

VenturisIT GmbH general terms and conditions

1. Area of application and object of contract

1.1 These terms and conditions apply to the contractual relationship between VenturisIT GmbH (hereinafter "VenturisIT") as well as its clients, and in particular provide for the licensing of software ("products") and the granting of utilisation rights therein in accordance with Section 6. In addition they also provide for the contractual relationships with regard to which individual agreements were reached. In the event of inconsistencies, the individual provisions take precedence insofar as they are in writing or have been confirmed by VenturisIT in writing. These terms and conditions only apply to maintenance/service and training insofar as no special provisions have been agreed in the general terms and conditions for maintenance and the general terms and conditions for training.

1.2. On conclusion of similar contracts, these terms and conditions shall exclusively apply in the version available at www.venturisit.de/9-0-AGB.html.de at the time of the client's declaration being issued, regardless of any explicit reference to this being made by VenturisIT.

1.3. Contractual offers from VenturisIT shall – unless otherwise set out in the quotation – be without engagement and non-binding until signature of contract by both sides, or a written order confirmation by VenturisIT, or the start of performance of service by VenturisIT following an order. VenturisIT may demand the written confirmation of verbal contractual declarations by the client. The client shall be bound by his declarations regarding the conclusion of a contract for a period of four weeks.

2. Licensing of products

2.1. VenturisIT fulfils its obligations for the licensing of the products either by sending corresponding data media or by providing them for download by the customer in the download area of the VenturisIT Internet page.

2.2. The client shall put the products into operation and install the products himself and test them under his operational conditions. VenturisIT shall support the client in doing so to the extent that this was agreed for a fee in writing. All support services in this respect (such as e.g. preparation for use, installation, and demonstration of the successful installation) will be remunerated by outlay unless otherwise agreed in writing. Insofar as the installation is done by VenturisIT (following separate agreement), the client shall confirm its successful execution in writing.

2.3. Subject to written agreement on deadlines, the client will be informed about the proposed release date in the order confirmation. If documents etc. from the client are pending, the release date will be delayed accordingly until they are received.

2.4. Sections 433 ff. of the German Civil Code (BGB) shall apply additionally to the supply of the product. For additional separately agreed services (such as e.g. installation, adaptation) Sections 611 ff. of the German Civil Code (BGB) shall apply additionally. To the extent that services and partial services are provided in accordance with this, they shall be accepted within 4 weeks; lest there be a notification of defects, they shall be deemed accepted thereafter.

2.5. VenturisIT shall provide the client with help to use the product either by sending corresponding data media or by making it available for download by the client in the VenturisIT download area.

3. Prices

In the absence of any other written agreement, the prices valid at the time of ordering as set out in the VenturisIT quotation shall apply plus value-added tax. Travel costs shall be charged separately; Travel time is considered working time.

4. Payment terms

4.1. Payments fall due without deductions at the agreed deadlines or as set out in the quotation or the invoice, alternatively within 14 days of the products having been made available and the invoice having been received by the customer. In cases of billing by flat rate prices, monthly interim billing is deemed to have been agreed.

If the client is in arrears with payment, VenturisIT may charge interest on arrears of 9 percentage points over the respective base lending rate plus a flat rate fee of EUR 40.

4.3. Rights of retention of the client regarding the payment claim because of claims which are not based on the contract concerned shall only exist if the claim is not in dispute or has become legally absolute. VenturisIT may refuse delivery for as long as the client is in arrears with the payment of previous deliveries or services by VenturisIT.

4.4. The client is only entitled to offset claims if his counterclaim is not in dispute or has become legally absolute.

4.5. The products supplied by VenturisIT shall remain its property until paid in full, the client shall therefore only receive a provisional and revocable utilisation right until full payment has been received.

5. Warranty

5.1. The existence of errors shall be determined by the module description provided by VenturisIT. Smaller software errors are unavoidable and do not represent a defect insofar as the practical fitness for use is not impaired and there is no divergence from the agreed characteristics. Special requirements, wishes and ideas of the client only become an element of the contract as the result of an express written agreement.

5.2. In the event of a justified notification of defects, the client shall be entitled to the statutory warranty rights with the following restrictions:

5.2.1. VenturisIT may decide at its own discretion whether it complies with the client's demand for supplementary performance through rectification of the defect, or through replacement with a non-defective product, or through showing a possibility to avoid the effects of the defect.

