



Kesa Technische Software GmbH

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Germany

GENERAL TERMS AND CONDITIONS

Company Kesa Technische Software GmbH, D-48485 Neuenkirchen, shall only grant a licence of its software on the condition that you accept all the terms and conditions of the following licence contract.

This licence agreement shall be concluded between you as entrepreneur and the company Kesa Technische Software GmbH.

With your order you expressly accept these licence conditions.

If you do not agree with the conditions of licence agreement, send the software with the corresponding voucher back to the company Kesa Technische Software GmbH. The company Kesa Technische Software GmbH will issue a full refund for the purchase price.

Company Kesa Technische Software GmbH – D-48485 Neuenkirchen, Germany, as the LICENSOR, and the user of the kesa-programme as the LICENSEE, conclude the following agreement:

1 Subject of Agreement

The subject of the agreement is the right of use of a kesa software programme by the LICENSOR to the LICENSEE. Company Kesa Technische Software GmbH shall grant you a non-exclusive usage right in the enclosed delivery copy and documentation (hereinafter referred to as „Software“). The source code of the Software is not stated – not to mention the requirement of ensuring confidentiality.

The scope of the transferred software programme and its precise designation are taken from the technical description at the time the order is placed by the LICENSEE. The fee payable is taken from the LICENSOR's applicable price list in each case. If the LICENSOR presents an invoice, this price applies. Brochures, Internet site content, other advertising material etc. are of no significance in this regard.

Software programmes in the preceding sense are data processing programmes saved on data carriers. The application description is also part of the software programmes. It is sufficient if the application description is saved on data carriers, but it can also be provided in writing.

2 Surrender of Use and Benefit

The LICENSOR grants the LICENSEE depending on the contract, a time-limited or unlimited – not exclusive – right to use the software, specified in section 1 Subject of Agreement and detailed by the corresponding technical description, in the context of the applicable copyright law.

Within the scope of this, LICENSOR shall grant LICENSEE a licence (user licence). The licence establishes, by way of a clause on licence data, which properties and functions of the software may be used. LICENSOR shall inform LICENSEE of this licence data in writing. The user shall launch the Software for the use outlined (when he enters the licence data, following the installation process). Without a knowledge of the licence data, the Software is either not usable, or it can only be used in Demo Mode.

2.1 Single-User Licence

When there is nothing else specified, there is always one licence available: that being a single-use licence. A single-use licence allows for the installation and use of the Software on one's own computer. The LICENSEE of a single-use licence is registered with the LICENSOR. As long as the LICENSEE is not the user, the user is also registered with the LICENSOR.

2.2 Multi-User licence

Use at several individual computers is only permissible if the transferred licence is expressly a multiuse licence. The number is taken from the licence data and a written, binding declaration made by the LICENSOR. The LICENSEE is registered by the LICENSOR. Each user is registered by the LICENSOR, too.

2.3 Network Licence

Use at several workstations in a network (LAN) is only permissible if the transferred licence is expressly a network licence. The number is taken from the licence data and a written, binding declaration made by the LICENSOR. The LICENSEE is registered by the LICENSOR.

2.4 Customer Licence

A customer licence is a licence that is specially tailored to the LICENSEE; it essentially limits the use of the software so that only LICENSEE products (exhaust gas systems, hearths and similar) are available to be used in the Software.

In addition, the Client Licence can also be used to further limit the functions of the Software and to allow for the adaptation of the demands of the LICENSEE.

LICENSEE is authorised to further distribute the licence data to third parties with whom it is entertaining a professional relationship, and also to authorise them to use the software (Client Licence). Further distribution may only become gratuitous on the condition that there is some kind of alternative, contract-bound arrangement between LICENSEE and LICENSOR. Company Kesa's proof of authorship in the Software may not be limited and it especially may not be rescinded. The number of users of the customer licence is taken from a written, binding order of the LICENSEE. The users are registered by the LICENSOR.

2.5 Online Licence

An Online Licence is a kind of licence that is specially tailored to the requirements of LICENSEE, allowing for the use of the software online, made available from Kesa on a web server. Online usage is just like it is with a Client Licence in that it limits availability to only LICENSEE products (exhaust gas systems, hearths or similar) in connection with the use of the Software.

