

## General Terms and Conditions of VenturisIT GmbH

### 1. Scope of application and subject matter of the contract

1.1 These Terms and Conditions apply to the contractual relationship between VenturisIT GmbH (hereinafter referred to as "**VenturisIT**") and its customers and regulate in particular the provision of software ("**Products**") and the granting of rights of use in accordance with section 6. They also apply complementarily to contractual relationships with regard to which individual agreements have been made; in the event of contradictions, the individual rules prevail. These Terms and Conditions shall apply complementarily to maintenance and training, unless more specific provisions have been agreed in the General Terms and Conditions for Maintenance or the General Terms and Conditions for Training.

1.2 These terms and conditions also apply to the conclusion of future contracts of the same kind in the version available at <https://venturisit.de/en/terms-and-conditions/> at the time of the customer's declaration, even if VenturisIT does not refer to them again.

1.3 Contractual offers by VenturisIT are - unless otherwise stated in the offer - subject to change and non-binding until both parties have signed the contract or a written order confirmation has been issued by VenturisIT or VenturisIT has started to provide services after an order. VenturisIT may request written confirmations of verbal contractual statements made by the customer. Orders from customers are deemed to be a binding offer of contract. Unless otherwise stated in the order, VenturisIT is entitled to accept this contractual offer within four weeks after receipt by VenturisIT.

1.4 Depending on the model, the subject matter of the contract is (i) the permanent transfer of the Product specified in the offer/licence certificate (purchase) or (ii) the provision of the Product for a limited period of time (subscription), in each case together with the granting of the rights required for its use in accordance with the contract.

### 2. Surrender of the Products

2.1 VenturisIT fulfils its obligation to provide the Products at its own discretion either by sending a corresponding data carrier or by making them available for download by the customer in the download area of the VenturisIT website.

2.2 Before concluding the contract, the customer must check that the specification of the product corresponds to his wishes and needs and that he has the necessary hardware and software environment within which the Products are to be used.

2.3 The customer will commission and install the Products himself. VenturisIT will support the customer during installation and commissioning if this has been agreed in writing for a fee. All support services such as preparation for use, installation and demonstration of successful installation will, unless otherwise agreed in writing, be remunerated on a time and material basis in accordance with a (separate) quote. If VenturisIT takes over the installation (according to separate agreement), the customer will confirm its successful completion in writing.

2.4 Subject to written agreements on dates, the customer will be informed of the expected date of provision of the Products in the order confirmation. If required documents etc. from the customer are still outstanding, the provision date shall be postponed accordingly by the period of time until they are received.

2.5 §§ 433 ff. BGB (*Bürgerliches Gesetzbuch*, German Civil Code) shall apply complementarily to the delivery of Products. For any additional separately agreed services (e.g. installation, adjustment), §§ 611 ff. BGB shall apply complementarily. If services and partial services subject to acceptance are ordered in addition, these must be accepted (*Abnahme*) within 4 weeks; in the absence of any notification of defects they shall be deemed accepted thereafter.

2.6 VenturisIT provides the customer with an operating manual for the Products either by sending a respective data carrier or by making it available for download by the customer in the download area of VenturisIT.

### **3. Prices**

Unless otherwise agreed in writing, the prices valid at the time of the order and shown in VenturisIT's quotation plus the statutory value added tax shall apply. Travel expenses will be charged additionally; travel time is considered working time.

### **4. Terms of payment, right of retention, set-off, retention of title**

4.1 Payments shall be due without deduction on the dates agreed or specified in the contract, the offer or the invoice and, in the absence of such an agreement, within 14 days after provision of the Products and receipt of the invoice by the customer. In the event of invoicing according to unit prices, monthly interim invoices shall be deemed agreed.

4.2 If the customer is in default of payment, VenturisIT reserves the right to charge interest on arrears.

4.3 A right of retention of the customer against the payment claim due to claims not based on the contract in question only exists in case of an undisputed or legally established claim. VenturisIT may refuse delivery as long as the customer is in default of payment for previous deliveries or services of VenturisIT.

