

Standard Terms and Conditions of Contract of Janitza Electronics GmbH for the Provision of Software Free of Charge

§ 1 Applicability of the Terms and Conditions of Contract

(1) Unless otherwise agreed, exclusively these Standard Terms and Conditions of Contract apply for the provision of software free of charge to the user by Janitza Electronics GmbH, business domicile Vor dem Polstück 1, 35663 Lahnau (hereinafter called "JANITZA"). Deviating terms and conditions of contract of the user shall not form an integral part of the contract, even if JANITZA does not expressly contradict the same.

(2) Even if no reference is made to them once more upon the conclusion of similar contracts, exclusively the Standard Terms and Conditions of Contract of Janitza Electronics GmbH for the Provision of Software Free of Charge shall apply in the version applicable when the user made his declaration (retrievable under www.janitza.de) unless the parties expressly agree otherwise in writing.

(3) Supplemental hereto, the statutory provisions apply; for this provision of software free of charge, in particular § 516 et seq. German Civil Code [Bürgerliches Gesetzbuch] BGB (gift).

§ 2 Conclusion of the contract

(1) The contract is concluded in such manner that JANITZA, at the request of the user for the provision of the software free of charge, sends him an e-mail in confirmation and subsequently does actually provide the user with the free software (including the pertinent data carrier, in so far as available).

(2) Both parties are in agreement that the provision / gratuitous transfer of the software (and of the pertinent data carrier, in so far as relevant) is made free of charge.

(3) A binding contract is not formed until the software is actually provided (in accordance with § 518 (1) German Civil Code (BGB), a promise of a gift needs to be recorded before a notary; this deficiency in form is only cured through the actual transfer, § 518 (2) BGB).

(4) For other types of deliveries and services (e.g. delivery of hardware, software support, set-up and installation of software, training sessions) separate contracts are to be concluded.

§ 3 Object of the contract; Scope of performance

(1) The object of these Terms and Conditions of Contract is the provision of software free of charge (including the pertinent data carrier, in so far as available) to the user and the grant of the rights of use in accordance with § 4.

(2) The free software (including the pertinent data carrier, in so far as available) is transferred in the status in which it is available to JANITZA at the point in time of the transfer ("as is").

(3) Prior to the conclusion of the contract, the user shall verify that the specifications of the software conform with his wishes and requirements. He is familiar with the essential functional features and conditions of the software corresponding to the product description of JANITZA.

(4) According to the current state of technology, it is not possible to prepare software programmes which work without faults in all cases of application. Product descriptions, illustrations, test programmes etc. are therefore general performance specifications, but do not constitute any guarantees. A guarantee requires a written declaration by the management of JANITZA.

(5) The user will receive the software consisting of the machine programme and, in so far as available for the relevant software, a user manual in the form of a file. The method of the delivery of the software shall be determined by the agreements; in the absence of any other agreement, the programme and user manual will be delivered on a USB stick by post. The user has no claim to be provided with the source programme.

§ 4 Rights of the user to the software

(1) The software provided free of charge (programme and user manual) is legally protected. The copyright, patent rights, trademark rights and all other ancillary copyrights in the software, as well as all other items which JANITZA provides or makes available to the user within the framework of the contractual negotiations and performance of the contract shall, in the relationship of the parties inter se, remain the sole property of JANITZA. Where such rights are held by third parties, JANITZA has the corresponding rights of use and exploitation.

(2) The user shall only be entitled to process his own data himself and in his own operations and for his own purposes using the programme. All data processing equipment (e.g. hard disks and central processing units) on which the programmes are copied or transferred, either in whole or in part, either temporarily or permanently, must be located in the premises of the user and be in his direct possession. Further contractual provisions governing use (e.g. the limitation to a number of workplaces or persons) are to be implemented in technical terms and complied with in practice. JANITZA hereby grants the user the powers necessary for this use as a simple right of use, including the right to rectify faults. § 10 applies in respect of the period of the right of use.

(3) The user may prepare such backup copies of the programmes, as are necessary for his safe operations. The backup copies must be safely stored and, in so far as technically feasible, labelled with the copyright notice of the original data carrier. Copyright notices may not be deleted, altered or suppressed. Copies which are no longer required must be deleted or destroyed. The user manual and other documents provided by JANITZA may only be copied for internal business purposes.

(4) The user shall only be entitled to pass on the software or parts thereof free of charge to third parties in accordance with the following provisions and after carrying out the following procedures:

- a) Only one original data carrier may be passed on. Other software or software in another version may not be passed on.
- b) The user must delete all other copies of the software (irrespective of the version), in particular on data carriers and on solid state memories or random access memories (RAM). He shall relinquish the use of the same. He undertakes to carry out these procedures prior to passing on the original data carrier to third parties and to confirm this to JANITZA in writing without delay.
- c) The transfer to third parties is permanent, that is to say without any claim for return or any option of repurchase.
- d) The third party must give a written declaration to JANITZA that it will comply with § 4, § 10 (2) and (3), § 11 and § 12 of these Standard Terms and Conditions of Contract directly vis-à-vis JANITZA.
- e) The written consent of JANITZA has been received. JANITZA shall be obliged to grant consent unless compelling reasons preclude the same (e.g. protection from competition).

In the event of any breach of these provisions by the user, JANITZA reserves the right to claim damages.

(5) The provisions under paras. (2), (3) and (4 d), (e) also apply where the user eliminates the fault or (in so far as admissible) carries out any other modification of the programmes or uses the software for training purposes.

(6) The user may only decompile the interface information of the programmes within the limits defined by § 69 e German Copyright Act [Urheberrechtsgesetz] (UrhG), and then only after informing JANITZA in writing of his intent together with a request for the necessary information to be provided within a period of at least two weeks. § 11 shall apply to all knowledge and information which the user may obtain in relation to the software during the decompiling process. Each time before involving third parties, the user shall provide JANITZA with a written declaration from the third party that the latter undertakes directly vis-à-vis JANITZA to comply with the provisions laid down in §§ 4 and 11.