In addition, the Online Licence can also be used to further limit the functions of the Software and to allow for the adaptation of the demands of the LICENSEE.

LICENSEE is authorised to grant logins to third parties with whom it is entertaining a professional relationship, and to use these for the following purposes when using the software online: Every user shall be given a username and a personal password which they must enter when accessing the LICENSEE website in order to be able to use the Software on the LICENSOR Web Server.

As such, online usage without logins is only allowed if the licence does not carry a limit on the number of users.

3 Additional Services

Any additional services that may be instated as of the wishes of LICENSEE e.g. design preferences or special features, are dealt with in a special contract.

4 Delivery Conditions and Terms of Payment

4.1 Delivery terms and conditions, and times

Software programmes are data processing programmes saved on data carriers. The application description is also part of the software programmes. It is sufficient if the application description is saved on data carriers, but it can also be provided in writing.

Delivery times must be observed. The delivery times depend on the relevant offer of LICENSOR. It can vary according to the licence type (e.g. Single-user version, Client version).

4.2 Payment Conditions

Please find the payment rates in our offer to you presented below. The offer is binding, for a time period of 30 days. All prices are understood to include legally applicable sales tax. For LICENSEEs from EU member states except Germany, the German VAT will be charged unless the LICENSEE submits her VAT identification number. Payment is due within one week of the invoice date, with no discounts or rebates (as long as such payments have not been arranged in advance, in writing).

With new clients and clients from abroad, we reserve the right to deliver only if there has been made an advance payment.

4.3 Payment delay

In the event of non-payment or payment delay we shall submit a reminder fee (an additional 5 Euros every time). Should LICENSEE fail to pay even after a second reminder fee, the licence shall be blocked and the usage right shall be nullified. A launch may take place if LICENSEE has directly paid the valid invoice upon request, inclusive of reminder fees, delay interest rates and a grant fee. Should the amount fail to be registered in our account within one week, then LICENSOR shall cancel the existing service contract, and future possibilities to accommodate further updates shall be effectively be invalidated in connection with this licence.

In the event of a payment delay abroad, and in special cases, we shall call for the immediate withdrawal of the computer programme usage right, with no prior announcement.

5 The Licensee's Rights and Responsibilities

All present and future rights to the software programmes, however constituted, including the user documentation - irrespective of whether this is on the transferred data carriers or copied later - remain (except for the expressly granted usage rights) with the LICENSOR.

Any other use, particularly making transcripts or copies of the transferred software programmes, including the user documentation, is only permissible after previous written agreement from the LICENSOR. Without such agreement, the LICENSEE may only create a copy of the software programmes in the context of proper use, in particular for security purposes.

5.1 The LICENSEE accepts measures and technical equipment from the LICENSOR, to prevent unauthorised use or multiple use of the agreement. Apart from the registration of users, passwords, individual computer data and dongles etc. may be used as measures and technical fittings. The LICENSEE ensures that the passwords conveyed by the LICENSOR will be used in confidence and not passed to third parties without authorisation.

5.2 The license holder has a duty to cooperate, which includes the punctual execution of the preparatory work and the provision of the necessary documents and information as well as other information about the conditions on site and the provision of all material, necessary means which are important for the proper operation of the software in connection with the provision of services.

5.3 Transferring the license:

A license corresponding to Section 2 is tied to the LICENSEE. The LICENSEE may not transfer the right to use the software, therefore, without knowledge and consent of the LICENSOR. This also applies for a temporary transfer. It applies to § 34 UrhG.

5.4 Client Licence documentation duties:

In the event that LICENSEE has ordered a limited number of copies, it shall become obligated to document the number of the programme copies and their distribution. In such a case, the names are to be recorded in a suitable form / manner (Documentation Duty). If it should be demanded, then LICENSEE shall provide information on the subject to the extent that the company Kesa Technische Software GmbH has a legitimate interest thereto; especially if it is to do with copyright breach fears.

In the event that LICENSEE deliberately infringes the Documentation Duty, it shall become obligated to pay a measured-rate contract penalty. Thereby, legal claims remain unaffected.