4.4 The customer shall only be entitled to offset claims if his counterclaim is undisputed or has been legally established or is based on the same contractual relationship.

4.5 The Products delivered by VenturisIT remain its property until full payment has been made, the customer therefore only receives a provisional and revocable right of use until full payment has been made.

### **5. Warranty**

5.1 The existence of errors is determined exclusively based on the module description provided by VenturisIT. Minor software errors are technically unavoidable and do not constitute defects as long as the practical usability is not impaired and there is no deviation from the agreed specification. Special requirements, wishes and ideas of the customer will only become part of the contract if expressly agreed in writing.

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

5.2.1 VenturisIT can meet the customer's request for subsequent performance at its own discretion by remedying the defect or by delivering a replacement product free of defects or by pointing out a possibility to avoid the effects of the defect.

5.2.2 VenturisIT also fulfils its obligation to rectify defects by making updates provided with an automatic installation routine available for download on its homepage. Unless there are special

circumstances, the customer cannot demand the provision of a special error-corrected version of the Products, but must be patient until the next regular update.

5.2.3 VenturisIT is entitled to effect the temporary elimination of errors in the Products also by means of workarounds until the error has been eliminated in one of the following regular updates. If a suitable workaround is provided, the error does not have to be eliminated in the following update.

5.2.4 The customer must generally allow VenturisIT at least three attempts of subsequent performance within a period of at least three months with regard to the same defect, unless the nature of the product or the defect or other circumstances require otherwise. If a maintenance contract exists between the parties, the period for remedying defects shall be based on the times provided for in this maintenance contract.

5.2.5 The customer must allow VenturisIT at least 14 days for each attempt at subsequent performance, unless otherwise required by the nature of the product or the defect or other circumstances.

5.2.6 The customer's right to withdraw from the contract is excluded, unless there is a simultaneous right to withdraw from the contract due to defects in the product.

5.3 If the customer has used the Products improperly, in an unsuitable installation environment, with defective software, on unauthorised work units or addresses within a local network or in connection with Products not supplied by VenturisIT, exposed to inadmissible external influences, installed improperly or made unauthorised changes to the Products or their original identification features or retrospective changes to the hardware or the operating system programs, it cannot be assumed per se that the Products are defective. In such cases, the customer must prove that any irregularities that have occurred are due to defects in the Products and were already present at the time of handover. If he does not succeed in doing so, the warranty shall be excluded. Functional impairments of the Products resulting from hardware defects or incorrect operation by the customer as well as merely insignificant reductions in quality are not defects.

5.4 In the event of rescission of the contract, the customer shall also surrender or destroy all copies made of the Products and the documentation and confirm vis-à-vis VenturisIT that it has surrendered or destroyed all copies.

## **6 Use of the products, granting of rights, third party software**

6.1 The customer receives (i) in the case of purchase with full payment of the fee, a non-exclusive right to use the Products for an unlimited period of time to the extent specified in the offer, (ii) in the case of subscription against payment of the fee, a non-exclusive right to use the Products for the duration of the contract to the extent specified in the offer. VenturisIT is and remains the owner of the rights of use and exploitation of all copyrighted works created at VenturisIT within the scope of the order. VenturisIT only transfers simple rights of use to the customer to the extent necessary for the intended use of the Products.

6.2 If the Products are used to a greater extent than contractually permitted (in particular if the number of individual workstations agreed in the offer is exceeded), the customer shall be obliged to obtain additional licenses.

6.3 The customer is entitled to make one backup copy. The customer is obliged to reproduce VenturisIT's goods designations or copyright notices and to attach them to the backup copy.

