

# General Terms and Conditions

## 1 Definitions

- 1.1 The "**Purchaser**" refers to the company or person which or who has agreed to this agreement by signing an order form that makes reference to the present general terms and conditions, or has approved this agreement by other legally binding means, including selecting the checkbox on a registration page.
- 1.2 The "**Purchaser's data**" refers to all material, data, and information, which the Purchaser or their specified users make available to Servicetrace while using the service.
- 1.3 "**Servicetrace / licensors**" refers to Servicetrace GmbH of Feldbergstrasse 80, 64293 Darmstadt, Germany, and its affiliates.
- 1.4 "**Service documentation**": Service descriptions, work specifications, and other mutually agreed documents which describe services, software or deliverables.
- 1.5 "**Software**": Any software, library (program library), utility, tool or other computer or program code in object (binary) or source code form, as well as any related documentation, which Servicetrace provides to the Purchaser. Software comprises the software, which (1) is supplied by Servicetrace and installed on the Purchaser's hardware or equipment on-site or (2) which is made available by Servicetrace and is accessed by the Purchaser via the internet or another remote solution (e.g. website, portals or other cloud computing solutions).
- 1.6 "**Affiliate**" refers to any legal entity, which is affiliated to another company within the meaning of Article 15 of the German Stock Corporation Act (AktG).
- 1.7 The "**Agreement**" refers to the present general terms and conditions and to all order forms making reference to these general terms and conditions, as well as any other annexes, technical specifications, attachments or additions to the aforementioned general terms and conditions and order forms, which are either annexed or incorporated by reference.
- 1.8 In relation to the Purchaser, "**Confidential information**" refers to the Purchaser's data. In relation to Servicetrace, it refers to the following: (a) the service, including and without limitation all (i) computer software (both object and source code) and related service documentation or specifications; (ii) technologies/techniques, concepts, methods, processes, and designs, which are incorporated in or associated with the service, and (iii) all application programming interfaces, and all system infrastructure, system security, and system architecture designs, which are associated with the service; (b) information on Servicetrace research and development, product offerings, pricing, and availability, and (c) all information on or relating to a third party, which was made available to Servicetrace subject to a valid obligation to that third party to maintain confidentiality.

## 2 Introduction

- 2.1 These general terms and conditions are applicable to all products, software, and/or services, which are purchased by or on behalf of the Purchaser directly from Servicetrace solely for the Purchaser's own internal use. These general terms and conditions in conjunction with Servicetrace's order documents and service documentation form the sole legal basis for the business relationship between the Purchaser and Servicetrace for the purchase of products, software, and services (the "Agreement") unless expressly agreed otherwise in writing. Differing terms and conditions of the Purchaser are not applicable. In the event of conflict, the following order of precedence applies: (1) individually negotiated agreement (if any); (2) order documents; (3) service documentation, and (4) these general terms and conditions.
- 2.2 For products, software, and services, which are purchased by the Purchasers to resell, the conditions outlined in the partner agreement shall apply.