- 5.5 The LICENSEE is obligated to guarantee the fulfilment of all obligations arising from this agreement, in particular with regard to the scope of use, the duplication entitlement and the security of the software programme, using suitable measures with regard to its employees and others who have access to the software programmes and the user documentation.
- 5.6 The LICENSEE is only entitled to undertake editing or reconfiguration of the software programmes, or to permit third parties to do this, after express permission from the LICENSOR. The LICENSOR may only withhold agreement if he directly guarantees such editing himself, as is necessary for proper operation.
- 5.7 As such, a withdrawal of the programme is only permissible in the event that LICENSOR has failed to distribute the necessary information in connection with the establishment of interoperability (interface information) despite a demand to do so.

6 Warranty

- 6.1 The description of the software programmes is not intended as a guaranteed characteristic. It is merely intended as identification. Brochures and other advertising material are of no significance in this context.
- 6.2 The LICENSEE is obligated to inform the LICENSOR of any defects in writing. Moreover, the LICENSEE is obligated to make all necessary data and information pertaining to the defect available to the LICENSOR and, if necessary, also to transfer the licensed software for examination.
- 6.3 The legal grant shall be manifested foremost via the fulfilment of § 439 I BGB (lacking element elimination, or the delivery of a non-lacking item). It should as such be the responsibility of LICENSOR to meet the fulfilment demands. Only in the event that the selected method to fulfil the demands may prove unsuccessful, shall you become validated to appropriate legal rights toward a reduction or a withdrawal, as well as to file damages, to the extent that their requirements are valid.

7 Obligation to Give Notice of Defects

- 7.1 The LICENSEE is obligated to inspect the delivered software for obvious defects, which would be easily apparent to the average customer. Such obvious defects of this type are to be reported to the LICENSOR in writing within four weeks from delivery.
- 7.2 Defects that are not obvious must be reported in writing to the LICENSOR within two weeks of being noticed.
- 7.3 In the event of failure to fulfil this inspection and notification obligation, the software is assumed to be accepted.

8 Programme Maintenance

- 8.1 The LICENSOR is only responsible for programme maintenance if an additional software maintenance agreement has been concluded. This also applies to adjustments to the software for legal and other basic requirements.
- 8.2 The software-maintenance is charged in software maintenance periods (short: SP). One SP is a time period of six months, either from January 1st until June 30th, or from July 1st until December 31st.

The software maintenance contract will be completed over minimum two full SP. Termination may occur to each end of a SP. Otherwise the software maintenance contract will be prolonged for one SP.

The invoice for one SP will be approximately in the middle of the SP, regularly in April and October. The proportion of the software maintenance between purchase date and the first SP will be charged pro rata and together with the invoice for the license.

- 8.3 With resumption of the software maintenance after termination
- the actual prices at the time of resumption are valid
 - there are costs at actual prices for the update to actual manufacturer data which comply with the costs of the software maintenance of the suspended period
- 8.4 The other conditions of the software maintenance are defined by agreement. Services outside of this agreement must be paid extra.
- 8.5 LICENSOR shall reserve an annual price increase.

9 Liability

- 9.1 The LICENSOR has unlimited liability for claims because of defects of title and a lack of guaranteed characteristics and for claims arising from product liability legislation. Normally, the LICENSOR is only liable for intent and gross negligence. The LICENSOR is liable in any event if an obligation is breached, which is of particular significance for achieving the purpose of the agreement.

10 Final Provisions

- 10.1 Oral collateral agreements have not been made. Amendments to this agreement must be put in writing. This also applies to a repeal of this written form clause.
- 10.2 If individual contractual agreements are or become partially or wholly ineffective, the remainder of the agreement is still effective. This also applies if a loophole emerges in the agreement. The loophole is then to be closed by means of a supplementary interpretation of the agreement.
- 10.3 The place of fulfilment for services arising from this agreement is the LICENSOR's headquarters. The place of jurisdiction is also the LICENSOR's headquarters. The law of the Federal Republic of Germany applies.

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Kesa Technische Software GmbH