6.4 Without VenturisIT's prior written consent, the customer is not entitled to rent or otherwise sublicense the Products, to reproduce them publicly or make them accessible or to make them available to third parties or to grant use in a data centre to third parties or to allow third parties to use them in a data centre. VenturisIT is not obliged to grant this consent.

6.5 VenturisIT can revoke the right to use the Products if the customer seriously violates the restrictions mentioned in clauses 6.3. and 6.4. In less serious cases VenturisIT will first set a deadline with a reasonable time limit for remedy; if the customer does not remedy the breach within the deadline, VenturisIT may revoke the right of use. In case of repetition VenturisIT may revoke the right of use without setting a deadline. In the aforementioned cases the customer is obliged to immediately delete the respective programs and documentation including copies or to hand them over upon request by VenturisIT, and to confirm implementation of the respective measures to VenturisIT in writing. The foregoing provision does not affect any further claims, including claims for damages, of VenturisIT. The remuneration paid minus a compensation for use of the Products in the amount of 1/36 of the remuneration per month or part thereof since the provision of the Products will be deducted from claims for damages.

6.6 The customer may only use the Products without restriction and in perpetuity after full payment of the purchase price; if payment is not made in due time VenturisIT may reclaim the Products and revoke the right of use (see clause 4.5.). For this purpose, VenturisIT is entitled to integrate time locks into the Products, which it renders unusable after a certain period of time if payment is not made as agreed and the Products are unlocked.

6.7 **"Third Party Software"** means software that does not originate from VenturisIT itself. If Third Party Software is also provided to the customer as a part of the products under the contract or individual order, it is subject to separate third-party license terms. In this case, VenturisIT will provide the customer with a reasonable opportunity to obtain knowledge of the third-party license terms before concluding the contract, e.g. by means of a link on VenturisIT's website. VenturisIT implements this Third Party Software "as is" into the products. Customer may use the Third Party Software in connection with the Products of VenturisIT, provided that such use is in accordance with these terms and conditions and the license information applicable to the Third Party Software. The third-party license terms shall take precedence over these terms and conditions with respect to the third party component. Third-party license terms may contain additional rights, but also limitations or exclusions of warranty or guarantee and liability claims. We therefore recommend that the customer informs himself about these rights, limitations, and exclusions before concluding the contract.

## **7. Term and termination in the case of subscription**

7.1 The contract is concluded for one (1) year. It shall be automatically renewed for a further year if it is not terminated in writing with a notice period of 4 weeks before the end of the respective year.

7.2 Furthermore, either party may terminate the contract in writing without notice for good cause. Good cause entitling VenturisIT to terminate the contract exists in particular if the customer infringes VenturisIT's rights of use by using the software product beyond the scope permitted under this contract and does not remedy the infringement following a warning by VenturisIT within a reasonable period of time determined by VenturisIT, not exceeding two (2) weeks.

7.3 Notice of termination must be given in writing.

7.4 In the event of termination, the customer must cease using the Products and remove all installed copies of the program from its computers as well as immediately return to VenturisIT any backup copies that may have been made or destroy them, at VenturisIT's discretion.

## **8. Claims by third parties**

8.1 The customer will inform VenturisIT immediately of any claims made against it due to alleged infringement of third party property rights by the Products or their contractual use. Upon request, the customer will leave the defence against such claims to VenturisIT and grant all powers of attorney and authority necessary to defend the Products against the asserted claims. VenturisIT will, to the extent possible, at its own expense, assume the defence against claims asserted on the basis of the alleged infringement of intellectual property rights and conduct any negotiations for the settlement of the dispute. The customer will provide VenturisIT with appropriate support in this respect. VenturisIT's liability for defects of title remains unaffected. Each party is furthermore entitled to join a legal action brought against the other party due to alleged infringement of property rights; each party shall bear its own cost.

