

General Terms and Conditions and Licence Conditions of ALLPLAN Germany GmbH

(Last update: 01/07/2021)

1. General

1.1 ALLPLAN Deutschland GmbH (hereinafter referred to as "ALLPLAN") sells the contractual software (hereinafter referred to as "Software") including the digitised authorisation certificate (hereinafter referred to as "Softlock") and the related user manual (hereinafter collectively referred to as "Goods") subject to the following General Terms and Conditions and Licence Conditions.

1.2 Deviating, conflicting or supplementary general terms and conditions of the customer shall only become part of the contract if and to the extent that ALLPLAN has expressly agreed to their validity in writing. This requirement of consent shall also apply if ALLPLAN provides the services without reservation while being aware of the customer's general terms and conditions.

2. Delivery

2.1 Unless agreed otherwise, the Goods shall be made available to the customer as a download via the Internet. ALLPLAN shall not be obliged to hand over the source code to the customer.

2.2 ALLPLAN shall be entitled to make partial deliveries if this is reasonable for the customer.

2.3 The risk of accidental destruction, loss or alteration of the Goods shall pass to the customer upon downloading and transfer of the Goods from the ALLPLAN network to the public communication network.

2.4 The Software is protected against unauthorised use by a digitised authorisation certificate ("Softlock"). Should the Softlock be damaged, ALLPLAN shall provide the customer with a new Softlock after uninstalling the damaged Softlock, including a written declaration of uninstallation by the customer. If the customer is responsible for the damage, ALLPLAN may make the provisions of the new Softlock conditional on the prior payment of a reasonable lump-sum fee.

3. Scope of services

3.1 Unless agreed otherwise, ALLPLAN's contractual obligations shall be limited to the provision of the Goods. In particular, ALLPLAN shall not be obliged to render any set-up, installation, individual adaptation and/or parameterisation, consulting, training or other services.

3.2 ALLPLAN shall only be obliged to supply software updates to the extent that they are required for the proper use of the Software. ALLPLAN shall only be obliged to carry out further modifications, extensions or improvements to the Software if and insofar as the parties have separately agreed on this.

4. Prices and terms of payment

4.1 The prices shall not include the statutory value added tax.

4.2 If the customer is in default of payment, ALLPLAN shall be entitled to demand the statutory default interest in accordance with Section 288 of the *BGB* [German Civil Code] as compensation for such default. ALLPLAN expressly reserves the right to claim further damages.

4.3 The customer may only offset due claims of ALLPLAN against counterclaims that are undisputed or established as final and absolute.

5. Licence Conditions; network use; decompilation

5.1 The Software provided constitutes a trade secret of ALLPLAN. Furthermore, the Software is protected by the relevant copyright laws.

5.2 Unless agreed otherwise, ALLPLAN shall grant the customer a non-exclusive licence to use the Software to the contractually agreed extent (single user licence according to clause 5.3) upon acquisition of the Software and payment of the agreed remuneration.

5.3 Unless agreed otherwise, the customer shall be entitled to install the Software on multiple computers. However, its use shall only be permitted on a single computer, i.e. on one workstation at one location at any one time (single user licence). Use of the Software within a network, another multi-station computer system or via remote data transmission between several computers shall only be permitted if (i) this does not create the possibility of simultaneous multiple use of individual single user licences, (ii) or if the customer has acquired corresponding licences within the scope of the contract.

5.4 If a multi-user application (by means of an ALLPLAN licence server) has been agreed, the customer shall be entitled to use the Software on more than one computer, whereby the agreed maximum number of stations (users) using the software at the same time, as specified in the contract, shall be complied with. The use of the Software within a network, another multi-station computer system or via remote data transmission shall be permitted if the contractually agreed maximum number of simultaneously used stations (users) is not exceeded.

5.5 The customer may only reproduce the Software to the extent that such reproduction is required for the contractual use of the Software. The required reproductions shall include the installation of the Software as well as the loading of the Software into the main memory. The customer shall not be entitled to make any other reproductions. This shall also apply to the reproduction of parts of the Software and to the – complete or partial – reproduction of the user manual. The customer shall have the right to make a backup copy of the software.

5.6 The retranslation of the program code into other code forms (decompilation) as

well as other types of reverse engineering of the various production stages of the Software shall only be permitted within the scope of Section 69e of the *Urheberrechtsgesetz* [German Act on Copyright and Related Rights].

