

SCHEMA ST4 - General terms and conditions for software hire purchase of Quanos Content Solutions GmbH [2020-11]

General terms and conditions for the sale of software

§ 1 General terms

1. Lessor shall provide all services exclusively on the basis of the below mentioned general terms and conditions (GTC). Any other terms, in particular general terms and conditions of purchaser do not become part of the contract, even if lessor does not expressly contradict these terms.
2. Offers of seller are non-binding at all times. A purchase contract is concluded only if seller has confirmed the offer in writing. If seller provides the service without the receipt of a written order confirmation by purchaser, the lease contract is concluded with the supply of the software.

§ 2 Object of the purchase contract; additional services

1. Object of the purchase contract encompasses the rights of use on a computer program, the number of which is described in more detail in the order confirmation. The respective right of use is a non exclusive and non-transferable right without a time limit on the version of the computer program as described in the order confirmation ("right of use") which purchaser acquires according to the following conditions. The source code of the computer program is not included in the object of the contract.
2. The right of use which is granted according to § 2 para 1 of these GTC is deemed to be limited in time until full payment of the purchase price pursuant to § 3 of these GTC. Upon the acquisition of full title, purchaser may - by way of derogation from § 2 para 1 of these GTC - transfer the right of use to companies which are affiliated with purchaser within the meaning of §§ 15 to 18 AktG. In this case, purchaser must notify seller of the transfer without undue delay in writing. The transfer is only valid if the transferee of the right of use consents to these GTC towards purchaser in writing insofar as these GTC concern the use of the computer program.
3. The computer program is solely made available for the contractual use as described in more detail in the confirmation order and for the use within the scope of the respective user manual's guidelines; this above described right of use includes particularly the rights pursuant to §§ 69d para. 1 in conjunction with 69c no. 1 sentence 2 UrhG.
4. Any renting of the computer program by purchaser is only valid upon prior seller's consent.
5. Purchaser or – at his/her own wish – seller shall install the computer program and any customizing on an IT environment to be supplied by the purchaser.

Seller is obliged to hand over to purchaser all technical documentation necessary for the installation and use of the computer program, such as data carrier, user manual, etc. Purchaser must confirm seller the receipt of this technical documentation in writing at the time when handed over.

If the installation is performed by seller, purchaser shall bear the costs of the installation in the amount as described in the offer.

6. Seller shall during the term of the contract offer purchaser new updates and upgrades of the computer program upon availability. After the installation, purchaser shall be informed

within the frame of the operation of the computer program whether any updates and upgrades are available, and if so, which updates and upgrades. Apart from that, the support services of seller are rendered according to the support GTC in their respective version.

Backup copies of the computer program may only be established within the limits of the statutory provisions and only to the necessary extent and number. Backup copies must be labelled with a copyright notice of the original data carrier.

§ 3 Price clause

1. Purchaser is obliged to pay the purchase price for the rights of use on the computer program in the amount as described in the order confirmation. The prices are described therein plus the respectively applicable value added tax.
2. The purchase price is to be paid by instalments and is due for payment as follows:

Purchaser pays an instalment as from the date of delivery of the computer program on the third calendar day of each month, for the first time during the month following the month during which the computer program has been delivered, in the amount as described in the order confirmation. Payments must be made until the full purchase price has been paid according to § 3 para 1 of these GTC. Upon payment of the last instalment, purchaser acquires a temporarily unlimited right of use on the computer program subject to § 2 para 1 of these GTC.

3. Payment of the purchase price instalments is payable into an account as referred to on the bill of seller.
4. Purchaser may only offset claims that are either uncontested or have been recognised by final judgment. This, however, does not apply to a reduction within the meaning of § 4 para 6 of these GTC or a damage caused by a defect.

