

SCHEMA ST4 - General license terms of Quanos Content Solutions GmbH [2020-11]

§ 1 General

1. The elements of contract are in the below described order:
 - the offer and service description issued by Quanos Content Solutions and
 - in addition the general license terms hereinafter.
2. The general license terms provide for the granting of usage rights by Quanos Content Solutions.
3. In as far as licensee also uses general terms and conditions, these do not apply. The following license terms also apply in case that licensee has informed or informs about his own deviating terms or in as far as these terms are referred to on documents of the licensee, in particular order confirmations or invoices. Order confirmations of the licensee with deviating terms are hereby explicitly objected to.

§ 2 Licenses and technical documents

1. Quanos Content Solutions grants the licensee the number of user rights to use the computer program resulting from the applicable contract document (in particular, the applicable order confirmation of Quanos Content Solutions). These user rights are non-exclusive, unlimited in time and further assignable.
2. The acquisition of these user rights is effected by the purchase and the transfer of a respective license to use the computer program. Quanos Content Solutions offers licensee a license to use the computer program according to the respective contractual document and a transfer thereof.
3. Quanos Content Solutions shall hand over to the licensee all necessary technical documents which are required for using the computer program, such as data carriers, user manuals, etc. The licensee shall confirm in writing the receipt of these technical documents at the time of receipt. Licensee uses the computer program according to the specifications of the user manual and the documentation; such use includes in particular the rights according to §§ 69d para. 1 in connection with 69c Nr. 1 Satz 2 UrhG (= German copyright Act). Licensee is not entitled to either himself or via third parties perform changes to the computer program.
4. Licensee is entitled to perform changes to the released and documented interfaces of the computer program.
5. The computer program can be operated in the IT environment described in the respective contractual document. Licensee is responsible to, at his own costs, create and maintain the IT environment which is necessary for the operation of the computer program.
6. In the framework of the licensing, the computer program is eventually adapted to individual needs of the licensee. This would typically constitute a customizing in the course of which the computer program is adapted to the licensee according to the existing technical possibilities. Such customizing, in the course of which typically no new software is developed, is part of a different agreement.

§ 3 Warranty for defects in kind

1. Quanos Content Solutions warrants the licensee that the computer program is, at the time of the transfer of risk, suitable for the use as stipulated in the present agreement. The use as stipulated in this agreement is specified in the operative description in the technical documents according to §2. This also applies to the customary use of the computer program.

Descriptions of the computer program, in the form of, e.g. graphic representations, charts, catalogues or similar representations, which exist at the time of the conclusion of the agreement or will be created in future, merely contain a non-binding description and do not imply any warranty. The same applies to technical documents pursuant to §2. Apart therefrom, a guarantee regarding the computer program's properties requires written form for its validity.
2. During the warranty period, Quanos Content Solutions shall either remove reproducible defects at its own discretion, create a circumvention of the effects of such defects or rectify such defects by installing an improved software version (hereinafter referred to as "supplementary performance".) The warranty period is 12 (in words: twelve) months from the date of the delivery of the computer program. To the extent necessary for the supplementary performance and analysis of defects, the licensee shall grant Quanos Content Solutions access to the IT environment together with the computer program (e.g. remote access) and to his documents as well.
3. During the warranty period, Quanos Content Solutions is entitled to engage third parties for the purpose of supplementary performance. In this regard, Quanos Content Solutions acts neither on behalf nor with power of representation of the licensee. Any costs arising out of the engagement of third parties are borne by Quanos Content Solutions.
4. Quanos Content Solutions bears the initial expenses for the defect search until the availability of a first defect analysis. If Quanos Content Solutions can verify that the defects notified by the licensee are not covered by the warranty, then licensee must bear the further costs arising from the defect search and services in connection therewith.
5. If the supplementary performance as described in para. 2 has failed after the expiry of a reasonable time period, the licensee may, at his discretion, withdraw from the contract regarding the delivery of the respective computer program or reduce the purchase price. In addition, the licensee is entitled claim damages from Quanos Content Solutions provided that the legal requirements are met. besides, § 4 applies to the claim for damages.
6. The licensee is not entitled to claim supplementary performance and has no other rights of warranty, if he
 - does not grant Quanos Content Solutions access to the IT environment together with the computer program (e.g. remote access, etc.), or
 - a third party engaged by him undertakes modifications to the computer program (e.g. carrying out configurations), unless the defect was not caused by such modification.

§ 4 Liability

1. In all cases of intent, gross negligence, injuries to life, limb or health or in line with the provisions of the Statute on product liability or a guarantee undertaken by Quanos Content Solutions, the liability of Quanos Content Solutions is unlimited. In cases of light negligence, Quanos Content Solutions is only liable in case of the infringement of an essential contractual duty, the rendering of which enables to perform the agreement and the receipt of which the licensee may regularly expect.
2. The liability of Quanos Content Solutions in case of a light negligently infringement of essential contractual duty is in total limited to the amount of a foreseeable damage, the incurring of which typically has to be expected. The maximum of such liability is limited to twice the amount of the (net) license royalties according to this agreement.
3. In rendering the service according to this agreement Quanos Content Solutions owes the industry average diligence. In determining whether Quanos Content Solutions has acted with fault, it has to be taken into account that it is not possible to technically develop software without defects.
4. Quanos Content Solutions is not liable for the loss of data and/or functions of the computer program insofar as the damage has occurred due to the licensee omitting the performance of a data backup and thereby ensuring that lost data may be retrieved with reasonable expenditure.
5. There is no further liability of Quanos Content Solutions.
6. The above provisions also apply to third parties engaged by Quanos Content Solutions.

§ 5 Warranty for legal defects and hold free from Quanos Content Solutions

1. Quanos Content Solutions grants the licensee that the contractual use of the computer program does not infringe any equivalent intellectual property rights of third parties. Quanos Content Solutions shall hold the licensee free from all claims of third parties which they assert against the licensee by claiming the infringement of intellectual property rights, if and insofar such infringement has occurred within the scope of the contractually determined use of the computer program. Such hold free is subject to the licensee fully notifying Quanos Content Solutions about such claims promptly and in writing.
2. The licensee holder shall use best efforts to support Quanos Content Solutions on defending against such claims.
3. Quanos Content Solutions may perform the modifications to the computer program which are required by intellectual property right claims of third parties according to para. 1 at his own expense and in coordination with the licensee. Further claims of the licensee are set out in § 4.
4. The hold free within the meaning of para. 1 does not apply if the licensee or a third party engaged by him performs modifications to the computer program.

§ 6 Source Code

1. Quanos Content Solutions deposits the source code of the computer program with a trustee of its choice.
2. Trustee will grant licensee access to the source code, if Quanos Content Solutions applies for insolvency. The access is granted to the extent necessary to ensure the operation of the computer program, i.e. the correction of defects.

§ 7 Final provisions

1. The licensee may only set off against the claims of Quanos Content Solutions if his claims are uncontested or legally established. This does not apply to pecuniary claims of the licensee from representations and warranties, i.e. a (partial) reimbursement due to withdrawal or a decrease of the royalties or claims for damages.
2. The present terms and conditions are exclusively subject to German law. The applicability of CISG (Convention on the International Sale of Goods) is excluded. Jurisdiction for possible disputes is the district in which Quanos Content Solutions is seated.