

General Terms and Conditions (T&Cs) and Software Usage Conditions (EULA End User Licence Agreement) of elusoft GmbH

1. Scope of application for terms and conditions

1.1 All deliveries and services of elusoft GmbH, Breitwasenring 4, 72135 Dettenhausen ("elusoft") shall be provided exclusively on the basis of these GTCs and EULA, unless expressly agreed otherwise. Special supplementary reference is made to the conditions of use defined by elusoft or by third-party providers which accompany the contractual products.

1.2 The general terms and conditions of customers shall not apply, even if elusoft has not expressly rejected these. Deviations from the elusoft GTCs are only deemed effective if elusoft has expressly consented to these in writing.

2. Quotations

2.1 Quotations by elusoft are understood to be subject to the receipt of deliveries by elusoft's suppliers and can only be accepted within a reasonable period of time.

2.2 Reasonable technical and design deviations from the specifications in brochures, catalogues and written documentation as well as changes in the course of technical advancements and product refinement are reserved without the possibility of any rights against elusoft being derived therefrom.

2.3 A contract for elusoft services ordered by customers is only concluded once elusoft agrees to the order in writing.

3. Subject matter of the contract

3.1 The subject matter of the contract is the computer program provided by elusoft (hereinafter also referred to as "Software"). elusoft may make the Software available to the customer electronically.

3.2 The hardware and software requirements for the use of the Software (operating environment) as well as its scope of services shall be provided to the customer by elusoft separately.

3.3 Guarantees must be in written form.

3.4 At present in current engineering practice, it is not possible to completely rule out the occurrence of program errors in software. The subject matter of the contract is therefore only such software that is fundamentally suitable for use by the customer in accordance with the contract.

3.5 elusoft updates the Software regularly. At the same time, operation of the Software partly requires constant access to a licence enable, which elusoft regularly updates in various ways free of charge for the customer after the Software has been purchased. For this purpose, elusoft sends an invitation to customers to extend the licence period well in advance, however at least three months prior to expiration of the licence period; without a corresponding extension, it might no longer be possible to start some parts of the Software after expiration of the licence period. If elusoft foresees a cessation of their business operations, customers will receive an invitation to extend their licence at least three months before the cessation, and when the licence is enabled, they will receive a version of the Software that is permanently operable with no further licence extension.

3.6 Apart from this, there is no obligation to deliver updates and upgrades inasmuch as this has not been agreed separately.

3.7 Installation and start-up are performed by the customer unless otherwise agreed. elusoft is not responsible for any free support services (esp. installation, instruction, training) unless otherwise agreed.

3.8 The source code of the Software is not part of the subject matter of the contract.

4. Prices and terms of payment

4.1 The licence fee is dependent on the quotation provided by elusoft. The usage rights to the Software shall be granted only upon full payment of the contractual compensation.

4.2 Unless otherwise agreed, invoices from elusoft are due for payment immediately without deduction. Default occurs 30 days after the due date without a prior reminder.

4.3 elusoft reserves the right of advance payment for first-time purchasers or foreign customers.

4.4 If the customer becomes in arrears with a payment or circumstances become known which are deemed grounds for reducing the customer's creditworthiness, then all amounts receivable by elusoft become due and payable immediately without consideration of the agreed payment deadlines. In this case, elusoft is then entitled to carry out any as yet uncompleted services only upon advance payment or by way of security.

4.5 The customer is only permitted to set off those amounts receivable against elusoft's claim to remuneration that have been acknowledged or determined to be legally binding. The same applies for the exercise of rights of retention.

5. Delivery and services

5.1 The customer is obligated to assist elusoft in the provision of services in a reasonable manner, especially by providing elusoft with required information and, if needed, a remote means of access and/or workstation and system access on-site at the customer's premises.

5.2 elusoft expressly reserves the right to make reasonable partial deliveries or perform partial services and invoice these accordingly.

