

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

## I. Scope of application

(1) The General Terms and Conditions for Rental of Software of SHD KPS Nordic ApS, Niels Bohrs Vej 6, DK-6700 Esbjerg ("KPS") shall apply to all contractual relationships with customers in connection with the rental of software and shall be deemed to be an integral part of the contract unless otherwise agreed in writing in an individual agreement between KPS and the customer or unless otherwise regulated in the pCon software license terms.

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

## II. KPS's services

(1) KPS shall rent out to the customer the software designated in the quotation, in the order confirmation or in the software rental contract (hereinafter referred to as the software) and the future updates provided for the software in machine-readable object code for the duration of the software rental contract. The source code is not subject matter of the contract and is not owed. The software shall be provided on a data carrier or by remote data transmission (e.g. download from the internet). Documentation or operating instructions for the software are not owed unless this is expressly agreed in writing.

(2) The quotation or the specification conclusively states which functions and performance the software will have when used in accordance with the contract. Public statements, praise or advertising shall not constitute a statement of performance or quality.

(3) KPS shall not owe any services which go beyond the rental of the software, in particular no installation, no adaptation, no modification, no training, no connection with other software and no data exchange. This shall also apply if the software contains interfaces. Services that go beyond the rental of the software must be agreed separately.

## III. Maintenance services

(1) KPS shall undertake to maintain the software for the duration of the software rental contract by providing the following maintenance services:

- Provision of the current version of the program marketed by KPS (updates) in accordance with clause IV;
- remedy of defects in the software in accordance with clause V.

No further services shall be owed.

(2) KPS shall provide maintenance services only for the version currently marketed by KPS and for the previous version of the software. The provision of the maintenance services shall therefore presuppose that the customer has always updated the software to one of the two versions mentioned. This duty to cooperate on the part of the customer is an essential contractual obligation.

(3) The maintenance services shall be owed by KPS only if the software is installed in a system environment approved for the purpose by KPS.

## IV. Provision of current program versions (updates)

(1) KPS shall provide the customer with the latest program version (update) of the software to be maintained, provided that this is currently marketed by KPS and is available. This shall not apply to enhancements to the software to be maintained which KPS offers or markets as a new or independent product and not to new developments of the software with the same or similar functions or on a different technological basis or on the basis of a different license model.

(2) Updates shall be provided by making them available on a server for downloading via data networks (e.g. VPN or internet).

(3) The installation and commissioning of the updates shall be the responsibility of the customer.

## V. Remedy of defects of the software

(1) KPS shall remedy the software within a reasonable period.

(2) A precondition for the remedy of defects shall be that the software is installed by the customer in the version currently marketed by KPS or its previous version.

(3) KPS shall remedy a defect by suitable measures of its own choice. Defects shall be remedied on the customer's premises only if and insofar as no other measure promises success.

(4) The remedy of defects shall further require that the software is installed on an operating system which is generally still being maintained by the manufacturer of the operating system at the time KPS is notified of the defect. Individual maintenance agreements between the manufacturer of the operating system and the customer which extend beyond the general maintenance period shall be disregarded. If this is not the case and KPS nevertheless remedies the defect, the customer shall bear the costs incurred as a result. Furthermore, in the event that the operating system on which the customer has installed the software is no longer maintained by the

manufacturer, the contractual partners shall have the right to terminate the software rental agreement for cause. Clause VI. (9) hereof shall remain unaffected by this.

(5) KPS shall not be liable for the correctness of third party data on the software or for any defects or errors resulting therefrom.

(6) If it transpires that a defect reported by the customer does not in fact exist or is not due to the software, the customer shall pay KPS for the effort involved in analysis and processing in accordance with calculations based on the current price list of KPS for these services.

