

## GENERAL TERMS AND CONDITIONS

### ALLGEMEINE GESCHÄFTSBEDINGUNGEN

#### § 1 Definition of Terms

- (1) EFFICIENT ELEMENTS (Efficient Elements GmbH, Troppauer Str. 34, 74321 Bietigheim-Bissingen, Germany) is the producer and licensor of the SOFTWARE and the provider of any SERVICES delivered (if any) under this agreement.
- (2) ORDER is the document or electronic equivalent (e.g. web shop, e-mail), where the CUSTOMER orders the SOFTWARE licenses and / or SERVICES, including all commercial data. SOFTWARE ORDERS include the number of USERS for which the SOFTWARE license is valid.
- (3) SOFTWARE is one of EFFICIENT ELEMENTS' software products (e.g. "Efficient Elements for presentations") including templates and documentation.
- (4) SERVICE is an activity performed by EFFICIENT ELEMENTS to create value-add for the CUSTOMER. These activities include, but are not limited to, customization and deployment services and trainings.
- (5) USER is the person who is allocated by the CUSTOMER for the use of the SOFTWARE. This person must be uniquely identified, e.g. by e-mail address or another unique identifier.
- (6) CUSTOMER is the entity or person who is named in the ORDER and has agreed to these GENERAL TERMS AND CONDITIONS. CUSTOMER can also be a USER.
- (7) PERSONAL DATA are personal details that identify a person, for example name, address, e-mail address or telephone number, accounting data (e.g. bank account number, credit card information), as well as other unpublished data used in this context.
- (8) ANONYMOUS DATA refers to information that is not connected to PERSONAL DATA and which cannot be used to identify individual persons.
- (9) CONFIDENTIAL INFORMATION includes data and information that are not public knowledge, in particular user passwords and the know-how and trade secrets involved in the SOFTWARE and SERVICES.
- (10) IN WRITTEN FORM also includes electronic communication.

#### § 2 License

- (1) EFFICIENT ELEMENTS supplies the SOFTWARE to the CUSTOMER, exclusively on the basis of these GENERAL TERMS AND CONDITIONS and the ORDER of the CUSTOMER to EFFICIENT ELEMENTS. In no case, general terms and conditions and/or similar legal rules of the CUSTOMER (e.g. purchasing conditions) shall get part of the ORDER. In the event of contradictions between the aforesaid documents, they shall apply in the following sequence: ORDER of the CUSTOMER, these GENERAL TERMS AND CONDITIONS.
- (2) In return for the agreed license fee EFFICIENT ELEMENTS grants the CUSTOMER and its USERS the temporary, non-exclusive right to reproduce the SOFTWARE to such an extent

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as is necessary for loading, displaying, running, transferring or storing the SOFTWARE under the following conditions (hereinafter USE AS INTENDED).

- (a) A SINGLE USER LICENSE entitles the customer to allow the SOFTWARE to be used by one USER.
  - (b) A MULTI USER LICENSE entitles the CUSTOMER to allow the SOFTWARE to be used by the agreed number of USERS. The number of USERS means the number of potential USERS who would then be entitled to such use by the CUSTOMER, irrespective of whether and when they actually use the SOFTWARE.
  - (c) A CORPORATE LICENSE entitles the CUSTOMER to allow the SOFTWARE to be used by all employees within the same legal entity only, unless specified otherwise in the ORDER.
  - (d) The USER shall be entitled to install and use the SOFTWARE on one or more machines, as long as only this USER has access to the SOFTWARE. The USER shall not be entitled to share the use of the SOFTWARE.
  - (e) The CUSTOMER and USER are obliged to ensure that each license key for the SOFTWARE is held confidential.
  - (f) The CUSTOMER agrees to identify all USERS to EFFICIENT ELEMENTS in case EFFICIENT ELEMENTS has sufficient reason to suspect a breach of the above regulations (a) - (e). EFFICIENT ELEMENTS is authorized to demand the appropriate usage fee retrospectively from the beginning of the relevant breach from the CUSTOMER.
  - (g) The CUSTOMER and USER shall not be permitted to compile, adapt, change the arrangement or make other alterations including error correction to the SOFTWARE either in whole or in part, directly or indirectly, nor shall he disassemble the SOFTWARE, subject it to reverse engineering or decompile it, unless (I) this is necessary in order to obtain information to permit interoperability with an independently developed computer program and (II) EFFICIENT ELEMENTS has not made available this information to the USER within a commercially reasonable period of time despite request IN WRITTEN FORM. Information obtained by such a measure may not be used for other purposes than to achieve interoperability and shall not be communicated to third parties unless this is necessary to establish interoperability.
  - (h) The CUSTOMER and USER shall be entitled to make identical backup copies of all SOFTWARE licensed under this agreement on a data carrier.
  - (i) The ownership and all intellectual property rights to the SOFTWARE including copyright remain with EFFICIENT ELEMENTS and / or its licensor(s). With the exception of the USER rights granted in this agreement, the USER is not granted any additional rights.
  - (j) Under no circumstances shall the CUSTOMER and USER be entitled to transfer, rent or lease the SOFTWARE permanently or temporarily to third parties without EFFICIENT ELEMENTS' written consent.
- (3) The CUSTOMER is obliged to inform any USER about these GENERAL TERMS AND CONDITIONS and is responsible for the compliance of any USER with these GENERAL TERMS AND CONDITIONS.

