

# Allgemeine Geschäftsbedingungen der Comitas AG

## 1. Use of software

### 1.1 Subject

1.1.1. The LICENSOR grants the LICENSEE the right to use the contractually agreed licensed products in accordance with the provisions of these General Terms and Conditions (GTC).

1.1.2 The terms 'Software' and 'Licensed Products' mean the entirety of the products, services and other materials provided to the LICENSEE by or on behalf of the LICENSOR, including names, trademarks, documentation, software, manuals, instructions, other know-hows etc. It is made clear that all other products, materials, etc. made available to the LICENSEE during the contract period automatically form part of the licensed products.

### 1.2. Right of use on the LICENSEE

1.2.1. The right of use is understood to be a simple, non-exclusive and non-transferable license, with use at the contractually agreed location, on the computer system (s) of the LICENSEE agreed between the partners.

1.2.2. The licensed products, including manuals, documentation, etc., are trade secrets and are copyrighted and may only be used on systems agreed between the partners. The software may only be copied on the computer system of the LICENSEE with the inclusion of copyright and trademark notices and only for use. The use of the licensed products by companies, partner companies, etc. affiliated or cooperating with the LICENSEE requires in each case the prior written consent of the company LICENSORS

1.2.3. The Software may not be distributed, copied, translated, disassembled, decompiled, reverse engineered, assembled or merged, adapted, altered or altered with any other software. All manuals and documentation are the property of the LICENSOR and may not be wholly or partially distributed, copied in any way, converted into any electronic form, translated or otherwise reproduced.

1.2.4. If a limited period of use has been agreed, the LICENSEE may no longer use the licensed products and all directly or indirectly related objects and rights when the contract is terminated. He must hand over all products unsolicited to the LICENSOR at the latest on the last day of the contract. In addition, LICENSEE warrants that all software copies and installations will be disabled and deleted no later than the last day of the contract.

1.2.5. The software and the licensed products may under no circumstances be installed outside the territory of the country where the site agreed in this contract (1.2.1) is located. Multiple installation is prohibited.

### 1.3. Warranty obligations of the LICENSOR

1.3.1. The LICENSOR warrants that the LICENSED PRODUCTS function properly in accordance with the LICENSOR'S current manuals and technical specifications, provided that the software is properly installed, considering the LICENSOR'S technical specifications and instructions, and excluding the right to further features and services.

1.3.2 The LICENSOR undertakes to eliminate the software errors occurring without undue delay and reproducibly occurring at the LICENSEE, at the discretion of the LICENSOR, or to inform the LICENSEE of measures to circumvent or bridge such errors. A software error occurs if the software does not or only to a significantly reduced extent provide the agreed services in the case of professional installation and contractual use, taking into account the current manuals and technical specifications of the LICENSOR, as well as excluding the right to further properties and services.

1.3.3. The warranty period is 30 days. It begins with the delivery of the software and does not extend as a result of services provided by the LICENSOR under warranty.

1.3.4. Any further claim of the LICENSEE is excluded, including liability for direct, indirect, incidental, direct or indirect damages, lost data or programs, etc.

1.3.5. If the reason for the reported error or for other problems is not with the LICENSOR, or not with its products, the activities incurred by the LICENSOR and the error recovery and remedy provided to the LICENSEE, according to the valid LICENSOR rates.

## 2. Software Maintenance

### 2.1 Object and concepts; Start, duration and completion of maintenance

2.1.1. The LICENSOR supports the LICENSEE with the contractually agreed support and update services, in accordance with the provisions of the SOFTWARE USE AND MAINTANANCE AGREEMENT, at the contracted location.

2.1.2 The terms 'Software' and 'Products' refer to the entirety of the software products provided or to be provided to the LICENSEE by or on behalf of the LICENSOR.

2.1.3. All services to the LICENSEE and all products made available to it are subject to the property and protection provisions outlined in the License section. The same applies to the rules regarding contract termination.

2.1.4 Unless otherwise agreed by contract, the maintenance agreement begins on the date of delivery of the software, with a fixed maintenance period of 12 months. The contractual relationship is renewed automatically for a further period of 12 months, unless it is terminated in writing with a notice period of 90 days before the beginning of a new maintenance period.

