

SCHEMA ST4 - General terms and conditions for the leasing of software of Quanos Content Solutions GmbH [2020-11]

§ 1 General terms

1. Lessor shall provide all services exclusively on the basis of the below mentioned general terms and conditions (GTC). Any other terms, in particular general terms and conditions of lessee do not become part of the contract, even if lessor does not expressly contradict these terms.
2. Offers of lessor are non-binding at all times. A lease contract is concluded only if lessor has confirmed the offer in writing. If lessor provides the service without the receipt of a written order confirmation by lessee, the lease contract is concluded with the supply of the software.

§ 2 Object of the lease contract; additional services

1. Lessor rents to lessee for the term of the lease contract the rights of use on a computer program, the number of which is detailed in the order confirmation. The respective right of use is a non exclusive, time limited and non-transferable right on the version of the computer program as described in the order confirmation ("right of use") which purchaser acquires according to the following conditions. The source code of the computer program is not included in the object of the contract.
2. The computer program is solely made available for the contractual use as described in more detail in the order confirmation and only for the use within the scope of the respective user manual's guidelines; this above described right of use includes particularly the rights pursuant to §§ 69d para. 1 in conjunction with 69c no. 1 sentence 2 UrhG.
3. Only lessee is entitled to use the computer program. Lessee has not the right to make the program available to third parties without lessor's prior consent.
4. Lessee or – at his/her own wish – lessor shall install the computer program and any customizing on an IT environment to be supplied by the lessee. Lessor is obliged to hand over to lessee all technical documentation necessary for the use of the computer program, such as data carrier, user manual, etc. Lessee must confirm lessor the receipt of this technical documentation in writing at the time when handed over. If the installation is performed by lessor, lessee shall bear the costs of the installation in the amount as described in the offer.
5. Lessor shall during the term of the contract offer lessee updates and upgrades of the computer program upon availability. After the installation, lessee shall be informed within the frame of the operation of the computer program whether any updates and upgrades are available, and if so, which updates and upgrades. Apart from that, the support services of lessor are rendered according to the support GTC in their respective version.
6. Lessee is not entitled to carry out software modifications to the computer program by him or herself or by third parties insofar as such changes are not legally permitted. Lessee is entitled to make changes on revealed and documented interfaces of the computer program. Backup copies of the computer program may only be established to the necessary ex-

tent and number for the lessee's own business operation. Backup copies must be labelled with a copyright notice of the original data carrier.

§ 3 Price clause

1. During the term of the contract, lessee is obliged to pay a monthly licence fee for the rights of use on the computer program in the amount as described in the order confirmation. The prices are described therein plus the respectively applicable value added tax.
2. The licence fee is payable monthly in advance and is due for payment on the third calendar day of each month.
3. The licence fee is payable into an account as referred to on the bill of the lessor.
4. Lessee may only offset claims that are either uncontested or have been recognised by final judgment. This, however, does not apply to a reduction within the meaning of § 4 para 6 of these GTC or a damage caused by a defect.

§ 4 Warranty

1. Lessor warrants that the rented computer program within the meaning of § 2 para 1 of these GTC is suitable for contractual use implied in the user manual, or respectively the performance description. The same applies to the customary use of the computer program.
2. Should the software contain defects significantly impairing its contractual or customary use, lessor undertakes to either remove the defects in his/her discretion, to create a solution to avoid the effect of the defect or to correct the defect by the installation of an improved software version. Necessary measures are to be initiated within the time periods as listed below:
 - Error category 1 – light (error which can be circumvented without reduction of the production): two weeks;
 - Error category 2 – medium (in case of such error, the software can only be used under difficult conditions): 2 business days;
 - Error category 3 – gross: 1 business day.
3. To the extent necessary, lessee shall grant to lessor access (for example by means of a remote control access) to the computer program installed at the lessee as well as to the technical equipment and documentation for the measures within the meaning of § 4 para 2 of these GTC.
4. Lessor may also engage third parties in order to carry out measures within the meaning of § 4 para 2 of these GTC. In this regard, lessor neither acts on behalf of lessee nor with his/her power of representation. Lessor shall bear any costs arising from the engagement of third parties.
5. If lessor can prove that the defects notified by lessee do not give rise to any warranty claim, lessee shall bear expenses for the error search as well as for further services in connection therewith.
6. If a measure within the meaning of § 4 para 2 of these GTC does not result in success within a period of two weeks or a period of time agreed by lessor and lessee after it has been initiated by lessor, lessee has the right to either respectively reduce the licence fees payable according to § 3 in conjunction with an order confirmation or withdraw from the lease contract. Furthermore, lessee is entitled to claim compensa-