## VI. Customer's duty of cooperation

(1) The customer shall perform the acts of cooperation necessary for KPS to render its services at its own expense, in particular the following:

(a) The customer shall install the software in a system environment specified by KPS or otherwise suitable for the proper operation of the software.

b) Before using the software productively, the customer shall be obliged to test all the functions of the software in the system environment designated for the purpose. If the customer discovers defects, it shall notify KPS of them without delay in writing, by e-mail or in a ticket system provided by KPS for this purpose.

c) The customer shall name a German-speaking person responsible to KPS and, if necessary, a representative who shall have all the decision-making powers and authority required for the purposes of implementing the contract.

d) Insofar as services are provided by means of remote data transmission, the customer shall provide KPS at its own expense with the appropriate system environment (hardware and software) and the data lines up to the public data network ready for operation and shall maintain them.

e) Insofar as KPS provides services at the customer's premises or at another location agreed with the customer, the customer shall grant KPS and its employees access to the software and to the infrastructure required for its use, in particular to the system areas in which the cause of the defect lies and in which the defect is detectable.

f) If it is unclear which system component is causing a defect, the customer shall first carry out an analysis of the system environment together with KPS and - if necessary - involve third parties with the necessary know-how regarding the system environment at its own expense.

g) During the performance of the service the customer shall ensure that a competent member of staff provides KPS at all times with information about the overall system at the customer's premises, the use of the software and of details of the notified defect as well as carrying out tests.

h) The customer shall install the new program versions provided by KPS in accordance with KPS's instructions.

i) Insofar as it is necessary for the creation and/or use of a new program version of the software to be maintained, the customer shall provide, set up and operate new versions of the operating system, database or other means necessary for the use of the software at its own expense.

j) Defects shall be documented by the customer in a manner comprehensible to KPS and notified to KPS immediately after their discovery and, in the case of notification by telephone, subsequently communicated to KPS in writing or as an e-mail. This notification shall contain the more detailed circumstances of the occurrence of the defect, its effects and possible causes.

k) The customer shall be obliged to prevent unauthorized access to the software and to any original data carriers supplied.

(2) The aforementioned duty to cooperate is an essential contractual obligation. If the customer breaches its duty to cooperate, KPS shall not be obliged to provide the service. In the event of repeated or grossly negligent breach of duty, KPS shall be entitled to terminate the software rental contract with two weeks' notice to the end of the month; in the event of willful breach of duty, termination without notice shall be possible.

## VII. Rights of Use (License)

(1) The owner of all rights to and manufacturer of the software shall be EasternGraphics GmbH, Albert-Einstein-Straße 1, 98693 Ilmenau, Germany ("licensor"). With the software rental contract between KPS and the customer on the basis of these Software Rental GTC and the Copyright Act (UrhG) of the Federal Republic of Germany, the customer shall be granted by the licensor the right of use, limited in time to the term of the software rental contract, in accordance with the pCon software license provisions of the licensor. This right of use is subject to the timely and complete payment of the agreed remuneration. If the customer fails to pay the agreed remuneration in full despite a reminder, the right of use expires with the expiration of the payment period.

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(2) The customer shall be obliged to inform KPS immediately of any use going beyond the license. The customer shall pay KPS subsequently the rent in arrears for the period of use in breach of contract. If KPS becomes aware of the use in breach of contract without the customer having previously notified KPS of it, the customer shall pay KPS a contractual penalty amounting to 50% of the rent in arrears in addition to the rent in arrears.

### **VIII. Remuneration, terms of payment**

(1) The remuneration (rent/lease price) for the use of the software shall be based on the quotation, the order confirmation or the software rental contract.

(2) Unless otherwise agreed, the remuneration shall be due in advance on the third of each month for the current month.

(3) Payment of the remuneration shall cover the transfer of the software for the period agreed and the maintenance of the software.

(4) KPS shall be entitled to adjust the remuneration annually on 1 January by the annual average change in the overall price index for consumers published by the Federal Statistical Office (consumer price index = CPI) in Germany in the last calendar year to the calendar year before last in percentage terms (rate of change), provided that this is reasonable. The difference between a remuneration already charged or already paid shall be credited or charged to the customer retrospectively after publication of the rate of change. Prices shall be rounded to full euros in accordance with commercial practice. If the consumer price index is no longer continued by the Federal Statistical Office, it shall be replaced by the one determined by law, or alternatively by the cost of living index in force in the area of the Federal Republic of Germany, which most closely corresponds to the consumer price index at the time of its replacement.