### 2.2. Maintenance, support and update claims LICENSEE

2.2.1. The LICENSOR undertakes the maintenance of the contractually circumscribed software.

2.2.2. The LICENSEE has no right to demand from the LICENSOR free of charge the latest version of the software and the most recent changes to existing versions. In this regard, there are special conditions on which the LICENSEE has a 50% discount reduction with ongoing maintenance agreement. The LICENSEE with a "Full-Service Agreement" has the right to request from the LICENSOR free of charge the latest version of the software and the most recent changes of existing versions in an ongoing maintenance period.

2.2.3. The LICENSOR supports the LICENSEE with relevant information.

2.2.4. The LICENSOR supports the LICENSEE by phone in the event of software problems that occur, insofar as these are described in detail by the LICENSEE in accordance with the LICENSOR'S processing modalities.

2.2.5. The LICENSOR agrees, during the contractual support period, to correct the LICENSEE's occurring, undocumented and reproducibly documented software errors at the discretion of the LICENSOR or to name the LICENSEE measures to circumvent or bridge such errors. A software error exists if the software does not or only to a significantly reduced extent provide the agreed services in the case of professional installation and contractual use, considering the current manuals and technical specifications of the LICENSOR and excluding the right to further properties and services.

2.2.6. The LICENSOR additionally offers the LICENSEE the respective according to the corresponding tariffs. The LICENSOR will inform and keep the LICENSEE informed about the current offer and the development of the services.

### 2.3. Warranty obligations of the LICENSOR

2.3.1. The LICENSOR's performance obligations are related to or limited to the software versions officially supported by the LICENSOR.

2.3.2. If the LICENSOR does not provide the contractually guaranteed services despite a written reprimand with a reasonable deadline, the LICENSEE shall be entitled to extraordinarily terminate the maintenance agreement. The maintenance fees are billed pro rata temporis, with effect from the date of the extraordinary extraordinary termination.

2.3.3. If the reason for the reported error or for other problems is not with the LICENSOR, or not with their products, the activities incurred by the LICENSOR and the services provided for error recovery and troubleshooting are to be borne by the LICENSEE, in accordance with the applicable LICENSOR prices.

## 3. SaaS-Solutions

Access to the online products / SaaS solutions is password-protected via the Internet. The customer is obliged to keep his access data and his password secret and to protect them from misuse by third parties. In this context, we would like to point out that our employees are not authorized to request passwords by telephone or in writing. When choosing the password, the generally accepted rules should be observed (length, complexity of the password). The customer must inform us immediately if the access data or password is lost or if it is suspected that this data has been misused. In the case of misuse, we are also entitled to block access to the online products / SaaS solutions. The customer is liable for misuse for which he is responsible.

## 4. General rules and final provisions

### 4.1. Liability

4.1.1. The liability of the LICENSOR is in any case limited to proven damages of the LICENSEE arising intentionally or through gross negligence by the LICENSOR.

4.1.2. To the extent permitted by law, LICENSOR disclaims all liability for all direct and indirect damages (loss of production and services, data damage and data loss, loss of income and loss of profit, etc.).

## 4.2. Products

4.2.1. The LICENSEE acknowledges that all products distributed by the LICENSOR remain the property of Comitas AG, Wiesenstrasse 5, CH-8952 Schlieren.

4.2.2. All performance obligations of the LICENSOR are referred to or limited to the software versions officially supported by the LICENSOR.

## 4.3. Contracting party

4.3.1. Insofar as several partners participate on the part of the LICENSEE or under the name LICENSEE, they have solidarity within the meaning of Art. 143 et seq. OR with regard to the agreed obligations insofar as they are incumbent on the LICENSEE / LICENSOR.

4.3.2. A complete or partial transfer of rights or obligations by the LICENSEE to third parties requires the prior written consent of the LICENSOR.

4.3.3. The LICENSOR may at any time transfer all or part of its contractual position to other legal or natural persons.

## 4.4. Attachments, Contract Priority, Changes, Notifications, Partial Invalidation

4.4.1. The GTC of Comitas AG, Wiesenstrasse 5, CH-8952 Schlieren, as well as any APPENDICES form part of the contract is understood in this comprehensive sense.

4.4.2. Contract supplements or changes must be made in writing to be valid. The terms and conditions of the LICENSEE are only for application with the express written consent of the LICENSOR.

4.4.3. Fax transmissions are recognized as valid, if the receipt is confirmed in writing by the addressee.

4.4.4. Partial ineffectiveness: Should one or more of the provisions of this contract be or become in whole or in part inadmissible, ineffective or otherwise unenforceable for any reason, this shall not affect the validity of the contract. In the event that the agreed procedure in individual points cannot or only partially be realized, or that there are ambiguities or gaps, the partners will make a settlement that leads economically to the same or to the same as possible result.