## 3 Use rights for software

- 3.1 Servicetrace grants the Purchaser a non-exclusive, non-transferable right to use the software for a limited or unlimited period of time (in accordance with the license & maintenance certificate assigned). During the contract period, the Purchaser is granted the right to use the object code form of the software and documentation (the "Software") described in the accompanying License and Maintenance Certificate at the site described therein (the "Site"), and for the designated purchasers, solely for their own purposes and for the purposes of the designated purchasers. As the owner of all copyrights and protective rights, including intellectual property rights, Servicetrace GmbH retains all rights of use not expressly stipulated in these general terms and conditions.
- 3.2 The Purchaser may use the Software or parts thereof at other sites, provided that they notify Servicetrace of the intended use in writing in advance. Use outside the territory of the European Union requires the written consent of Servicetrace.
- 3.3 The Purchaser may acquire additional software for use at the same Site or other sites by obtaining a further legally valid License and Maintenance Certificate from Servicetrace. The Purchaser shall notify Servicetrace of any changes to the licensing assessment basis (software, number of licenses) immediately in writing.
- 3.4 The Purchaser shall not pass on the Software to third parties without the prior written permission of Servicetrace. Servicetrace shall grant permission if the Purchaser provides a written assurance prior to transfer that they shall permanently discontinue using the Software and retain no copies, and if the third party provides a written undertaking to Servicetrace that they agree to comply with the contractual terms of use and transfer. The third party shall assume all rights and obligations of the existing agreement with the Purchaser. Servicetrace shall provide the Software to the third party on the original media.
- 3.5 The Purchaser is not permitted to (a) disassemble, decompile or reverse engineer the Software except as expressly allowed by law (Sections 69d paragraph 3, 69e German Copyright Act (UrhG); (b) modify or adapt the Software or create derivative works from it; (c) copy the Software in whole or in part unless expressly permitted to do so in a separate agreement or unless Servicetrace has otherwise granted prior consent in writing; (d) lease, sublicense or distribute the Software, and (e) publish the results of benchmark tests relating to the Software.
- 3.6 The Purchaser agrees that the Software, both as a whole and in part, as well as all copies and works derived from it, shall remain the exclusive property of Servicetrace and its licensors. The right to use the Software remains with Servicetrace until payment of fees has been made in full.
- 3.7 The Purchaser may not remove or modify in any way copyright, trademark or other proprietary notices associated with Servicetrace or Servicetrace licensors that appear on the Software supplied to the Purchaser.
- 3.8 In the event of infringement of copyrights or protective rights by a third party, the Purchaser shall make every reasonable effort to assist Servicetrace in exercising their rights either in or out of court.
- 3.9 Servicetrace indemnifies the Purchaser, contractor, subcontractor and purchasers, as well as their respective successors and assignees (the "Protected parties"), from claims asserted by third parties for breach of protective rights resulting from the use, manufacture, sale or sublicensing of Servicetrace's products/results unless the demands are based on the behavior of the Protected parties. The Protected parties shall not recognize the claims of third parties. The Purchaser authorizes Servicetrace to conduct the dispute with the third party on its own. The Protected parties must inform Servicetrace without delay in writing and comprehensively of any assertions of claims made by third parties.

## 4 Services, support and security

- 4.1 Servicetrace provides support services for the Software and service in accordance with the assignment and definition of the License and Maintenance Certificate.

4.2 When delivering services, Servicetrace deploys security technologies to an extent which is commercially viable (e.g. encryption, password protection, and firewalls) and the Purchaser undertakes to observe the relevant Servicetrace security guidelines and procedures, which are communicated to them as part of the service or in any other way. Servicetrace emphasizes, however, that Servicetrace does not check the transmission of data (including, but not limited to the Purchaser's data) via telecommunications facilities, including the internet. Servicetrace provides no warranty for the secure operation of the service or that the respective security technologies prevent any disruption of the service by third parties.

## **5 Responsibilities and duties of the Purchaser**

5.1 The Purchaser grants Servicetrace the non-exclusive right to use the Purchaser's data solely for the purpose of delivering the service, insofar as this is necessary.

5.2 The Purchaser is responsible for entering the Purchaser's data into the service, as well as for maintaining the data which they have provided. The Purchaser hereby represents and warrants to Servicetrace that the Purchaser's data is free of viruses, Trojans, and other comparable elements that may damage systems or software used by Servicetrace or its subcontractors to deliver the service. The Purchaser affirms that they have collected and will maintain and manage all of the Purchaser's data in compliance with all applicable data protection laws, regulations, and provisions.

5.3 The Purchaser must change all passwords used to access the service on a regular basis. If the Purchaser is aware that an unauthorized third party has gained access to a password, the Purchaser must inform Servicetrace of this without delay and change the password immediately.

5.4 The Purchaser is responsible for the connection of the service, including the internet connection, as well as for the proper operation of their own IT infrastructure, consisting of (a) hardware, (b) network, (c) operating systems, and (d) databases.

## **6 Ordering / provision of software**

6.1 The Purchaser shall order copies of the products in writing.

6.2 Servicetrace shall send a copy of the Software to the Site at the start of the license period. The license and risk shall pass to the Purchaser upon delivery to their premises.

6.3 The Purchaser acknowledges that they are responsible for installing the Software. No formal handover shall take place.

