

# License terms and conditions of Durst Professional Services GmbH on the surrender of software

As of: May 2019

## 1. Scope of application

- 1.1. The following license terms and conditions (hereinafter: "**T&C**") form the basis of all offers, orders, deliveries and services of DURST Professional Services GmbH, registered with the Commercial Register of Bozen, REA-number: BZ – 218994, fiscal number: 02947850216, Julius-Durst-Straße 4, Brixen, 39042 Italy (hereinafter: "**DURST**") in connection with the surrender of software to the contracting partner (hereinafter: "**Customer**"). All orders shall only be accepted and carried out on the basis of the following T&C.
- 1.2. The T&C shall thus also apply to all future business relationships.
- 1.3. At the latest upon taking delivery of the software, these terms and conditions are deemed accepted. The contracting parties agree that the general terms and conditions of the Customer shall not apply. This also applies if the Customer refers to its terms and conditions of business or, respectively, its terms and conditions of purchase by counter-confirmations or in any other way.

## 2. Subject matter of the contract and granting of a license

- 2.1. The subject matter of the contract is the machine code (object code) of the computer programme including any data stocks possibly related therewith ("**Software**") as well as – provided that this is agreed – the data carrier which the software is provided on ("**Software Data Carrier**") and the application documentation in printed and/or electronic form (.pdf format) in German ("**User Manual**"); the software, the data carrier, the User Manual and the installation pursuant to point 4. form the subject matter of the contract.
- 2.2. It is stated that the source code of the software is not part of the subject matter of the contract.
- 2.3. DURST grants the Customer simple, non-exclusive and non-transferable permissions to use the software and User Manual to be used by the number of persons agreed ("**User**"). The term of the license granted may be unlimited or recurring and corresponds to the license type agreed between DURST and the Customer in the individual case. The software may only be used by the Customer provided that the remuneration agreed is paid in good time. If the Customer is in default of payment in case of a remuneration to be paid recurrently, DURST is entitled to prohibit the use of the software.
- 2.4. The Customer may only use the subject matter of the contract for its enterprise and the business transactions arising there; the Customer must hence – if not agreed otherwise between the parties – in particular not (i) provide the software to third parties – in any form whatsoever – (e.g. lease or application service provision) and/or (ii) use the software for business transactions of third parties.
- 2.5. The Customer must not reproduce the software and the User Manual.
- 2.6. The Customer is not entitled to a right to modify the subject matter of the contract.

- 2.7. If DURST provides the software as part of a device produced or delivered by it (in particular printers), the Customer is not entitled to remove the software from this device; the Customer is prohibited to use parts of the software separated from the device.
- 2.8. The Customer may reproduce the software and the electronic User Manual for security purposes only (security backups) and only insofar as this is necessary for using the computer programme; security backups have to be labelled as such on portable data carriers and a copy right notice of DURST has to be added on them.
- 2.9. If DURST within the framework of improvements under warranty law provides the Customer with (a) additions to the subject matter of the contract (e.g. patches, supplements to the User Manual or the like) and/or (b) new versions of the subject matter of the contract (update or upgrade) replacing the respective part of the subject matter of the contract previously provided, in case of (a), this contract shall apply per analogy to the supplements and in case of (b), the granting of rights concerning the (part of the) subject matter of the contract previously provided is deemed expired or, respectively, the new versions replace the old versions, with the Customer being obliged to surrender the concerned old versions of the subject matter of the contract to DURST upon request of DURST or to destroy them irrevocably or, respectively, delete them at its own expense. In case (b), DURST shall, insofar as necessary, grant the Customer a transition phase of one month during which both versions may be used at the same time.

### **3. Terms of payment**

- 3.1. Unless otherwise agreed, the Customer shall before taking delivery (e.g. by download) of the subject matter of the contract remit the remuneration incurred in this respect to DURST.
- 3.2. All prices are subject to the respectively applicable legal VAT.

### **4. Delivery, installation and separate additional services**

- 4.1. Unless otherwise agreed between DURST and the Customer in the individual case, the subject matter of the contract is delivered by the online provision of the subject matter of the contract by DURST and by the download by the Customer.
- 4.2. Insofar as it was agreed between DURST and the Customer that the installation will be carried out by DURST, the following applies: DURST will have the software installed at the Customer by appropriately qualified staff within a reasonable time period and render it operational for the Customer to use it under this contract ("**Installation**"). The Installation requires that the Customer at least fulfils any and all requirements announced by DURST at its own expense, in particular as regards the minimum required hardware and software environment and the access to the IT system of the Customer. Insofar as this is necessary or appropriate, the Customer will take part in any and all activities that DURST carries out for the Customer, in particular by for example providing staff, workspaces, hardware and software, data and telecommunication facilities at the own expense of the Customer. Cf. the further duties to cooperate of the Customer pursuant to point 6.
- 4.3. If DURST provides services exceeding those listed under point 2.1., such as the service and maintenance of the software and the User Manual, such services are also governed by these T&C.