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### § 3 Warranty

- (1) For duration of this contract, EFFICIENT ELEMENTS warrants that the SOFTWARE if USED AS INTENDED shall essentially satisfy the function and performance features described on the EFFICIENT ELEMENTS website at the time when the ORDER was placed. Insignificant deviations are irrelevant.
- (2) Before concluding this agreement, the CUSTOMER shall himself determine that the SOFTWARE sufficiently satisfies his requirements.
- (3) If within the warranty period the CUSTOMER submits evidence of a defect / error in the SOFTWARE, EFFICIENT ELEMENTS shall at its discretion first be entitled to remedy or replace. The CUSTOMER shall only be entitled to reduce the remuneration (diminution) or to cancel the agreement if the remedy or delivery of a replacement has definitively proven unsuccessful. If the CUSTOMER exercises his right of cancellation, he shall terminate the use of the SOFTWARE and completely delete the SOFTWARE from all data carriers and data memories, including the hard disc of his machine, and notify EFFICIENT ELEMENTS thereof IN WRITTEN FORM. The warranty does not cover defects caused – directly or indirectly –
  - by intentional or negligent use contrary to purpose by the USER for which EFFICIENT ELEMENTS is not responsible, and
  - by repairs or modifications by the USER or third parties.

### § 4 Technical Requirements

- (1) All technical requirements for using the SOFTWARE will be explained to the USER on the EFFICIENT ELEMENTS website. The USER must adhere to these requirements for the full duration of the contract in order to be able to use the SOFTWARE. In the event that the CUSTOMER and / or USER does not fulfill the technical requirements and therefore is not able to use the SOFTWARE, EFFICIENT ELEMENTS shall not be liable for any damages resulting from the inability to use the SOFTWARE and will not refund any fees.
- (2) Depending on the version and deployment of the SOFTWARE, an internet connection may be required in order to activate the SOFTWARE; the cost of the internet connection will be borne by the CUSTOMER or USER.
- (3) Depending on the version and deployment of the SOFTWARE, administrative privileges may be required in order to install the SOFTWARE.
- (4) When using the SOFTWARE, the installed SOFTWARE will store information both temporarily and permanently on the respective machine. SOFTWARE settings will be saved to the machine and may be entered in the registry.
- (5) The CUSTOMER and USER shall cooperate and provide all reasonable assistance to EFFICIENT ELEMENTS in the correction of errors in the SOFTWARE. This includes the delivery of an error description / screenshots / sample files to EFFICIENT ELEMENTS (including the information, whether or not and how the error can be reproduced) and remote and / or live access to the relevant machine(s). In the event that the CUSTOMER and / or USER do not cooperate then EFFICIENT ELEMENTS shall have no obligation to correct such errors and shall not be liable in respect of such errors.
- (6) The CUSTOMER shall name individuals responsible for operating, administrating and maintaining the software on a day-to-day basis on behalf of the CUSTOMER and shall ensure that such list of named individuals remains current and up to date. The

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CUSTOMER shall make sure that these individuals are reasonably well trained in accordance with EFFICIENT ELEMENTS recommendations (if any).

- (7) If the CUSTOMER fails to install and use any delivered release of the SOFTWARE within 8 weeks of the date on which it was made available to the CUSTOMER, EFFICIENT ELEMENTS may on notice withdraw maintenance / error correction from the version of the SOFTWARE, which the maintenance release was intended to replace. Maintenance / error correction will be resumed at such time as the last delivered release is installed.