(7) No other forms of exploitation, in particular the sale, leasing, rental or distribution in tangible or intangible form, the use of the software by and for third parties (e.g. outsourcing, computer centre operations, application service providing) are permitted without the prior written consent of JANITZA.

(8) Objects of the contract, documents, suggestions, test programmes etc. from JANITZA which become available to the user either before or following the conclusion of the contract are deemed to be intellectual property and business and company secrets of JANITZA. They may not be used in any manner without the written permission of JANITZA and must be kept confidential in accordance with § 11.

§ 5 Place of performance

The place of performance for all performances under and in connection with this contract shall be the location of the head office of JANITZA.

§ 6 Duties of the user

(1) The user shall be obliged to test the programme thoroughly as to its usability in the specific situation before commencing any productive use.

(2) The user shall be obliged to take reasonable precautions (e.g. through data back-ups, fault diagnosis, regular examination of the results, emergency planning) in order to deal with a situation in which the programme, either in whole or in part, does not work properly. It is the responsibility of the user to ensure the functionality of the working environment of the programme.

§ 7 Material defects

(1) The liability of JANITZA as towards the user for material defects in the software provided (including the pertinent data carrier, in so far as available) shall be restricted to the case of JANITZA fraudulently concealing from the user any material defect in the software. In such case, JANITZA shall reimburse the user the damage arising therefrom in accordance with § 524 (1) German Civil Code (BGB).

(2) The user shall have no claim to have defects rectified by JANITZA in the case of software provided free of charge

§ 8 Flaws in legal title

(1) The liability of JANITZA as towards the user for flaws in the rights to the software provided (including the pertinent data carrier, in so far as available) shall be restricted to the case of JANITZA fraudulently concealing from the user any flaw in the rights to the software. In such case, JANITZA

shall reimburse the user the damage arising therefrom in accordance with § 523 (1) German Civil Code (BGB).

(2) The user shall inform JANITZA in writing without delay if any third party asserts industrial property rights (e.g. copyright or patent rights) against him in respect of the software. The user authorises JANITZA to conduct the dispute with the third party alone. So long as JANITZA avails itself of this authorisation, the user may not of his own initiative acknowledge the claims of the third party without the consent of JANITZA; JANITZA shall then at its own expense avert the claims of the third party and shall indemnify the user from all costs associated with averting such claims except in so far as these result from conduct on the part of the user in breach of duty (e.g. use of the programmes in breach of the terms of the contract).

§ 9 Liability

(1) With the exception of liability for material defects and flaws in legal title (see above §§ 7, 8), JANITZA shall only be liable in accordance with § 521 BGB in so far as the user asserts claims for damages based on deliberate intent or gross negligence, including the deliberate intent or gross negligence of representatives or vicarious agents of JANITZA.

(2) JANITZA shall be free in each case to raise the defence of contributory negligence. The user is, in particular, under an obligation to prepare data back-ups and to protect his system from malicious software in accordance with the latest state of technology.

§ 13 Commencement and end of the rights of the user

(1) Ownership of the items provided and the rights pursuant to § 4 hereof shall pass to the user upon the transfer of the same.

(2) JANITZA may revoke the rights under § 4 for compelling reasons. A compelling reason exists in particular if JANITZA cannot be reasonably expected to continue to maintain the contract in force, in particular where the user commits a significant breach of § 4.

(3) Should the rights under § 4 not come into existence or should they end, JANITZA may demand of the user that he return the software provided or submit a written declaration that it has been destroyed, as well as the deletion or destruction of all copies of the software and a written assurance that this has taken place.

§ 11 Confidentiality

(1) Each party to the contract undertakes, also beyond the end of the contract, to treat as confidential all items provided to it by the respective other party or which have otherwise become known to it before or during the performance of the contract (e.g. software, documents, information) and which are legally protected or contain business or company secrets or are otherwise designated as being confidential, unless such items are already in the public domain without any breach of the duty of confidentiality. The parties shall store and secure these items in such a way as to ensure that no third party has access to them.

(2) The user shall only make the objects of the contract accessible to those employees and other third parties who require access to the same for the performance of their contractual duties. The user shall instruct these persons regarding the necessity of maintaining confidentiality in relation to the items in question.

(3) JANITZA shall process the necessary user data relevant for handling the business transaction in due compliance with the data protection provisions. JANITZA may name the user as a reference user following the successful conclusion of its services.

§ 12 Final provisions

(1) Any amendments and supplements to the contract need to be made in writing in order to be effective. The requirement of the written form may only be revoked in writing. Transmission in text form, in particular by fax or e-mail, shall suffice to satisfy the requirement of the written form.

(2) These Terms and Conditions of Contract shall be governed by the law of the Federal Republic of Germany to the exclusion of the UN Convention on Contracts for the International Sale of Goods.

(3) The user may only set off claims of his own against claims of JANITZA if such claims are undisputed or have been judicially decided and are final and legally binding. Except as provided in § 354 a German Commercial Code [Handelsgesetzbuch] (HGB), the user may only assign claims under this contract to third parties with the previous written consent of JANITZA. The user shall only be entitled to exercise a right of withholding or to raise the defence of non-performance of the contract within the scope of this contractual relationship.

(4) In the case of contracts with business persons, public legal entities or bodies of public assets the place of performance and court venue for all disputes arising under and in connection with this contract shall be the location of the head office of JANITZA.

(5) In the case of any inconsistencies between the German version of these Terms and Conditions of Contract and any translations, the German version of these Terms and Conditions of Contract is binding.