## **5. Protection of the subject matter of the contract**

- 5.1. Unless the Customer has expressly been granted rights regarding the subject matter of the contract under this contract, DURST alone shall be entitled to all rights regarding the subject matter of the contract – especially any copyright, trademark and patent rights; this shall also apply – in any form and in any connection whatsoever – to modifications of the subject matter of the contract or parts of it carried out by DURST. The property of the Customer regarding the respective data carriers remains unaffected.
- 5.2. The Customer will keep the subject matter of the contract in safe custody in order to exclude any abuse, in particular the unauthorized reproduction and/or use. The Customer shall particularly ensure that the entitlement to access the software and the protection of the data carrier against an inspection and use by unauthorized persons are regulated, that the entitlement to use the software is specified by technical measures and that every device from which the software can be retrieved is protected against the unauthorized commissioning of the software by precautionary measures.
- 5.3. The Customer refrains from changing or removing copyright notices, labels or the like of DURST or third parties regarding or in connection with the subject matter of the contract.
- 5.4. The Customer keeps records on the security backups of the subject matter of the contract created by the Customer in accordance with the contract and their use or, respectively, storage location and provides DURST with information and grants DURST inspection within five working days upon request in writing.

## **6. Customer's duties to cooperate and to inform**

- 6.1. The Customer declares that it has informed itself as best as possible on any and all functional characteristics of the software. The Customer has convinced itself that the software fulfils its requests and needs; the Customer has been given advice by DURST or, respectively, by expert third parties regarding questions or doubts before the conclusion of the contract, for the information of which DURST is in any case not responsible.
- 6.2. The Customer will strictly respect the information on the operation of the software given by DURST.
- 6.3. The Customer grants DURST, directly and/or by means of remote access ("Remote Support"), access to the IT system of the Customer, in particular to the subject matter of the contract, in particular to the software installed, for searching and correcting defects or, respectively, errors in connection with the subject matter of the contract. It is expressly stated that the Customer agrees with the Remote Support by DURST and the processing of data related therewith.

## **7. Warranty**

- 7.1. DURST only warrants the subject matter of the contract pursuant to the terms and conditions specified in these T&C.
- 7.2. DURST only warrants that the software has the specified characteristics and fulfils functions as described in the user documentation.
- 7.3. The warranty period amounts to 12 (twelve) months and starts to run upon download of the software

by the Customer or upon completion of the Installation.

- 7.4. DURST does not warrant anything if the Customer modifies, copies or reproduces the software or uses it in any way not intended in the user documentation. DURST does not warrant anything if the software is used with hardware and/or other components the Customer has not acquired from DURST or from an enterprise of the DURST Group.
- 7.5. The Customer is obliged to notify DURST of “defects” of the software without delay, however, at the latest within 5 (five) days upon their occurrence, in writing by mentioning the malfunction.
- 7.6. The Customer shall take appropriate precautionary measures in order to avoid malfunctions of the software as good as possible or, respectively, to minimize their consequences; there shall in particular be an uninterruptible power supply (UPS) with protection against voltage fluctuations, a state-of-the-art data backup, at least daily with a parallel backup every three days, every week and every month, a state-of-the-art error diagnosis and a regular check of data processing results.
- 7.7. In case of defects, DURST first of all in any case has the possibility to carry out improvements (rectification or replacement of what is missing) or an exchange; in this regard, DURST provides the Customer at its own choice a new data carrier and/or a software free of defects or removes the defect directly at the Customer (in particular by Remote Support); it is also deemed the removal of a defect if DURST shows the Customer reasonable possibilities to avoid the consequences of the defect (reasonable workaround).
- 7.8. The Customer shall accept a new or, respectively, changed subject matter of the contract within the framework of the warranty if the scope of functions under the contract is preserved and if taking over a new, or respectively, changed subject matter of the contract does not result in significant disadvantages to be proven by the Customer, so-called reasonable workaround.
- 7.9. If two attempts of improvement fail, the Customer is entitled to set a reasonable grace period for the removal of the defect. In this context, the Customer shall expressly point out in writing that it reserves the right to demand a price reduction in case of another failure or – unless it is a minor defect – to rescind the contract. If also the other improvement fails, the Customer may reduce the consideration (price reduction) or withdraw from the contract, with the latter option only being possible unless there is a minor defect, what the Customer has to disprove. Point 8. shall accordingly apply to consequential damages of the defect and/or rectification expenses.
- 7.10. If third parties put forward claims which hinder or, respectively, impede the Customer to use the subject matter of the contract in accordance with the contract, the Customer shall comprehensively inform DURST thereon without delay in writing. If the Customer is sued by third parties due to the use of the subject matter of the contract, the Customer shall agree any and all steps in this connection with DURST and perform procedural acts, in particular acknowledgements and settlements, only with the consent of DURST. In this context, DURST is obliged to hold the Customer harmless and indemnify it insofar as the claims are not due to a behaviour of the Customer which is in breach of its duties; in this case, the Customer shall hold DURST harmless and indemnify it.
- 7.11. If DURST provides services, for example for the search or removal of errors, without the existence of a defect, DURST may claim appropriate costs for these services. This shall apply in particular if

a defect is not provable/reproducible or not to be attributed to DURST or for expenses incurred because the Customer did not comply with its duties, in particular pursuant to point 6.