5.3 Events of force majeure which make it significantly more difficult or impossible for elusoft to perform the contractual service entitle elusoft to postpone the fulfilment of their obligations for the duration of the hindrance plus a reasonable start-up period. Strikes and lockouts are the same as force majeure inasmuch as they are unforeseeable, serious and not due to the fault of elusoft. elusoft will notify the customer without delay when such an event occurs, inasmuch as this is reasonable and possible under the circumstances.

5.4 Agreed deadlines for the performance of services are deemed to have been met if elusoft offers the service by the agreed date.

5.5 If expenditures for elusoft are increased due to an interruption of the service provision or an unforeseen additional expenditure, elusoft is entitled to charge the additional expenditure to the customer, except if the customer is not responsible for the increased expenditure and its cause lies outside of the responsibility of the customer.

5.6 If elusoft falls behind in the provision of service, any damage and expenditure claim by the customer resulting from the delay must be substantiated by the customer and is limited per full week of the delay to a maximum of 0.5% of the net price for that part of the contractual service that is unusable because of the delay. Any liability due to delays is limited to a total of at most 5% of this net price. This shall not apply in the event that the delay is due to gross negligence or deliberate intention on the part of elusoft.

5.7 elusoft reserves the right to withdraw from the contract if a service performance delay lasts longer than six weeks and elusoft is not responsible for this.

6. Transfer of ownership of material and data storage media

elusoft shall not transfer ownership of any physical data carriers or written material to the customer until the contractual compensation has been paid in full. Until then, elusoft expressly reserves ownership.

7. Usage rights for the Software

7.1 Unless otherwise agreed, elusoft grants the customer a single, non-exclusive right to install the Software on one server and on one workstation in the agreed country of destination for the customer's own purposes for an undetermined time period and for use by one single user at a time. The country of destination shall be exclusively that country in which the customer has its registered office at the time the contract is concluded. In the event that the Software is used to control a machine, the usage rights are limited to the use of the Software for the operation and control of this machine. Subject to the following provisions, the customer is granted no further rights, such as those for reproduction, distribution, editing or providing public access to the Software.

7.2 The customer is forbidden to modify, translate, reverse engineer, decompile, disassemble or to reproduce the Software or its constituent parts unless this has been expressly agreed or unless such a right arises from Par. 69 d Sec. 2 and 3, Par. 69 e of the German Copyright Act (UrhG) and elusoft does not provide the customer with the required data within a reasonable period of time upon request. The customer is permitted to create a backup copy. The customer may neither change nor delete copyright notices, markings or control numbers in the Software. Concerning backup copies on portable data storage media, the copyright notice must be applied to the data storage medium.

7.3 A transfer of the usage rights for the Software to a third party presupposes that the customer passes the complete Software with all of its components and backup copies to the third party and discontinues all use of the Software as of the point in time of the transfer. A transfer of this nature requires the written consent of elusoft, which will be granted if the customer confirms in writing fulfilment of the prerequisites of sentence 1 and the third party acknowledges the applicability of these conditions of use in writing.

7.4 elusoft is entitled to equip the Software with copy protection or to protect the Software in another manner against any non-contractual use, provided that the contractual use is not thereby significantly impaired.

7.5 If the customer acts in breach of the conditions of use, elusoft is entitled to revoke the usage rights. elusoft shall grant the customer a reasonable grace period as a matter of course for the elimination of the breach of contract provided that, upon evaluation of the mutual interests, especially in the case of repeated breaches of contract, an immediate revocation is not called for. The customer must cease to use the Software after a revocation and must confirm this in writing to elusoft.

7.6 Custom software and software that is the result of project services is also subject to this provision. In this constellation as well, elusoft retains the rights, in particular to the source code.

7.7 If applicable, the customer hereby expressly consents to the inclusion of software that is subject to the GNU Public License (GPL) of any version or other copyleft licences and that is required for adaptation or creation of the Software, in the event that consent is required for any agreed installation of the Software.

8. The customer's duties of cooperation

8.1 The customer must take care to ensure that the users have sufficient technical knowledge for the use of the Software.

8.2 The customer must notify elusoft promptly of any change in the operational environment.

8.3 The customer must assist elusoft in the elimination of any defects, especially in the form of fault descriptions, transmission of error messages or sample files. For this purpose, useful information must be provided, including in particular the type and effect of the fault as well as the user input which preceded the occurrence of the fault.