## § 5 Contract Duration and Cancellation

- (1) The contract comes into effect with acceptance of the ORDER by EFFICIENT ELEMENTS and – in case of a SOFTWARE ORDER – delivery of the license key(s) to the CUSTOMER and / or USER. The contract is valid for the duration specified in the order (CONTRACTUAL PERIOD). If no duration is explicitly specified, the CONTRACTUAL PERIOD for SOFTWARE ORDERS will be one year, starting with the date of delivery of the license key(s).
- (2) Before the end of the relevant CONTRACTUAL PERIOD of a SOFTWARE ORDER, EFFICIENT ELEMENTS may remind the CUSTOMER and / or USER to obtain a new license key, either through the user interface of the SOFTWARE or a reminder e-mail. CUSTOMER declares the explicit consent to such reminders.
- (3) The parties can cancel the contract at any time with sufficient reason. A sufficient reason exists
  - (a) for EFFICIENT ELEMENTS when the CUSTOMER is more than 30 days behind on payment, as defined in this contract, or
  - (b) for each party when the other party is in breach of fundamental points of this contract.
- (4) In order to be effective, any cancellation must be IN WRITTEN FORM.
- (5) After cancellation of the contract on which basis the SOFTWARE was used, the USER must end the use of the SOFTWARE and uninstall the SOFTWARE.

## § 6 Fees and Conditions of Payment

- (1) The fees for the use of the SOFTWARE and / or SERVICES outlined in the contract shall be defined in the ORDER. If the fees are not explicitly stated in the ORDER, the regular price list for the SOFTWARE and / or SERVICES applies as published on the EFFICIENT ELEMENTS website at the time the ORDER is placed. The fees will be calculated including whatever value-added tax is legally defined at the time the invoice is issued. Payment is to be made in advance for the CONTRACTUAL PERIOD when the contract becomes binding.
- (2) Any payments have to be made
  - (a) within 30 calendar days after issue of the relevant invoice through bank transfer or offered e-payment methods,
  - (b) directly when purchased through the web shop on the EFFICIENT ELEMENTS website via the offered e-payment methods.

Transactional fees and costs of conversion to invoice currency (if applicable) are to be borne by the CUSTOMER. In case a chargeback should become necessary (e.g.

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because of an erroneous order quantity) through negligence of the CUSTOMER, EFFICIENT ELEMENTS reserves the right to reduce the chargeback amount by 35 EUR plus 3.5% of the original amount to cover transaction cost.

- (3) If the CUSTOMER / USER has been using the SOFTWARE on a trial basis, trial usage can only be extended with the express approval of EFFICIENT ELEMENTS; if the CUSTOMER / USER contravenes this regulation, EFFICIENT ELEMENTS has the right to demand payment for the use of the SOFTWARE according to its regular price list.

## § 7 Personal Data of CUSTOMER

- (1) When the CUSTOMER places an ORDER at EFFICIENT ELEMENTS directly or through the web shop, it is necessary for the conclusion of the contract that CUSTOMER enters PERSONAL DATA which is required for the completion of the ORDER. Required information for the execution of the contract is:
  - CUSTOMER company, address, name and e-mail of the person(s) responsible
  - Payment data including additional information for payment processing
  - Name and e-mail-address of the intended users for the activation of the licence which is user based

The legal basis for this data processing is Art. 6 Para. 1 S. 1 lit. b GDPR.

- (2) EFFICIENT ELEMENTS processes the data provided by the CUSTOMER to execute the order placed. For this purpose, EFFICIENT ELEMENTS can pass on CUSTOMER'S payment data to third party payment service providers. The legal basis for this is Art. 6 Para. 1 S. 1 lit. b GDPR. Where EFFICIENT ELEMENTS utilizes third party payment service providers, the CUSTOMER'S PAYMENT INFORMATION will be disclosed to such third parties for card validation and transaction processing. EFFICIENT ELEMENTS will securely store PAYMENT INFORMATION where necessary to process ORDERS.
- (3) Depending on the version and deployment of the SOFTWARE, EFFICIENT ELEMENTS may collect data for license validation as follows (together named as "ACTIVATION INFORMATION") upon activation of the SOFTWARE and periodically while the SOFTWARE is installed: license key, user name, organization, e-mail – as filled in by the USER in the activation form or pre-filled in agreement with the CUSTOMER, license type, hardware ID (consisting of domain name, computer name, user name), timestamp, Microsoft® Office® version, Microsoft® Windows® version, SOFTWARE version.
- (4) Depending on the version and deployment of the SOFTWARE, the following data may be collected by EFFICIENT ELEMENTS if the USER decides to send error reports: error message, performance metrics, style name and style id generated by the SOFTWARE, error description, user name, contact information – as filled in by the USER in the error form, all ACTIVATION INFORMATION as stated in § 7 (3).
- (5) If the CUSTOMER / USER uses the "automatic updates" feature of the SOFTWARE (if available), SOFTWARE will check for updates in regular intervals and may thereby transmit and store the ACTIVATION INFORMATION as stated in § 7 (3).
- (6) For the use of the EFFICIENT ELEMENTS website and/or other services provided through the website, additional privacy terms may apply, which are accessible through the relevant website or service.
- (7) Other services or websites that are linked or redirected to from the EFFICIENT ELEMENTS website may have implemented different guidelines as regards data collection and processing; for this reason, the data protection notices on the respective websites, or the data protection notices for the use of respective services are effective.