5.2.2. In the absence of special circumstances, the client may not demand the provision of a special non-defective version of the products but has to wait until the next regular update.

5.2.3. VenturisIT is entitled to effect the temporary removal of defects in the products also through workarounds until the defect has been removed in one of the following regular updates. If a serviceable workaround is provided, the defect does not necessarily have to be removed already during the following update.

5.2.4. The customer must grant VenturisIT fundamentally at least three attempts at supplementary performance within a period of at least three months with regard to the same defect insofar as nothing else arises from the nature of the sales item or the defect or other circumstances.

5.2.5. The client must grant VenturisIT at least 14 days for each attempt at supplementary performance insofar as nothing else arises from the nature of the sales item or the defect or other circumstances.

5.2.6. Withdrawal of the client from the contract for neglect of duty by VenturisIT is excluded unless the neglect of duty is the responsibility of VenturisIT or the right of withdrawal arises from defects in the product.

5.3. If the client has used the products inappropriately, in an unsuitable installation environment, with defective software on non-approved work units or addresses within a local network, or in connection with products not supplied by VenturisIT, exposed them to impermissible external influences, improperly installed them or made unjustified changes to the products or their original identifying features, or retrospective changes to the hardware or the operating system programs, the defectiveness of the software cannot be assumed per se. In these cases the client must prove that the irregularities which have occurred are due to defects in the products and already existed when it was supplied. Absent such proof, warranty is excluded. Functional impairment of the products resulting from defective hardware or incorrect operation by the client as well as a merely negligible reduction in quality shall not be considered defects.

5.4. In the event of a cancellation of the contract, the client must also hand over or destroy all copies made of the products and documentation and give assurance to VenturisIT that all copies have been handed over or destroyed.

6. Utilisation of the products, rights granted

6.1. The client shall receive a non-exclusive, chronologically unlimited right to use the products in the scope set out in greater detail in the quotation. VenturisIT is and remains the owner of the utilisation and exploitation rights in all the works protected by copyright created at VenturisIT as part of the order. VenturisIT transfers to the client only simple utilisation rights insofar as they are required for the intended use of the products.

6.2. To the extent that the products are used in greater scope than contractually permitted (particularly if the number of stand-alone computers agreed in the quotation is exceeded), the client is obliged to obtain additional licenses.

6.3. The client is entitled to make a backup copy. The client is obliged to reproduce the VenturisIT description of goods or copyright notices and attach them to the relevant backup copy.

6.4. The client is not entitled to lease out the products, or sub-license them in any other way, to reproduce or make them available publicly, or make them available to third parties, or to allow their use in a computer centre by third parties, or to permit third parties to use them in a computer centre without the prior written consent of VenturisIT. VenturisIT is not obliged to grant such consent.

6.5. The client is entitled to permanently assign the acquired copy of the products to a third party. In such an event he will completely give up the use of the program, remove all installed copies of the program from his computers, and delete all copies on other data media or hand them over to

VenturisIT. At the request of VenturisIT the client shall confirm in writing that the above measures have been carried out. In addition the client will expressly agree with the third party the observation of the conditions for use provided for in this Section 6.

6.6. VenturisIT can revoke the utilisation rights in the products if the client is in serious breach of the restrictions as set out in Subsections 6.4. and 6.5. In less serious cases VenturisIT shall beforehand set an extension period for remedial action. In repeated cases VenturisIT may revoke the utilisation rights without setting a deadline. In the above cases the client is obliged on request to delete or hand over the relevant programs and documentation along with copies immediately, Subsection 6.5. Sentences 2 and 3 apply accordingly. This leaves more extensive claims for damages of VenturisIT unaffected. The fee paid minus compensation for use based on 1/36 of the license fee per month started since licensing of the products will, however, be offset against such damages.

6.7. The client may not use the products without restriction and permanently until the purchase price has been paid in full; if payment is not made in good time, VenturisIT may reclaim the products and revoke the client's utilisation rights (see Subsection 4.5.). To this end VenturisIT is entitled to integrate time limitations into the products which make them unusable after a certain period if payment as required is not made and hence the products are not activated.