5.7 The customer shall not be permitted to rent out, lease or otherwise make the Software, including the user manual, temporarily available to third parties. In particular, the subleasing, the transfer of the Software by way of Application Service Providing (ASP) or within the framework of cloud computing applications for third parties shall not be permitted.

5.8 The customer shall not be entitled to remove or change copyright notices, serial numbers or other features of the Software that serve to identify it.

6. Industrial property rights of third parties

6.1 To ALLPLAN's knowledge, there are no industrial property rights of third parties affecting the contractual use of the Goods. ALLPLAN shall not be liable for any claims of the customer that are based on modifications of the Goods not made by ALLPLAN or on defects of title of third party software which is not part of the Goods.

6.2 If the contractual use of the Goods is impaired by industrial property rights of third parties, ALLPLAN shall have the right, to the extent reasonable for the customer, to acquire licences and/or to modify the Goods or to replace them in whole or in part at its discretion and at its expense. If this fails, the customer shall have the right to reduce the purchase price appropriately or to withdraw from the contract. Withdrawal from the contract shall not be permitted if the defects of title affecting the Goods are of only insignificant nature. Any claims for damages shall be governed exclusively by clause 8.

7. Claims for defects upon delivery of the Goods

7.1 The customer, who is not a consumer, shall inspect the delivered Goods immediately upon receipt for obvious defects, in particular with regard to completeness and basic functionality. ALLPLAN shall be notified immediately in text form of any defects that are discovered or can be discovered in the process. This notification of defects shall contain a detailed description of the defects. The same shall apply if such a defect is identified at a later date. Section 377 of the *HGB* [German Commercial Code] shall apply accordingly.

7.2 In the event of a defective delivery, ALLPLAN shall be entitled, at its discretion, to remedy the defect free of charge or to replace the defective delivery, also by providing a newer version, provided that the customer is not a consumer. Should the Software be defective, subsequent performance may also be effected by providing a workaround, provided that the defect is completely eliminated within the scope of an updated or new version of the Software. ALLPLAN can also fulfil its obligation to remove defects by providing sufficient information on how to remove them. The fault analysis shall take place at the ALLPLAN headquarters. Upon request and where necessary, the customer shall grant ALLPLAN access, directly or by means of remote data transmission, to their hardware and computer programs on which the defective Software is located. If technical access is not possible or only possible under difficult conditions for reasons attributable to the customer, the customer shall bear the additional costs incurred.

7.3 The customer's claim for the removal of defects shall be excluded if the defect is not reproducible or cannot be shown on the basis of machine-generated output.

7.4 There shall not be any liability for defects if the occurred defects have been caused by circumstances the customer is responsible for. This shall apply e.g. to faults resulting from the use of unsuitable operating materials (e.g. hardware, operating system, etc.) or if the customer has failed to comply with the provisions of the relevant user manuals, terms of use or installation requirements of the Software and this has caused the defect. Furthermore, the liability for defects shall not apply if the customer has changed and/or interfered with the Software, unless the customer proves in connection with the error message that the change was not the cause of the error.

7.5 If the repair or replacement delivery definitively fails despite two attempts made by ALLPLAN, the customer shall have the right to a reasonable reduction of the purchase price or to withdraw from the contract. The latter right can only be exercised if essential functions of the Software are significantly impaired by the defect in the Software and/or other service.

7.6 Except for claims for damages, warranty claims based on material defects shall be subject to a limitation period of two years or one year if the transaction does not involve a consumer. The limitation period shall start when the Goods are made available for download and the customer can access them. This shall not apply to maliciously concealed defects. Clause 8.3 shall apply to the limitation period for claims for damages.

7.7 Any claims for damages shall be governed exclusively by clause 8.

8. Liability

ALLPLAN shall be liable, irrespective of the legal grounds, exclusively in accordance with the following provisions:

8.1 ALLPLAN shall be liable without limitation

- for intention or gross negligence,
- for damage arising from injury to life, body or health,
- according to the provisions of the *Produkthaftungsgesetz* [German Product Liability Act], and
- if it has assumed a guarantee.

