new versions shall be subject to the provisions of this Agreement.

If the licensor provides a new version of the software, the licensee's authorizations relating to the old software pursuant to this Agreement shall expire as soon as the licensee starts using the new software.

Section 3 Software Protection

(1) Unless any rights have been expressly granted to the licensee pursuant to this Agreement, then all rights to the software – particularly copyright, rights in respect of inventions, and intellectual property rights for technology – shall belong exclusively to the licensor. This shall also apply to any modifications the licensor makes to the software. This shall not affect the licensee's ownership of data carriers.

(2) The licensee shall not be permitted to change or remove any of the licensor's copyright notices, markings, and/or inspection numbers or characters.

(3) If the licensee passes on any data carriers, storage media, or other hardware on which software is stored (either in whole or in part and either modified or unmodified) (i) to a third party without transfer approval pursuant to Section 4, or (ii) with actual possession of such items granted, then the licensee must ensure that any software stored on them has been completely and permanently erased from them beforehand.

Section 4 Transfer

(1) The licensee may only provide the software to a third party together with the contractual objects if it completely and definitively surrenders its own use of the software. Providing third parties with use of the software on a temporary basis or subject to partial payment is prohibited regardless of whether the software is provided in a physical or non-physical format. The same shall apply to any provision that is carried out at no charge.

(2) Transferring the software requires written approval from the licensor. The licensor shall grant approval if (i) the licensee assures the licensor in writing that it has passed on all original copies of the software to the third party and has erased any copies it has created itself, and (ii) the third party declares to the licensor, in writing, its consent to the conditions of use and transfer agreed here.

Section 5 Licensee's Obligations to Cooperate and Provide Information

(1) The licensee shall observe the information provided by the licensor for the purpose of operating the software.

(2) If the licensor has any performance obligations beyond providing the software, the licensee shall cooperate with these to the extent necessary free of charge by, for example, providing employees, working space, hardware and software, data, and telecommunications equipment.

(3) The licensee shall grant the licensor access to the contractual objects for troubleshooting purposes; said access shall be granted either directly and/or via remote data transmission, at the licensee's discretion. The licensor shall be entitled to check whether the contractual objects and/or the software is being used in accordance with the provisions of this Agreement. To this end, the licensor may demand information from the licensee concerning, in particular, the period and scope of use of the software, and may ask to view the licensee's books and records as well as its hardware and software. For this purpose, the licensor must be granted access to the licensee's business premises during normal hours of business.

(4) The licensee shall take reasonable precautions in case the software does not work correctly, either partially or completely (for example, daily data backups, fault diagnostics, and routine checks of the results of data processing).

(5) Unless the licensee explicitly states otherwise beforehand, the licensor may assume that all the licensee's data with which it comes into contact has been backed up.

(6) The licensee shall bear any negative consequences and additional costs arising from a breach of these obligations.

Section 6 Obligation to Inspect and Give Notification of Defects

In respect of all deliveries and services provided by the licensor, the licensee shall, in performing this Agreement, accept an obligation to inspect and give notification of defects pursuant to Section 377 of the German Commercial Code.

Section 7 Defects in Quality and Title; Other Disruptions in Performance

(1) Pursuant to commercial sales regulations, the licensor shall guarantee that the use of software by the licensee within the scope specified by the Agreement shall not conflict with any rights of third parties. However, any guarantee that the software is free of third-party rights shall only apply to the destination country – agreed between the parties – in which the software is to be used. Unless expressly agreed otherwise, this guarantee shall apply to the country in which the licensee's place of business is located.

(2) In the event of defects in quality, the licensor shall initially honour its guarantee by means of supplementary performance. To this end, it shall – at its discretion – provide the licensee with a new, defect free version of the software or rectify the defect; rectification of defects shall also be deemed to have occurred if the licensor demonstrates to the licensee reasonable options for preventing the consequences of the defect.

In the event of defects in title, the licensor shall initially honour its guarantee by means of supplementary performance. To this end, it shall – at its discretion – provide the licensor with a legally sound option for using the software that has been supplied or a replacement or modified equivalent version of the software.

