General Terms and Conditions of SHD KPS Nordic ApS for Transfer of Software "Software GTC" (Status 2023-01-01)

I. Scope of application

(1) The General Terms and Conditions for Transfer of Software ("Software GTC") of SHD KPS Nordic ApS, Niels Bohrs Vej 6, DK-6700 Esbjerg ("KPS"), are applicable to all contractual relationships with customers arising from or associated with transfer of software and shall be deemed to be an integral part of the contract insofar as nothing to the contrary has been individually agreed in writing between KPS and the customer or unless otherwise regulated in the pCon software license conditions.

(2) The Software GTC shall be supplemented by the General GTC which shall form part of the contract in addition to the Software GTC.

II. KPS's services

(1) KPS shall transfer to the customer the software indicated in the quotation, the confirmation of order, the specification or the contract, as appropriate, in machine-readable object code. The software shall not be sold but licensed. The software is provided on a data carrier or by making it available on a server for downloading via data networks (e.g. VPN or Internet). A user manual for the software is not owed unless this is expressly agreed in writing.

(2) The specification shall conclusively state which functions the software has when used in accordance with the contract. Public statements, praise or advertising shall not be deemed to be information about the nature of the software.

(3) The software's ability to run shall only be guaranteed under the system environment specified by KPS for the software (minimum processor clock frequency, memory space, operating system, etc.).

(4) KPS's services in connection with the transfer of the software shall not include new program versions, installation, modifications or adaptations, training or any other services beyond the transfer of the software. In particular, KPS shall not owe any services which enable the connection and exchange of data with other software, even if interfaces are included in KPS's software.

III. Remuneration, Accounting

(1) The remuneration shall be as stated in the documents referred to in clause II, paragraph (1), sentence 1. If no agreement has been reached, the remuneration shall be based on KPS's price list for software licenses in force at the time the contract is concluded.

(2) Unless otherwise agreed, the remuneration shall be paid to KPS within 10 days of the date of the invoice.

IV. Customer's duty of cooperation

(1) The customer shall provide and keep ready the suitable system environment in due time and for the duration of the use of the software at its own expense.

(2) The customer shall be obliged to test all functions of the software under the customer's system environment in which it will integrate the Software and to check them for defects before using the software productively. The customer shall also examine the absence of defects in any data carriers and documentation upon handover. If defects are discovered by the customer, KPS shall be notified of them without delay in writing, by e-mail or by means of a ticket system provided by KPS for this purpose.

(3) The customer shall be obliged to prevent unauthorized access and access by third parties to the software. The customer shall keep the original data carriers and any backup copies in a place secured against unauthorized access and access by third parties.

(4) The customer's duty of cooperation shall constitute an essential contractual obligation.

V. Rights of use (license)

(1) Owner of all rights to and manufacturer of the Software is EasternGraphics GmbH, Albert-Einstein-Straße 1, 98693 Ilmenau, Germany (licensor). The pCon software license terms of the licensor shall apply. On the basis of the software transfer agreement between KPS and the customer on the basis of these Software GTC, the customer shall be granted the right of use by the licensor on the basis of the Copyright Act (UrhG) of the Federal Republic of Germany in accordance with the pCon software license provisions. This right of use is subject to the timely and complete payment of the license purchase price.

(2) The customer shall be obliged to inform KPS without delay of any use going beyond the agreed licensing, to acquire the licenses required for such use (subsequent licensing) and to pay KPS the remuneration for these licenses in accordance with KPS's current license price list. If KPS ascertains use going beyond the agreed licensing without the customer having notified KPS of this beforehand, the customer shall, in addition to acquiring and paying for the licenses required for this further use, pay to KPS on first demand a contractual penalty amounting to 50% of the remuneration payable for the subsequent licensing.

VI. Liability for defects

(1) The statutory provisions shall apply to the rights of the customer in respect of defects in the software transferred unless otherwise laid down in the following clauses.

(2) Claims in respect of software defects shall be governed by a guarantee period of one year. This one-year period shall commence on provision of the software to the customer. The guarantee period set in German law shall, however, apply if KPS has deliberately failed to declare a defect or has given a guarantee for specified characteristics of the software. A guarantee in respect of specified characteristics shall take effect only if given in writing.

(3) KPS shall ensure that the software fulfils the specifications described if used in accordance with the contract and has no defects which will impair its effectiveness for the contractually agreed use to anything but an insignificant degree. Insignificant deviations from the specifications shall not be construed as defects. The customer shall be construed as being aware that software of the present complex type is incapable of absolutely error-free development in the present state of the art. Not every error is a defect.

(4) The customer shall have a duty immediately to inform KPS in writing, by e-mail or via a ticket system provided for this purpose by KPS of any defects arising and to state and describe how the defect manifests itself, what its effects are and under what circumstances it occurs. There shall be a right to claim in respect of the defect only if the defect notified is reproducible or can be demonstrated in machine-generated output.

(5) KPS shall remedy a defect properly notified by the customer by way of subsequent performance, i.e. by repair or replacement. The right of choice of the means of the subsequent performance for the remedy of a defect shall lie with KPS. KPS's right to refuse subsequent performance under the statutory conditions shall remain unaffected. Insofar as such is not unreasonable for the customer, KPS shall have the right to provide the customer with a new version of the software by way of remedy of defect (e.g. an "update", a "maintenance release" or a "patch"), which either no longer contains the defect complained or will remedy it; or to develop an alternative solution or to bypass the defect by changing the configuration of the software.

(6) If subsequent performance has failed within a reasonable period, the customer shall set KPS in writing a further reasonable period (period of grace) for subsequent performance, provided that the setting of the period is not unreasonable for the customer and provided that KPS does not finally refuse subsequent performance. If these conditions are met, the customer shall be entitled, after the second subsequent performance has failed, to withdraw from the contract under the statutory conditions or to reduce the agreed remuneration and - if KPS is at fault - to claim damages in lieu of performance or compensation for wasted expenditure. After the unsuccessful expiry of the last period of grace, the customer shall declare within a reasonable time whether it will continue to demand subsequent performance or whether it will assert its above rights. There shall be no right of withdrawal in the case of a minor defect. Upon declaration of withdrawal or reduction, the customer's claim to delivery of defect-free software shall lapse.

(7) KPS shall not be liable if a defect has occurred after a change in the system environment, after installation and/or operating errors, after interventions in the software, such as modifications, adaptations, connection with other programs and/or after use contrary to the terms of the contract, unless the customer proves that the defect was already present at the time of handover of the software or has no causal connection with the above-mentioned events.

(8) KPS shall have no liability for the correctness of data from the customer or third parties to be found in the software or for any defect resulting therefrom.

(9) Should it transpire that a defect notified by the customer does not in fact exist or is not caused by the software, the customer shall pay KPS for the effort involved in analysis and the processing in accordance with calculations based on the respective current hourly or daily rates for services of KPS for the tasks in question.

(10) KPS shall be entitled in the case of justified withdrawal on the part of the customer to demand reasonable compensation for the extent to which the customer has benefitted by using the software in the past up to the unwinding. This compensation for benefit from use shall be calculated on the basis of a total period of four years of use of the software, with a reasonable deduction for the impairment of the software due to the defect which caused the withdrawal.

VII. Application of the General GTC

The terms of KPS's General GTC shall supplement these Software GTC and shall apply subordinately to them.