

General Terms and Conditions

of **COMPRION GmbH**
for the online shop

(as at: June 18, 2018)

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1 Scope/Terminology

- 1.1 Solely these General Terms and Conditions (GTC) shall apply to all business relationships between COMPRION GmbH, Lise-Meitner-Str. 3, 33104 Padernborn (hereinafter "COMPRION") and the Customer, that are conducted via COMPRION's online shop, in particular the sale of software and hardware by COMPRION.
- 1.2 Other terms and conditions shall not become subject matter of the contract, even if they are not explicitly rejected by COMPRION or if no explicit reference was made hereto upon conclusion of similar contracts, unless otherwise agreed by the Contractual Parties.
- 1.3 With his registration, the Customer confirms that he is an entrepreneur in terms of § 14 German Civil Code (BGB) and European legal provisions and that he uses the goods solely for business purposes.
- 1.4 As far as the Customer purchased goods from COMPRION, COMPRION offers the Customer information on own similar goods and services to the email address submitted upon purchase (§ 7 III German Unfair Competition Act (UWG)). The Customer may contradict to the receipt of such information at any time.

- 1.5 COMPRION uses the service provider CleverReach GmbH & Co. KG in particular for sending the newsletter.

2 Delivery

- 2.1 Shipping method and packaging shall be made at COMPRION's choice.
- 2.2 The client shall realise the installation of software products.
- 2.3 The delivery of goods is made ex works (EXW, Incoterms 2010). It shall be expressly agreed that a transport company chosen and commissioned by COMPRION carries out the delivery.
- 2.4 COMPRION reserves all proprietary rights for delivered software and hardware until the receipt of all payments under the contract. Possibly granted rights of use may be revoked by COMPRION after previous written warning and information in this regard in case of unauthorised refusal of payment on part of the Customer. The Customer may prove that he is entitled to a right of retention in the respective contractual relationship.
- 2.5 The Customer shall be responsible for the adherence to (re-)export restriction. Hardware and software may be subject to US or UK regulations.

3 Payment terms

- 3.1 All prices are in EUR and are subject to statutory VAT and possible customs and shipping costs.
- 3.2 Unless otherwise agreed, all payments shall be due immediately, however, at the latest 10 days after invoicing. COMPRION shall be entitled to invoice partial services.
- 3.3 Credit cards are billed by PAYONE GmbH - Fraunhoferstraße 2-4, 24118 Kiel - registered office of the company: Kiel, local court Kiel HRB 6107, managing director: Carl Frederic Zitscher, Jan Kanieß, a company of Sparkassen-Finanzgruppe group.

4 Contract implementation/Order

- 4.1 The offers presented in the online shop shall not be offers in the legal sense. With his order the Customer bindingly expresses his contractual offer. Input fields can be changed before sending the order via common keyboard and mouse

functions. By clicking on the button that completes the order, the Customer submits a binding contractual offer. After receipt by COMPRION of the Customer's offer, the Customer receives an automatically generated email listing the receipt of the order with all details. This confirmation shall not constitute an acceptance of the offer by COMPRION. The contract is concluded with regard to the ordered product when the order is accepted by COMPRION by means of an explicit order confirmation or by product delivery.

- 4.2 The contract text is saved by COMPRION and can be inspected by the Customer in his customer account.

5 Rights of use

- 5.1 When purchasing software products, the following five clauses shall apply: Unless no other intended use is agreed in particular in the product descriptions, COMPRION grants the Customer at the time of delivery/transfer of a creation the non-exclusive, locally unrestricted and permanent right to use the software/solutions for his own purposes according to the contract, i.e. in particular to save it permanently or temporarily and to load it, to display and run it, also when duplications become necessary to do so. The Customer needs separate rights of use for each further, unnecessary copy or virtualisation.
- 5.2 The copyright remarks, trademarks, other legal reservations, serial numbers as well as other features serving the identification of the program possibly contained in the software must not be amended or disguised.
- 5.3 As far as, among others, open source software or third-party software forms part of a delivery/service, COMPRION usually shall not transfer any rights of use for such software. The license terms of the respective open source software shall apply, which COMPRION submits in case of provision of such software.
- 5.4 The creation of a backup copy and the duplication in the framework of common data backup shall be permitted to the client in a reasonable number.