## 4.5. Infringements, Impossibility

4.5.1. A breach of contractual provisions by the LICENSEE, in particular a breach of the property rights and intellectual rights, entitles the LICENSOR to terminate the contract without notice. The assertion of damages remains reserved.

4.5.2. The performance obligations of the LICENSOR are subject to the fulfillment of performance or supply, by the contracting party.

## 4.6. Remuneration, terms of payment, interest

4.6.1. Prices: All prices are net prices excluding VAT. The maintenance fees are regulated in the maintenance agreement. A change in maintenance fees can be made at the earliest 12 months after conclusion of the contract or after the last increase. The change come into force at the earliest 30 days after written notification. The change in maintenance fees must be reported no later than 30 days before a new maintenance period. It may not exceed the increase according to the BIGA index.

4.6.2. Maturity: All invoices are due 10 days from the date of invoicing, unless the billing documents contain different terms.

4.6.3. Delayed payment: In the event of late payment, the LICENSOR must pay a default interest of 1.5% per month without a reminder from the due date. A default of payment entitles the LICENSOR to terminate the contract without notice pursuant to section 3.5.1. In such a case, the LICENSOR is obligated to return all software and documentation (unopened) as well as all product codes and related literature to the LICENSOR immediately.

4.6.4. Property: All software and licensed products supplied to the LICENSEE remain the property of the LICENSOR until full payment has been received.

4.6.5. The clearing of claims of the LICENSEE with credit balances or claims of the LICENSOR is excluded in any case, both during the contract period as well as upon termination of the contract.

4.6.6. Taxes, Expenses: Taxes, duties, fees, insurance, distribution costs, expenses, expenses, etc. associated with this contract shall be borne by, or by law passed to, the party to whom they are due.

## 4.7. Cooperation, completion work, instruction of the employees

4.7.1. The LICENSEE designates one or more persons responsible for the contractual processing Contact Person.

4.7.2. The LICENSEE will ensure the correct and timely instruction of the employees involved and issue the necessary instructions.

## 4.8. Third party providers

We offer co-operation with external partners. The customer concludes direct (license) contracts with these partners. The customer can find out more about the possibilities of connecting third-party applications and partnerships on our partner pages.

## 5. Confidentiality

The contracting parties are obliged to treat as confidential the information made available to them by the respective other party under this contract as well as knowledge that they acquire on the occasion of this cooperation on matters of a technical, commercial or organizational nature of the respective other contracting party and for the duration as well after termination of this agreement not to exploit or use or to make available to third parties without the prior written consent of the party concerned. The transfer to third parties, who are subject to a legal obligation of confidentiality, does not require consent. Passing on the information to employees who need the information for their work when performing contractual services also does not require consent. However, the parties ensure that such employees are bound by appropriate confidentiality obligations. Use of this information is limited solely to the implementation of this contract. Each party will inform the other party immediately upon learning of any unauthorized disclosure or possible loss of confidential information.

## 6. Changes to these terms and conditions

The application of conflicting or deviating terms and conditions is excluded, even if we do not expressly contradict them or accept services without reservation. In accordance with the following provisions, we reserve the right to change these general terms and conditions, provided that this change is reasonable for you, taking our interests into account; this is particularly the case if the change does not result in any significant legal or economic disadvantages for you, e.g. changes in the registration process, changes to contact information. In addition, we will inform you in advance of any changes to these terms and conditions, but at least one month before the intended entry into force. The information will be sent to the e-mail address you have given. If you do not agree to a change we intend to make, you have the right to object to the change within one month of notification.

## 7. Applicable law; Place of fulfillment; Jurisdiction

7.1. The entire legal relationship between the parties is subject exclusively to Swiss law, also with regard to procedural or enforcement law. Any applicability of the CISG is excluded.

7.2. The place of fulfillment is in any case and for both parties the registered office of the licensor.

7.3. All disputes arising from or in connection with this contract will be decided exclusively by the commercial court of the canton of Zurich, provided that the relevant jurisdiction and the prescribed amount in dispute exist, otherwise by the district court of Zurich. However, the right of the LICENSOR to enforce the LICENSEE in his respective place of residence or at the respective statutory seat remains reserved in any case.

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Appendix 1: [Data protection declaration](#)

Appendix 2: [Order processing](#)