§ 4 Warranty

1. Seller warrants according to the legal requirements of the law relating to sales that the computer program which is sold within the meaning of § 2 para 1 of these GTC is suitable for contractual use implied in the user manual or, respectively the performance description. The same applies to the customary use of the computer program.
2. Should the software contain defects, seller undertakes to either remove the defects in his/her discretion, to create a solution to avoid the effect of the defect or to correct the defect by the installation of an improved software version (supplementary performance). The supplementary performance is to be initiated within the time periods as listed below:
 - Error category 1 – light (error which can be circumvented without reduction of the production): two weeks;
 - Error category 2 – medium (in case of such error, the software can only be used under difficult conditions): 2 business days;
 - Error category 3 – severe: 1 business day.
3. To the extent necessary, purchaser shall grant to seller access (for example by means of a remote control access) to the computer program installed at the purchaser as well as technical equipment and documentation for the measures within the meaning of § 4 para 2 of these GTC.

4. Seller may also engage third parties in order to carry out measures within the meaning of § 4 para 2 of these GTC. In this regard, seller neither acts on behalf of purchaser nor with his/her power of representation. Seller shall bear any costs arising from the engagement of third parties.
5. If seller can prove that the defects notified by purchaser do not give rise to any warranty claim, purchaser shall bear expenses for the error search as well as for further services in connection therewith.
6. If a measure within the meaning of § 4 para 2 of these GTC does not result in success within a period of two weeks or a period of time agreed by seller and purchaser after it has been established by seller, purchaser has the right to either respectively reduce the purchase price payable according to § 3 of these GTC in conjunction with the order confirmation or withdraw from the lease contract. Furthermore, purchaser is entitled to claim compensation from seller, provided the appropriate legal requirements are met. Apart from that, damage claims are based on § 7 of these GTC.
7. Purchaser has no claim to the performance of guarantee measures in the meaning of § 4 para 2 of these GTC or to any other warranty, if
 - he/she does not grant seller access to the computer program, etc. contrary to § 4 para 3 of these GTC, or
 - he/she or a third party engaged by him/her has performed changes to the computer program, insofar as such changes are legally not permitted (for example for the purpose to create an interface).

Besides, the legal requirement, in particular § 442 BGB, apply to warranty exemptions.

§ 5 Warranty of title

1. Seller shall, subject to § 4 para 7 of these GTC, hold purchaser harmless of any claim asserted by third parties against purchaser resulting from the infringement of intellectual property rights, insofar as this infringement allegedly results from the contractual and intended use of the computer program by purchaser. This indemnity is only applicable if purchaser immediately informs seller in full detail and in writing about such claims.
2. Purchaser shall support seller on the defense against such claims with best efforts.
3. Purchaser is entitled to carry out, in coordination with purchaser and at his/her own expense, necessary modifications on the computer program which are required due to third-party property right claims according to § 5 para 1 of these GTC. Further claims of purchaser are provided for in § 4 para 6 of these GTC.

§ 6 Time of limitation for claims

Claims of purchaser within the meaning of § 4 and § 5 of these GTC become timebarred within one year upon delivery of the computer program.

§ 7 Liability

Seller is not liable for damages arising to purchaser from minor negligence on the part of seller and/or a third party authorized by seller. An exception thereof applies to the infringement of significant contractual obligations and personal injuries. In the case of infringement of significant contractual obligations, the liability of purchaser is limited to foreseeable damages. Liability for intention and gross negligence remains unaffected.

§ 8 Final provisions

1. The contractual partners commit themselves to treat confidentially all information they obtain about circumstances concerning the internal business operation of the respectively other contractual party within the frame of the conclusion and performance of the purchase contract. This obligation to confidentiality also includes facts concerning the conclusion, contents and text of the contract. Additionally, this confidentiality obligation encompasses all circumstances in connection with this contract, and, in particular, the source code of the computer program. The source code of the computer program is a trade or business secret of seller. This confidentiality obligation remains valid for an unlimited period, also for a period reaching beyond the end of the contract.
2. This contract is subject exclusively to the law of the Federal Republic of Germany.
3. The place of jurisdiction for all disputes arising from this lease contract is Nürnberg, insofar as permitted by law. Seller may also chose as place of jurisdiction for legal actions against purchaser the purchaser's general place of venue.