(3) The licensee shall undertake to accept a new version of the software if its range of functions remains in line with the Agreement and accepting it will not result in significant disadvantages.

(4) If two attempts at supplementary performance fail, the licensee shall be entitled to specify a reasonable grace period for rectifying the defects. In such cases, it must provide express written notification that it reserves the right to withdraw from the Agreement and/or demand damage compensation if another failed attempt takes place.

(5) If, in the course of troubleshooting measures, the licensor provides services without being obligated to do so, it may demand remuneration for said services at its usual rates. This shall apply in particular if it is not possible to provide evidence of a defect or a defect cannot be ascribed to the licensor.

(6) In the event that third parties assert claims which prevent the licensee from exercising authorizations for use that it has been granted under the Agreement, the licensee shall immediately inform the licensor of this in writing and in comprehensive detail. It shall hereby authorize the licensor to bring action against third parties alone, both judicially and extra-judicially. If action is brought against the purchaser, it shall coordinate with the licensor and shall only conduct procedural actions – in particular, settlements and acknowledgements – with the consent of the licensor.

(7) The licensee may only derive rights from any other breaches of obligations on the part of the licensor if the licensee notifies the licensor of said breaches in writing and has granted the licensor a grace period for remedying the situation. This shall not apply if the nature of the breach of obligations rules out any remedial action.

Section 8 Liability and Limitation

(1) Where the licensor's limitation of liability is concerned, the relevant provision in the purchasing agreement for the contractual objects shall apply in the sense that the limitation of liability also includes claims for damage compensation arising from this License Agreement and, therefore, any upper limits are not applied on a cumulative basis. In other cases, liability shall be based on legal provisions.

(2) Where the limitation on guarantee and/or damage compensation claims is concerned, the limitation provision in the purchasing agreement for the contractual objects shall apply. In other cases, the limitation shall be based on legal provisions.

Section 9 Confidentiality and Data Protection

(1) The licensee shall undertake to treat as confidential all knowledge of confidential information and trade secrets (hereinafter referred to as "trade secrets") of the licensor obtained within the context of the Agreement formation and performance process. It shall do so for an unlimited period and only for the purposes of performing this Agreement. The licensor's trade secrets also include software and the services performed in accordance with this Agreement.

(2) The licensee shall only make the software available to employees and any other third parties in cases where this is required for exercising the authorizations for use that it has been granted. It shall provide all persons granted access to the software with instructions concerning the licensor's rights to the contractual objects and the obligation of said persons to maintain confidentiality. It shall obligate said persons in writing to maintain confidentiality and use the information only within the scope of Clause 1, provided that said persons are not obligated to maintain confidentiality within at least this scope for other legal reasons.

Section 10 Final Provisions

(1) The exclusive legal venue for all disputes arising from and in conjunction with this Agreement shall be the licensor's place of business. If the licensor brings action, it shall also be entitled to choose the licensee's premises as the legal venue. The right of both parties to apply for temporary legal protection against the courts deemed competent according to legal provisions shall remain unaffected.

(2) German law shall apply exclusively, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

(3) In order to take effect, this Agreement must be concluded in writing and any subsequent changes and supplements to it must be in writing. This shall also apply to any amendments to this clause. No verbal ancillary agreements have been reached.

All declarations by the parties must be in writing in order to take effect.

(4) Should a provision of this Agreement be or become ineffective, or contain an inadmissible deadline or a loophole, the legal effectiveness of the other provisions shall remain unaffected by this. If the ineffectiveness does not arise from a breach of Articles 305 et seq. of the German Civil Code (application of standard business terms), an effective provision that comes as close as possible to the commercial intentions of the parties shall be deemed agreed instead of the ineffective provision. The same shall apply in cases of loopholes. In cases of inadmissible deadlines, a legally admissible deadline shall apply.

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Institut Dr. Foerster GmbH & Co. KG
Registered offices: Reutlingen; local court: Stuttgart HRA 350 774
Personally liable shareholder and management:
Institut Dr. Foerster Geschäftsführungs GmbH
Registered offices: Reutlingen; local court: Stuttgart HRB 737 381
Managing directors: Felix Förster
Christoph Schanz
Dr. Jürgen Schröder

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