(5) KPS shall be entitled to increase the remuneration with effect from the next calendar year with three months' notice. On receipt of KPS's statement concerning the increase in remuneration, the customer shall have the right to terminate the software maintenance contract with two months' notice to the end of the current calendar year. If the customer does not exercise this right, it shall thereby declare its consent to the increase in remuneration from the next calendar year.

### **IX. Liability for defects**

(1) The statutory provisions shall apply to the customer's rights in the event of defects in the software and updates transferred, unless otherwise stipulated below.

(2) 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. As is well known, complex software cannot be developed absolutely error-free. Not every error is a defect. Insignificant deviations from the specifications do not constitute a defect.

(3) The customer shall be obliged to notify KPS of defects without delay in writing, by e-mail or by means of a ticket system provided by KPS for this purpose, stating and describing how the defect manifests itself, what its effects are and under what circumstances it occurs. Claims on account of defects shall exist only if the defects reported are reproducible or can be shown by machine-generated output.

(4) KPS shall remedy the defect duly notified by the customer by way of subsequent performance, i.e. by repair or subsequent delivery, within a reasonable period. KPS shall have the right to choose the type of subsequent performance. The right of KPS to refuse subsequent performance under the statutory conditions shall remain unaffected. Insofar as this is not unreasonable for the customer, KPS shall be entitled, in order to remedy the defect, to provide the customer with a new version of the software (e.g. "update", "release/patch") which no longer contains the defect complained of or which remedies it, or to develop an alternative solution.

(5) As long as the subsequent performance has not failed, the customer's right to terminate the contract on the grounds of failure to provide use shall be excluded.

(6) 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 changes, 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 when the software was handed over or that it has no causal connection with the above events.

(7) KPS shall not be liable for the correctness of the customer's or third party's data on the software or for any defects resulting therefrom.

(8) KPS's strict liability for defects already present at the time of conclusion of the contract shall be expressly excluded.

(9) The customer must not enforce a reduction in rent by deducting it from the agreed rent. Claims in respect of enrichment and damages shall remain unaffected.

(10) If it transpires that a defect reported by the customer does not in fact exist or is not due to the software, the customer shall pay KPS for the expenditure incurred in analyzing and processing it, based on the price calculation for these services in accordance with KPS's current price list.

### **X. Commencement, term and termination of the software rental contract**

(1) Unless otherwise agreed, the software rental contract shall commence upon provision of the software or activation of the license and shall run for an indefinite period. The contract may be terminated with three months' notice to the end of a calendar year, but not before twelve months have elapsed. The right to terminate the contract pursuant to section VIII. paragraph (5) shall remain unaffected.

(2) Notice of termination shall be given in writing.

(3) The right of extraordinary termination for good cause shall remain unaffected. KPS shall have the right of extraordinary termination in particular if the customer is in arrears with payment of the remuneration in whole or in part by more than two months.

(4) On termination of the contractual relationship the customer shall return to KPS all the items provided, as well as other materials and documents provided within the framework of the rental relationship. The customer shall bear the costs and transport risk of returning the items to KPS. The customer shall be responsible for ensuring that the items provided are not in a worse condition than that which corresponds to the contractual use of the rented item; this shall apply both during the rental period and at the time of termination of the contract.

(5) Upon termination of the contract, the customer shall immediately delete the software completely and irretrievably from the hardware on which it is installed or stored. It shall either destroy the backup copy(ies) and provide proof of destruction to KPS or hand it/them over to KPS.

(6) The customer shall be expressly informed that it must not use the software after termination of the contract and that in the event of such use it shall be in breach of KPS's copyright.

### **XI. Rights of use to updates**

KPS shall grant the customer the same rights of use to the updates provided as to the software. The provisions of these Software Rental GTC shall apply accordingly to updates.

### **XII. Application of the General GTC**

The General GTC of KPS shall supplement these Software Rental GTC and shall apply subordinately thereto.