## **8. Liability and damages**

- 8.1. DURST shall – except for personal damages – exclusively be liable for gross negligence, however, the exclusion of liability does not apply to completely unforeseeable or atypical damages the Customer could not expect. The liability for foreseeable data loss and foreseeable consequential damages, in particular for loss of profit, is – except in case of intent – excluded. The liability of DURST is in any case limited as regards its amount by the annual turnover for services acquired from DURST agreed with the Customer.
- 8.2. The period of limitation amounts to one year starting from the download of the subject matter of the contract by DURST or – provided that the Installation was carried out by DURST – to 1 (one) year after the completion of the Installation.

## **9. Confidentiality and data protection**

- 9.1. The Customer undertakes to treat any and all confidential information and trade secrets of DURST (“Confidential Information”) it gained knowledge of within the framework of the initiation and execution of the contract confidential for an indefinite period of time and to only use them for the purpose of executing the contract. The subject matter of the contract and the services provided pursuant to this contract also form part of the Confidential Information of DURST.
- 9.2. The Customer will only make the subject matter of the contract accessible to staff and other third parties insofar as this is absolutely necessary for the use in accordance with the contract. The Customer guarantees to impose the duties arising out of this contract, in particular concerning this point, upon these persons and to hold DURST harmless and indemnify it in this regard.
- 9.3. The aforementioned obligations do not apply to Confidential Information (i) that at the time it is transmitted by the party has already been notorious or known to the other party; (ii) that after having been transmitted by the other party has become notorious without the other party being at fault; (iii) that after having been transmitted by one party has been made accessible to the other party by a third party in a way that is not unlawful and without any restriction in relation to confidentiality or exploitation; (iv) that has been developed by one party independently, without using the Confidential Information of the other party; (v) that has to be published by law, by an order of an authority or a decision of a court – provided that the publishing party informs the other party thereon without delay and assists it in the defence against such orders or, respectively, against such decisions; or (vi) insofar as the party is permitted to use or pass on the Confidential Information due to compulsory legal provisions or in accordance with this contract.
- 9.4. DURST shall comply with the provisions of the data protection law, in particular if access to the business or to hardware and software of the Customer is granted. The Customer confirms to have comprehensively been informed by DURST on the use and processing of data.

## **10. Term and cancellation**

The term of the respective use of the software is based on the term agreed between the contracting parties in the individual case.

However, DURST shall be entitled – in case the contracting partner is in default of payment of its license fee – to withdraw the Customer the entitlement to use the software and to terminate the respectively concluded software/license contract with immediate effect.

Furthermore, DURST is entitled to prohibit the Customer the entitlement to use the software, to terminate the respectively concluded software/license contract with immediate effect if the Customer violates fundamental provisions of these T&C (in particular the provisions 2., 5. and 9.).

## **11. Termination of the right of use**

In all cases of termination of the entitlement to use by the Customer, in particular in case of a reversed transaction, rescission of the contract or improvement regarding the “old versions”, a violation of fundamental contract provisions, the Customer surrenders all (old) deliveries of the subject matter of the contract without delay to DURST and deletes any and all (old) data in connection with the subject matter of the contract insofar as the Customer is not obliged by law to keep them for a longer time.

## **12. Final provisions**

- 12.1. The court having substantive jurisdiction for Lienz/Austria shall have exclusive jurisdiction for all disputes arising out of and in connection with a contract concluded between DURST and the Customer, including questions as regards the valid conclusion of the contract. Moreover, DURST is also entitled to sue the Customer at the court having jurisdiction for the seat of the Customer.
- 12.2. Exclusively Austrian law under exclusion of the national and European conflict-of-laws rules and the United Nations Convention on Contracts for the International Sale of Goods (CISG, UN Sales Law) shall be applicable.
- 12.3. Should a provision of these T&C be or become invalid, or should the contract contain a loophole, the legal validity of the remaining provisions shall remain unaffected thereby. In such a case, the parties undertake to agree on a valid provision replacing the invalid provision which comes as close as possible to the economic purpose intended by the parties.

### **DURST Professional Services GmbH**

Registered with the Commercial Register of Bozen

Legal Representatives: Christoph Gamper & Christian Casazza

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