8.2 Unless clause 8.1 applies, ALLPLAN shall only be liable for slight negligence if ALLPLAN breaches a contractual obligation the fulfilment of which is a prerequisite for the proper performance of the contract, the breach of which jeopardises the achievement of the purpose of the contract and on the compliance of which the customer may regularly rely (cardinal obligations). In these cases, liability shall be limited to the

amount of the foreseeable damage typical for this type of contract, but at most to 200% of the contractual remuneration up to a maximum of EUR 50,000.00 per year. In all other cases, ALLPLAN shall not be liable for slight negligence.

8.3 Claims under this clause shall become statute-barred after 12 months, subject to the proviso that the statutory limitation period shall apply to claims under clause 8.1.

8.4 If a damage case is due both to the fault of ALLPLAN and to the fault of the customer, the customer shall allow their contributory negligence to be taken into account. In particular, the customer shall be responsible for the regular backup of their data. If data is lost and ALLPLAN is responsible, ALLPLAN shall only be liable for the costs of duplicating the data of the backup copies to be made by the customer and for reconstructing the data that would have been lost even if backup copies had been made at reasonable intervals.

8.5 To the extent that ALLPLAN's liability is excluded or limited, this shall also apply to the personal liability of ALLPLAN's employees, representatives and vicarious agents.

9. Force majeure

9.1 If and as long as an event of force majeure exists, the parties shall be temporarily released from their performance obligations.

9.2 Force majeure is an event caused externally from outside the company by elementary forces of nature or by actions of third parties and which is unforeseeable according to human insight and experience, cannot be prevented or rendered harmless by economically acceptable means, even by taking the utmost care reasonably to be expected in the circumstances, and which cannot be just accepted because of its frequency. This particularly includes strikes, lockouts, official orders, the failure of communication networks and gateways, disruptions within the area of the respective service provider as well as disruptions within the area of risk of other network providers.

9.3 The parties may terminate this contract if the force majeure event continues for more than ten days and a mutually agreed modification to the contract cannot be reached.

10. Modification of these conditions

ALLPLAN reserves the right to modify these General Terms and Conditions and Licence Conditions with effect for the future. ALLPLAN shall notify the customer of any changes and make the modified conditions available to the customer. By using or continuing to use the Software after a modification, the customer declares their agreement with the modification and their acceptance of the modified conditions.

11. Final provisions

11.1 The parties shall comply with the statutory provisions on data protection.

11.2 Should the export of the Goods be subject to national or international export regulations, the customer shall obtain the consent of the competent authorities. The costs of export, such as customs duties, taxes, fees and other costs, shall be borne by the customer.

11.3 No implicit, oral or written collateral agreements have been made. Amendments and supplements to this contract shall be made in writing. This shall also apply to any amendment or waiver of this written form requirement clause.

11.4 The customer shall not be permitted to assign or transfer this contract or any of their rights or obligations arising from this contract to third parties without obtaining ALLPLAN's prior written consent. ALLPLAN shall not unreasonably withhold such consent. This clause 11.4 shall not apply to the extent that Section 354a *HGB* applies.

11.5 Both contracting parties undertake to use all knowledge of confidential information, company and/or business secrets of the other contracting party obtained within the framework of the contractual relationship only for the purpose of implementing the contract and to keep such knowledge confidential for an unlimited period of time.

11.6 Should any provision of the General Terms and Conditions and Licence Conditions be invalid or unenforceable in whole or in part or should they contain a loophole, this shall not affect the validity of the remaining provisions. In this case, the invalid provision shall be replaced by a valid and enforceable regulation that comes closest to the economic and legal purpose pursued by the invalid provision. The same shall apply to the closure of any contractual loophole.

11.7 The contract as well as these General Terms and Conditions and Licence Conditions shall be governed by German law to the exclusion of the German conflicts of laws rules and the UN Convention on Contracts for the International Sale of Goods.

11.8 Exclusive place of jurisdiction shall be the headquarters of ALLPLAN, provided that the customer is an entrepreneur. However, ALLPLAN shall also be entitled to bring an action at the customer's place of business.

11.9 The EU Commission has created an Internet platform for the online resolution of disputes. This platform serves as a contact point for the out-of-court resolution of disputes concerning contractual obligations arising from online sales contracts. More information is available at the following link: <http://ec.europa.eu/consumers/odr>. ALLPLAN is neither prepared nor obliged to participate in a dispute resolution procedure before a consumer arbitration board.