tion from lessor, provided the appropriate legal requirements are met. Apart from that, damage claims are based on § 7 of these GTC.

7. Lessee has no claim to the performance of guarantee measures in the meaning of § 4 para 2 of these GTC or to any other warranty, if
 - he/she does not grant lessor access to the computer program, etc. contrary to § 4 para 3 of these GTC, or
 - he/she or a third party engaged by him/her has performed changes to the computer program (for example for the purpose to create an interface).

Besides, the legal requirement, in particular, §§ 536 para. 1, sentence 3, 536b, 536c para 2, sentence 2 BGB apply to warranty exemptions.

§ 5 Warranty of title

1. Lessor shall, subject to section § 4 para 7 of these GTC, hold lessee harmless of any claim asserted by third parties against lessee resulting from the infringement of intellectual property rights, insofar as this infringement allegedly results from the contractual and intended use of the computer program by lessee. This indemnity is only applicable if lessee immediately informs lessor in full detail and in writing about such claims without undue delay.
2. Lessee shall support lessor on the defense against such claims with best efforts.
3. Lessor is entitled to carry out, in coordination with lessee and at his/her own expense, necessary modifications on the computer program required due to thirdparty property right claims according to § 5 para 3 of these GTC. Further claims of lessee are provided for in § 5 para 1, 2 and 3 of these GTC.

§ 6 Time of limitation for claims

Claims of lessee within the meaning of § 4 and § 5 of these GTC become timebarred within one year upon delivery of the computer program.

§ 7 Liability

1. Liabilities of lessor for initial defects according to § 536a para 1 BGB are excluded.
2. Apart from that, lessor is not liable for minor negligence, except in the case of personal injuries. Liability for intention and gross negligence remains unaffected.

§ 8 Term of the contract, termination

1. The term of the lease contract is based on the provisions of the order confirmation.
2. During the rental period, the rental agreement can be terminated by either party with 30 days' notice to the end of the month.
3. The right of the contractual parties to terminate for cause remains unaffected.
4. Any notice of termination requires written form to become effective.
5. Upon termination of the contract, lessee must return the rented item (including any technical and other documentation made available, for example user manuals) to lessor in a condition corresponding to its contractual use. Any copies

of the computer program or any technical documentation handed over must be destroyed or completely deleted. At the request of lessor. Lessee must prove to lessor the deletion or destruction.

§ 9 Final provisions

1. The contractual partners commit themselves to treat confidentially all information they obtain about circumstances concerning the internal business operation of the respectively other contractual party within the frame of the conclusion and performance of the lease contract. This obligation to confidentiality also includes facts concerning the conclusion, contents and text of the contract. Additionally, this confidentiality obligation encompasses all circumstances connection with this contract, and, in particular, the source code of the computer program. The source code of the computer program is a trade or business secret of lessor. This confidentiality obligation remains valid for an unlimited period, also for a period reaching beyond the end of the contract.
2. This contract is subject exclusively to the law of the Federal Republic of Germany.
3. The place of jurisdiction for all disputes arising from this lease contract is Nürnberg, insofar as permitted by law. Lessor may also chose as place of jurisdiction for legal actions against lessee the lessee's general place of venue.