8.2 If an injunction is issued against the customer due to use of the Products in accordance with the contract, VenturisIT will, at its own discretion and at its own expense, either acquire the right for further use of the Products by the customer or replace the Products or modify them in such a way that they do no longer infringe. If, in VenturisIT's sole discretion, this is not possible at reasonable expense, VenturisIT will reimburse the customer accordingly against return of the Products.

## **9. Confidentiality**

The parties shall not disclose any confidential or proprietary information to third parties without the prior written consent of the respective other party and shall 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 this case, it shall immediately notify the other party of the impending disclosure and its scope.

## **10. Product changes**

VenturisIT reserves the right to make product changes without prior notice to or consent by the customer if such changes are necessary for safety reasons or to ensure that the Products meet the product specifications and the Products do not deteriorate as a result. Furthermore, changes may be made at any time, provided that the intended use of the Product is not significantly impaired.

## **11. Export**

Should it not or no longer be possible to supply the customer due to an export ban, VenturisIT shall be released from its obligation to perform.

## **12. Limitations of liability**

12.1 VenturisIT will pay damages or compensation for futile expenses, irrespective of the legal grounds (e.g. arising from contractual and quasi-contractual obligations, material defects and defects of title, breach of duty and tort), only to the following extent:

12.1.1 Liability is unlimited in case of intent, for damages resulting from injury to life, body or health, and to the extent of a guarantee assumed by VenturisIT.

12.1.2 In case of other damages (not covered by 12.1.1 or 12.3) due to gross negligence VenturisIT is liable to the amount of the typical damage foreseeable at the time of conclusion of the contract.

12.1.3 In the event of a breach of an obligation due to simple negligence, the fulfilment of which is a prerequisite for the proper performance of the contract and on the observance of which the customer may regularly rely, and the breach of which jeopardises the achievement of the purpose of the contract, VenturisIT shall be liable to the amount of the typical damage foreseeable at the time of conclusion of the contract.

12.2 VenturisIT reserves the right to invoke contributory negligence by the customer. In particular, the customer has the duty to back up data and to prevent malware according to the current state of the art. VenturisIT is not liable for the loss of data if the customer has not adequately backed up his data on a daily basis and secured it against interventions in the system.

12.3 In the event of injury to life, body and health and in the event of claims under the Product Liability Act, the statutory provisions shall apply without limitation.

12.4 The above limitations of liability also apply to the personal liability of VenturisIT's employees, representatives and bodies.

12.5 The possibility of a liability insurance does not lead to a more extensive liability than regulated above and in section 5.2.

12.6 VenturisIT is only obliged to check instructions and documents of the customer for correctness if agreed in writing.

### **13. Statute of limitations**

13.1 The customer's claims for warranty and/or damages expire one year after delivery, installation, if owed by VenturisIT, or acceptance in the case of Products subject to acceptance, if no consumer is involved in the transaction.

13.2 The general limitation period of § 195 BGB is reduced to one year, with the exception of liability due to intent.

### **14. Final provisions**

14.1 The customer's general terms and conditions shall not apply.

14.2 Amendments and additional agreements must be made in writing; this also applies to this written form clause.

14.3 VenturisIT is entitled to have the customer's premises, the equipment and the programs inspected and examined by an expert selected in agreement with the customer in order to be able to assess whether the customer is complying with the provisions of this contract. The customer shall bear the costs in the event of any infringements found.

14.4 If any provision of these Conditions is or becomes invalid, void or unenforceable, the validity of the remaining provisions of these Conditions shall not be affected.

14.5 German law shall apply with the exception of international codifications such as the United Nations Convention on Contracts for the International Sale of Goods of 11.4.1980 (UN Sales Convention). Place of performance is Bad Soden/Ts. The place of jurisdiction for legal disputes is Frankfurt a.M., provided that the customer is a merchant, a legal entity under public law or a special fund under public law and no special place of jurisdiction is provided for by law - e.g. for dunning proceedings. Each party is free to bring an action at the general place of jurisdiction of the other party.

Status: Bad Soden, 01 August 2023