8.4 The customer shall take reasonable precautions to prevent unauthorized use by third parties and unauthorized access by third parties to knowledge of the source code of the Software or other elusoft trade secrets.

8.5 The customer shall give elusoft access to the data processing units on which the Software is installed. The customer must also ensure the functionality of the technical equipment required for troubleshooting and repair, such as electrical power, a telephone connection and data transmission lines, and shall make these available to elusoft to a reasonable extent at no charge. The customer must give elusoft a means of external access to the system (remote access) for the purpose of troubleshooting. elusoft must fulfil the existing requirements for external access at the customer's site and comply with the internal policy of the customer with respect to IT security inasmuch as the customer requires this of elusoft and provides the requisite information.

8.6 The customer must inform elusoft immediately after becoming aware of any unauthorized use or access – whether this is imminent or has already occurred.

9. Supplementary special rules for project services

9.1 If elusoft and the customer enter into a contract for services, elusoft is responsible for the success of project services, which particularly includes the creation of custom software, only inasmuch as

9.1.1 The success of the contractual performance has been defined specifically and conclusively in the statement of work with regard to scope and effect at the time of conclusion of the contract and has become the subject of the contract (agreed performance criteria) and

9.1.2 The customer fulfils his duties of cooperation in a proper and timely fashion, except if this has no influence upon the service provision.

9.2 The following applies to acceptance:

9.2.1 The customer must declare acceptance within 14 calendar days of receipt of an acceptance request from elusoft provided that no other time period has been agreed.

9.2.2 The customer is entitled to refuse to issue the declaration of acceptance if the project service has one or several defects which singly or together render usage impossible or only possible with severe limitations.

9.2.3 elusoft shall remedy defects subject to Clause 9.2.2 within a reasonable period of time; Clause 9.2.1 shall then (again) apply accordingly.

9.3 The project services are deemed to be accepted – even without an express declaration and without an acceptance request from elusoft –

9.3.1 When the customer begins use of the project service for purposes other than test purposes, or

9.3.2 Upon payment, except if the customer has justifiably refused acceptance, or

9.3.3 If the customer does not give notice of any defects preventing acceptance within the inspection period pursuant to Clause 9.2.1.

9.4 Unless otherwise agreed, distinct partial services shall also be accepted individually according to these provisions.

9.5 If necessary due to the scope of a project, elusoft and the customer shall each appoint a project manager for the duration of the project within a period of one week after conclusion of the contract. Delivery of the project shall be coordinated between the project managers exclusively.

10. Supplementary special rules for maintenance contracts

10.1 If elusoft and the customer enter into a maintenance agreement, elusoft is obligated to provide only the following services, unless otherwise agreed:

10.1.1 Processing of fault situations and support requests with the objective of finding a means of rectification or a solution which can be implemented immediately.

10.1.2 elusoft is not obligated to establish (or restore) the functionality of the Software nor to successfully eliminate faults, unless the customer is entitled to this on the basis of warranty claims.

10.2 Support requests and error messages are to be reported to support@elusoft.com along with the following information:

- Company with contact person
- Telephone number,
- Condition log
- Problem description

10.3 The following, for example, are not components of a maintenance contract:

- Maintenance of and support for the customer's existing (in-house) system, especially the customer's existing hardware and its applications;
- Training and installation services;
- Machine updates;
- Rectification of faults resulting from force majeure, environmental conditions, faulty hardware or faults for which the customer or third parties are responsible, especially due to faulty or incomplete system or data input or manipulation of the program code by the customer's staff;
- Unscheduled supplements and modifications of the Software covered by this contract at the customer's request and Software upgrades;

- Support for back-end database systems as well as support for software products from third-party suppliers as well as data conversion services.

10.4 The remuneration for maintenance services shall be effected by means of annual flat rates which are to be paid in advance for the current year, except as otherwise agreed. The annual flat rates do not include work that becomes necessary due to incorrect operation or damage or modification of the programs for which elusoft is not responsible. Work of this nature shall be invoiced on the basis of the generally applicable elusoft hourly rates in effect at the time the work is contracted according to time and effort. Travel costs, travel times, accommodation expenses and other expenses are not included in the flat rates and will be charged separately.