- 5.5 A decompilation in terms of § 69e German Copyright Act (UrhG) shall remain permitted. The Customer's rights from §§ 69 d para. 2 and 3 UrhG shall remain unaffected as well.

- 5.6 The duplication or adaptation of the user documentation shall not be permitted subject to and by taking into account the Customer's rights from §§ 69 c no. 2, 69 e UrhG (as far as the documentation is integrated in the software).

- 5.7 Under no circumstances shall the Customer be entitled to duplicate, rent out or otherwise sub-license, publicly share or make available the purchased COMPRION software or provide it to third parties for payment or without payment.

- 5.8 The Customer shall not be permitted to allow third parties the usage of the software.

- 5.9 When the Customer uses the purchased software in a scope exceeding the purchased rights of use qualitatively (with regard to the permitted usage) or quantitatively (with regard to the number of purchased licenses), he shall be obliged upon COMPRION's request to immediately purchase the rights of use needed for the permitted usage. COMPRION's right to assert any rights they are entitled to, in particular the right to claim damages and the right to terminate the use, shall remain unaffected.

- 5.10 If needed, COMPRION may mandate an independent auditor to audit the proper performance of this Contract on part of the Customer during common opening hours after reasonable notification.

- 5.11 The Customer shall provide appropriate support during the realisation of the audit without any remuneration.

- 5.12 The right to audit comprises the auditor's right to access the business premises and computer systems, in which the relevant copies/products are stored, provided that (a) the auditors adhere to the applicable rules for health and work safety as well as general safety rules for business premises and (b) the auditors assume a reasonable confidentiality obligation.

- 5.13 When purchasing software, the software source code shall not be part of the

subject matter of the contract and shall not be transferred; unless explicitly otherwise agreed by the Contractual Parties.

6 Warranty

- 6.1 COMPRION warrants that all services are free of material defects and/or defects of title.
- 6.2 The warranty shall not refer to the used open source software, since no rights of use are transferred by COMPRION for such software. Thus, liability on part of COMPRION for material defects and/or defects of title is excluded for open source software due to its specific nature.
- 6.3 A defect exists as far as the service (a) does not have the agreed properties, (b) is not suited for the contractually intended use or (c) is not suited for common use and does not have the properties that is customary for services of similar kind and that can be expected by the Customer based on the type of service.
- 6.4 The Customer shall examine the contract items immediately after transfer, in particular with regard to completeness and functionality. The Customer shall undertake to comply with his duty to examine and give notice of defects in accordance with § 377 German Commercial Code (HGB).
- 6.5 They shall be deemed approved unless COMPRION received a notice of defect in writing with specific description of the defect with regard to obvious or other defects that were detected during an immediate and thorough examination, immediately after delivery or otherwise immediately after detection of the defect or the time when the defect was detected by the Customer during normal usage without thorough examination.
- 6.6 In case of a defect, COMPRION shall remedy free of charge within a reasonable period in accordance with the following provisions.
- 6.7 At COMPRION's choice, subsequent performance may take place as rectification or replacement. The Customer shall be entitled to request a specific type of subsequent performance given that the respective other form of

subsequent performance is unreasonable. As far as third party rights are infringed, the provider may rectify at his own choice by acquiring rights of use to the benefit of the Customer sufficient for the purpose of this contract or by changing the infringing software without or only with such effect on the function that is acceptable to the Customer or by exchanging the infringing software without or only with such effect on the function that is acceptable to the Customer with a software that can be used according to the contract without any infringements or that provides a new program version that can be used according to the contract without any infringements.

- 6.8 The remedy of defects on part of COMPRION may take place by means of instructions to the Customer by phone, in writing or electronically.
- 6.9 COMPRION shall bear the costs incurred for the subsequent performance, in particular transportation, road, work and material expenses.
- 6.10 Possible additional expenses incurred to COMPRION due to the fact that the Customer transferred the products to another location than they were delivered to originally, shall be borne by the Customer.
- 6.11 The Customer shall support COMPRION to a reasonable extent in the fulfilment of the services at his own expense.
- 6.12 If it turns out that the complaint was unjustified, COMPRION shall be entitled to claim the compensation of the incurred expenses as far as the Customer acted with at least gross negligence.
- 6.13 If subsequent performance fails and the Customer granted a reasonable deadline, which allowed at least two rectification attempts, the Customer may at his discretion withdraw from the contract or reduce the payment for the respective service. Subsequent performance shall not be deemed finally failed after the second unsuccessful rectification attempt; the number of attempts shall be up to COMPRION during the period granted by the Customer as far as reasonable for the Customer.