7. Third party claims

7.1. To the extent that the client immediately informs VenturisIT about measures taken against him based on alleged infringement of third party proprietary rights by the products or their use, and grants VenturisIT the exclusive control over the defence and all negotiations regarding a settlement or conclusion of any legal action, VenturisIT will initiate legal defence at its own cost and hold the client harmless from all claims for damages and costs arising from this measure.

7.2. If an interim injunction is granted against the client, VenturisIT will at its own discretion and at its own cost either acquire the right for the continued use of the products by the client, or exchange the products, or change them in such a way that they no longer represent an infringement. If at the exclusive discretion of VenturisIT this is not possible at a reasonable cost, VenturisIT will grant the client a corresponding refund on return of the products.

8. Secrecy

The parties are obliged to prevent access for third parties to confidential or protected information without the written consent of the respective other party, and to treat such information as confidential. The information may be disclosed to the extent that a party is obliged to do so by law or by a court or an authority. In such an event it will immediately notify the other party of the pending disclosure and its scope.

9. Product changes

VenturisIT reserves the right, without prior notification of the client or his consent, to undertake product changes if this is necessary for security reasons or for the products to meet the product specifications and to the extent that this will not cause a deterioration of the products.

10. Export

If supply of the customer is not possible due to a ban on exports, VenturisIT is released from its obligation to perform.

11. Limitations of liability

11.1. VenturisIT shall pay compensation for, or reimbursement of, wasted expenditures, regardless of the legal grounds (such as e.g. obligations arising from legal transactions or similar to legal transactions, material defects and deficiency in title, neglect of duty and tort), only to the following extent:

11.1.1. Liability in the event of intent and within the scope of any guarantee provided by VenturisIT is unlimited.

11.1.2. In the event of gross negligence VenturisIT shall be liable to the amount of the typical damage foreseeable on conclusion of contract.

11.1.3. In the event of an ordinary negligent violation of a contractual duty, the fulfilment of which is a prerequisite for the proper execution of the contract and in the compliance with which the customer may regularly trust, and the violation of which places the achievement of the purpose of the contract at risk, VenturisIT shall be liable to the amount of the typical damage foreseeable on conclusion of contract.

11.2. The plea of contributory negligence remains open to VenturisIT. The client in particular has a duty to back up data and defend against malware always in accordance with the state of the art. VenturisIT shall not be liable for the loss of data if the client has not backed up his data daily and protected it appropriately against attacks on the system.

11.3. In the event of loss of life, physical injury and damage to health, and with regard to claims arising from the product liability act, the statutory provisions shall apply without restriction.

11.4. The above limitations of liability shall also apply with regard to the personal liability of VenturisIT's staff, representatives and organs.

11.5. The possibility of third-party liability insurance shall not lead to more extensive liability than provided for above and in Subsection 5.2.

11.6. VenturisIT shall only be obliged to examine the client's instructions and documents for errors on written agreement.

12. Limitation

12.1. The client's entitlements to warranty and/or compensation expire by limitation one year after delivery, installation, insofar as owed by VenturisIT, or acceptance for products subject to acceptance, if no consumer is party to the transaction.

12.2. The general period of limitation in Section 195 of the German Civil Code (BGB) shall be reduced to one year.

13. Concluding provisions

13.1. The client's general terms and conditions shall not apply.

13.2. Amendments and supplementary agreements shall be in writing; this also applies to the written form clause.

13.3. VenturisIT GmbH is entitled to have the operating location of the client, the systems and programs inspected and investigated by an expert selected in agreement with the client in order to verify whether the client is complying with the provisions of this contract. If any breaches are identified, the client shall bear the cost.

13.4. Should a provision in these terms and conditions be or become void, invalid or incapable of implementation, the validity of the remaining provisions in these terms and conditions shall not be affected.

13.5. German law shall apply with the exception of international codes such as e.g. the CISG or the UN convention on the sale of goods. Place of fulfilment shall be Bad Soden/Ts. Place of jurisdiction for legal disputes shall be Frankfurt am Main if the client is a businessman, a legal entity under public law, a special fund under public law, and a specific place of jurisdiction – e.g. for action for default – is not provided for by law. Each party remains free to take legal action at the general place of jurisdiction of the other party.

Status: Bad Soden, May 2016