6.4 Licensing does not include the provision of services, third-party software or hardware unless stipulated in other agreements or in the License and Maintenance Certificate.

## **7 Provision of services**

7.1 The Purchaser shall order services in writing.

7.2 Servicetrace provides the Purchaser with services and/or software in accordance with the service documentation. Servicetrace can offer the Purchaser an extension of the service and software license, e.g. by sending an invoice to the Purchaser or, subject to prior written notification, by continuing to perform the service or provide the Software to the Purchaser. The Purchaser is deemed to have consented to such an extension of the service and the software license when the invoice is paid by the due date or by continuing to use the service or Software.

7.3 Servicetrace can terminate or suspend the execution of services or the Purchaser's or any user's access to the Software delivered by Servicetrace in the context of the provision of services if (1) this is prescribed by law or (2) is demanded by a court ruling which is binding for Servicetrace or (3) if Servicetrace has reasonable grounds to believe that the Purchaser (or the Purchaser's user) is using the Software for illegal and/or immoral purposes.

7.4 It may be necessary for Servicetrace to carry out scheduled or unscheduled repair or maintenance work or remote troubleshooting or to enhance the Software which is provided by Servicetrace in order to perform services, and which is installed on the Purchaser's computer system(s) ("Maintenance"). This may result in a temporary reduction in the quality of the service or in a partial or complete failure of the Software.

7.5 The Purchaser acknowledges that the systems which are used to access and interact with the Software provided by Servicetrace in order to perform services or which are used to transmit information (including telephone, computer networks, and the internet) are not available continuously and without limitation and may occasionally disrupt or prevent access to the Software or the use or operation of the Software. Servicetrace is not liable for any such disruption or prevention of access to the Software, use of the Software, or for the reduced functionality of the Software.

## **8 Fees, pricing and payment terms**

8.1 The right of use or receipt of services requires payment to be made to Servicetrace for all invoiced amounts for the Software and/or services. All payments must be paid to Servicetrace by the Purchaser without deduction no later than fourteen (14) days from receipt of the invoice. Monthly payments shall be made by the 14th day of the month of use.

8.2 Should payment by the Purchaser be more than thirty (30) days overdue, Servicetrace shall issue a written reminder and will then be permitted to demand interest on arrears from the due date at the rate of 1.5 % per month or the highest rate allowed under the law, whichever is lower.

8.3 The applicable statutory sales tax (VAT) and any import taxes shall be added to all fees.

## **9 Warranty**

9.1 Servicetrace warrants for a period of six (6) months following delivery to the Purchaser that (a) the Software will perform substantially in accordance with the relevant documentation and (b) the media upon which the Software is delivered and the user manuals are free from defects in materials and workmanship.

9.2 In the event of critical operating errors (see license & maintenance agreement), the Purchaser shall receive either a full or partial refund of the amount paid for the Software or a free-of-charge replacement for the faulty item, the choice being at the discretion of Servicetrace, provided that the Software is returned to Servicetrace within six (6) months of delivery. If, based on the above provision, no item free from defects is supplied by Servicetrace within six (6) weeks, the Purchaser shall be entitled to demand a price reduction or to withdraw from the purchase. Servicetrace shall assume no further liability.

9.3 The Purchaser must immediately report any faults or defects in the Software in writing and assist with identifying errors by undertaking suitable measures and submitting appropriate documentation to Servicetrace.

9.4 The Purchaser accepts that Servicetrace provides no warranty that the software is fit for resale or fit for a particular purpose. This shall not affect liability for any features that the Licensor may have promised to include. Liability for consequential damages or business losses is expressly excluded unless such liability has been expressly warranted or is based on statutory law.

9.5 In any case, liability on the part of the Licensor is limited to €1.5 million for damage to persons, €500,000 for material damage; the Licensor shall not be liable for any unforeseeable, non-typical damages.

9.6 The warranty obligation lapses if the Software is modified without the Licensor's prior written permission.

## **10 Confidentiality and data protection**

10.1 Trade and company secrets, including the provisions of mutual agreements and their terms, may only be shared with third parties if disclosure to those persons has been authorized by the other party to the agreement.