11. Warranty

11.1 The customer must check the functionality of the Software immediately upon receipt. Mere minor deviations do not constitute grounds for warranty claims by the customer.

11.2 Warranty claims shall be limited to such defects that are reproducible or can be proven by the customer in another manner.

11.3 elusoft shall not be liable for infringements of the rights of third parties if the Software is not used in accordance with the contract or in the agreed country of destination.

11.4 The customer shall notify elusoft promptly of any claim of legal infringement brought to his attention. elusoft is entitled but not obligated to defend themselves at their own expense against a claim due to an asserted infringement of the rights of third parties. The customer must only acknowledge the claims of third parties if elusoft has consented to this in writing.

11.5 There shall be no warranty claims for defects due to improper use, operating errors, an improper operating environment or external influences not assumed in the contract (e.g. fire, lightning strike, overvoltage). In the event of subsequent manipulation of the Software, especially modifications made by the customer or third parties, warranty claims shall be acknowledged only if the fault is not due to the manipulation and the manipulation does not complicate the troubleshooting and rectification.

11.6 Warranty claims are initially limited to the right to subsequent performance within a reasonable time period. elusoft is entitled, at their discretion, to either repair the delivered Software or to deliver replacement Software. elusoft must take the customer's interests into account in a reasonable manner when making their determination. If replacement Software is delivered, the customer must turn the original Software over to elusoft.

11.7 Warranty claims become statute-barred within one year of delivery to the customer, or, if installation by elusoft has been agreed, upon completion of the installation, or, in the case of a project service, upon acceptance, inasmuch as elusoft did not conceal the defect with malicious intent. Later modifications of the scope of application shall have no effect upon the progress of the limitation period.

11.8 If an inspection in the context of a notice of defects reveals that no warranty case exists, the customer shall only reimburse elusoft for their expenditures if the customer did not recognize the absence of the notified defect either intentionally or due to gross negligence.

12. Liability

12.1 elusoft shall be liable for damages arising from injury to life, limb or health due to defects that elusoft maliciously concealed as well as for damages resulting from a wilful or grossly negligent breach of duty by a legal representative or by a vicarious agent as well as in accordance with the provisions of product liability law.

12.2 For other forms of damage, elusoft shall only be liable inasmuch as they, in a manner that endangers the purpose of the contract, culpably violate a major contractual obligation the fulfilment of which is a prerequisite for the contract itself and for which the customer is entitled to rely that compliance with said is a matter of course (cardinal obligation).

12.3 If the violation of a cardinal obligation is neither grossly negligent nor wilful, then elusoft's liability shall be limited according to Clause 12.2 to such typical forms of damage that were reasonably foreseeable at the time the contract was concluded. Liability for

indirect or consequential losses such as lost profits is excluded in these cases.

12.4 Any liability for damages resulting from the loss of data is excluded inasmuch as the damage is due to the fact that the customer did not carry out the regular data backups and/or system inspections that are customary in the industry.

12.5 These provisions also apply for the benefit of elusoft's legal representatives, employees and vicarious agents.

13. Secrecy

In the event that elusoft receives confidential data such as design drawings, machine information or job data, elusoft is entitled to pass these data on to partner firms and subcontractors for the purpose of contract fulfilment. When doing so, elusoft shall obligate the partner firms and/or subcontractors to confidentiality.

14. Final provisions

14.1 Changes and additions to contractual agreements must be made in writing to be effective. This also applies to any change of this clause requiring written form. There are no verbal subsidiary agreements.

14.2 The contractual relationship between elusoft and the customer and all legal disputes arising therefrom shall be governed by German law, excluding the application of the UN Convention on Contracts for the International Sale of Goods. The contract language is German.

14.3 The place of performance and the court of jurisdiction shall always be that of the registered office of elusoft, inasmuch as the customer is a merchant or a legal entity under public law.