- 6.14 Granting a deadline by the Customer shall not be necessary if this is no longer reasonable for the Customer, in particular when COMPRION refused subsequent performance finally and seriously.
- 6.15 In addition, the Customer shall be entitled to claim damages instead of the service or reimbursement of expenses if COMPRION is at fault.
- 6.16 The right to withdraw and the claim for damages instead of the complete service shall only exist for severe defects.
- 6.17 In case of a justified withdrawal on part of the Customer, COMPRION shall be entitled to claim a reasonable compensation for the usage of the products withdrawn by the Customer until the recession of the contract. Such compensation for use shall be determined based on on a four-year total period of use, however, a reasonable deduction for the impairment due to the defect that lead to the withdrawal is intended.
- 6.18 If COMPRION maliciously concealed a defect or provided a guarantee for the quality, the statutory provisions regarding material defects and defects of title and their limitation shall remain unaffected.
- 6.19 Claims for damages (including for documentation) become time-barred within one year after delivery. This shall not apply for claims for damages due to harm to life, body or health caused by the culpable breach of obligations on part of COMPRION or his legal representative or agent of the contractor. Furthermore, this shall not apply to claims due to other damages caused by a deliberate or grossly negligent breach of obligation by COMPRION or one of his legal representatives or agent.
- 6.20 If COMPRION offers the Customer new program parts, in particular patches, bug fixes, updates, upgrades, new releases, new versions etc. in order to prevent or rectify defects, the Customer shall use them.
- 6.21 Rectification of defects may also take place by providing a workaround solution.
- 6.22 The Customer shall not be entitled to any claims due to defects when he changed the products or had them changed by third parties or used them in connection

with others than those provided, unless the Customer provides prove that the material defect already existed upon transfer.

- 6.23 Mandatory unlimited liability on part of COMPRION required by law and clause 7 of this Contract shall remain unaffected from the provisions under this clause 6.

7 Liability

- 7.1 Liability shall be excluded for damages to other legal assets than life, body or health unless such damages are caused by intentional or grossly negligent behaviour of COMPRION, COMPRION's legal representatives or agents and such behaviour infringes secondary obligations essential for the contract purpose.
- 7.2 Essential contractual obligations shall be obligation whose fulfilment enable the performance of the contract in the first place and in the compliance of which the Customer may regularly trust (so-called material contractual obligation).
- 7.3 This exclusion of liability - as well as further limitations of liability in these Terms and Conditions - shall not apply insofar as claims according to the product liability law are affected, a defect was maliciously concealed or the defects were covered by a guarantee of quality.
- 7.4 Provided that the infringement of essential contract obligations was caused by the negligence of COMPRION, COMPRION's legal representatives or executives or by the simple or gross negligence of other agents, COMPRION's liability shall be limited to the damage amount that was predictable and contractually typical for COMPRION at the time of the conclusion of the contract.
- 7.5 The Customer shall undertake to make appropriate arrangements for the case that a program might not work properly in whole or in parts, i.e. by means of fallback procedures, data backup, failure diagnosis, etc. The Customer shall undertake to prevent possible loss of data and to backup such data regularly and properly.
- 7.6 In case of data loss, COMPRION shall only be liable for the costs of the restoration of data backup.

8 Final provisions

- 8.1 There are no oral collateral agreements. Changes and deviations from this agreement shall require the written form. This shall also apply to the deviation from the requirement of the written form.
- 8.2 The German substantive law shall apply to all claims arising from or in relation to this agreement with the exclusion of the law of conflict and the UN Sales Convention.
- 8.3 Furthermore, the Incoterms 2010 of the International Chamber of Commerce in Paris shall apply.
- 8.4 The place of performance for all obligations as well as the sole place of jurisdiction for all disputes arising from and in relation to this agreement shall be COMPRION's registered office.
- 8.5 Contract language is German. An English version is provided. With various language versions solely the German text of these Terms and Conditions shall be decisive.