10.2 This non-disclosure obligation does not apply to information and documents that it can be demonstrated (a) are common knowledge without responsibility on the part of the relevant party to the agreement; (b) were already known to the relevant party to the agreement, (c) were made known to the relevant party to the agreement by a third party without any cooperation from the former; (d) must be communicated in the course of court or administrative proceedings.

10.3 The confidentiality obligations expire five (5) years after the business relationship has ended.

#### **11 Liability**

11.1 Liability on the part of the Licensor for damages arising from the use of the Software or the provision of services shall be limited to the total amount of license fees for the Software that was licensed or to the corresponding sum insured (€500,000) by the Licensor, whichever is lower.

11.2 Each party shall be liable for damages caused as a result of culpable infringement of a fundamental contractual obligation that endangers the achievement of the purpose of the agreement. Liability pursuant to this provision shall be limited to damage that is typical for the agreement, and that each party to the agreement ought reasonably to have foreseen on concluding the agreement.

11.3 The Licensor shall not be liable for lack of commercial success, loss of profits, indirect or consequential damages, or claims by third parties of any kind, except for such damages that cannot be limited due to statutory provisions.

11.4 The Licensor shall not be liable for loss of data or for the costs of recovery if such a loss could have been avoided by making appropriate arrangements to backup data.

11.5 The foregoing limitations of liability shall also apply to the employees, freelance workers, trainees, representatives, agents, and subcontractors of the parties to the agreement.

11.6 The above limitations of liability shall not apply to damages caused by gross negligence or intent, nor shall the Licensor be liable for the absence of any promised features or claims based on German product liability law (ProdHaftG). Liability for ordinary negligence shall exist only with respect to the infringement of fundamental contractual obligations.

11.7 The Purchaser agrees to exempt the Licensor from third-party claims associated with software use which does not conform to the agreement or is illegal.

11.8 No further liability shall be assumed by the Licensor.

#### **12 Term, termination and cancellation**

12.1 The right to use the software service as conferred by this agreement will begin on delivery of the Software or with the agreed commissioning of the service and will continue until the agreed term expires or the agreement is terminated. If one of the parties to the agreement infringes a fundamental contractual obligation and does not cease this infringement within thirty (30) days of receiving a written communication describing said infringement, the other party to the agreement is entitled to terminate this agreement in writing without further notice.

12.2 Without prejudice to the above provisions, non-payment of license fees, insolvency, settlement deals, liquidation or other dispositions in favor of creditors on the part of either party to the agreement constitute a material breach of contract if the proceedings are not discontinued within thirty (30) days of initiation.

12.3 Upon termination of the rent, all licenses and rights granted on the basis of the agreement will be terminated. The Purchaser must return or destroy the original Software, as well as all backup copies and all documentation that have been received from the Licensor or that have been made, within ten (10) business days of termination and provide appropriate written confirmation to the Licensor.

12.4 The validity of licenses granted shall remain unaffected by the termination of maintenance and support services by one of the parties. These licenses remain valid in their entirety.

#### **13 General provisions**

13.1 Rights and obligations arising from this agreement may not be transferred either in whole or in part by one of the parties without the prior written consent of the other party. Servicetrace may, however, transfer this agreement either in whole or in part to a Servicetrace subsidiary at any time.

13.2 Communications of all types that are necessary or admissible pursuant to this agreement shall be deemed to have been made if they are sent to the address of the other party to the agreement, or to another address specified in writing by the party, namely (a) on the day of delivery in the case of a handover in person; (b) on the day of transmission if communications are sent by e-mail or fax; (c) two days after mailing if communications are sent by letter post.

13.3 The use, export or re-export of software and related materials is subject to the export control restrictions of the Federal Republic of Germany and of the United States of America.

13.4 The Purchaser acknowledges and agrees that this agreement may favor specific Servicetrace licensors if and insofar as these are defined in the License and Maintenance Certificate.

13.5 These general terms and conditions are governed by the laws of the Federal Republic of Germany. Insofar as this is not excluded thereafter, any disputes arising from this agreement shall be settled by the courts having jurisdiction for the place of business of the defendant. Application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is expressly excluded. The German version of this agreement takes precedence over the English version.