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## § 8 Use of Data

- (1) If PERSONAL DATA is passed on to EFFICIENT ELEMENTS, the CUSTOMER and the USER declares himself in agreement with EFFICIENT ELEMENTS passing on, using and storing this information in all countries in which EFFICIENT ELEMENTS is established, or in which EFFICIENT ELEMENTS avails of technical services from a third party.
- (2) The data processing centers used by EFFICIENT ELEMENTS are located within a member state of the European Union (EU) or within a member state of the European Economic Area (EEA) or, if a transfer of data to a state which is not a member state of either the EU or the EEA will take place, EFFICIENT ELEMENTS will secure, that the specific conditions of Article 44 et seq. GDPR have been fulfilled. The data processing in such territories will only take place in countries, where the adequate level of protection
  - has been decided by the European Commission (Article 45 Paragraph 3 GDPR),
  - is the result of binding corporate rules (Article 46 Paragraph 2 Point b in conjunction with Article 47 GDPR),
  - is the result of Standard Data Protection Clauses (Article 46 Paragraph 2 Points c and d GDPR),
  - is the result of approved Codes of Conduct (Article 46 Paragraph 2 Point e in conjunction with Article 40 GDPR).
- (3) EFFICIENT ELEMENTS will only use PERSONAL DATA for the specific reason for which this data was conveyed. PERSONAL DATA will only be passed on to a third party with the express agreement of the USER, or in cases that are allowed by law. Unless otherwise stated, PERSONAL DATA the USER has passed on to EFFICIENT ELEMENTS is only for internal EFFICIENT ELEMENTS use, and for use described in the data protection directive. PERSONAL DATA can, however, be passed on to third party organizations that provide services for EFFICIENT ELEMENTS in the areas of execution of orders, payment processing or administration, or other services described in this document.
- (4) EFFICIENT ELEMENTS can pass on PERSONAL DATA and other information if this is required by virtue of a law, or because of a citation or court ruling, or if it is required in order to answer a query, request or complaint from the USER or from a third party on behalf of the USER.

## § 9 General Principles on Data Protection

- (1) Due to commercial and tax regulations, EFFICIENT ELEMENTS is obliged to store CUSTOMERS address, payment and ORDER data for a period of ten years. However, two years after the contract has been completed, EFFICIENT ELEMENTS will restrict processing, i.e. this data will only be used to comply with legal obligations.
- (2) To prevent unauthorized access to CUSTOMERS personal data, especially financial data, the ORDER process is encrypted using SSL/TLS technology.
- (3) The person responsible in the meaning of. Art. 4 Para. 7 General Data Protection Regulation (GDPR) is Dr. Bastian Schittny, Troppauer Str. 34, 74321 Bietigheim-Bissingen, Germany, [privacy@efficient-elements.com](mailto:privacy@efficient-elements.com) (see „Impressum“ on the EFFICIENT ELEMENTS website). CUSTOMER / USER can contact the person responsible for data protection at [privacy@efficient-elements.com](mailto:privacy@efficient-elements.com) or via EFFICIENT ELEMENTS' postal address with the addition "Data Protection".

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- (4) If CUSTOMER / USER sends e-mail messages or other messages, in particular comments, or enters them directly via a form provided by EFFICIENT ELEMENTS, EFFICIENT ELEMENTS will retain such messages in order to process the request, respond to questions and improve the products and services provided. EFFICIENT ELEMENTS deletes the data arising in this context after the storage is no longer necessary or limits the processing if statutory retention obligations exist.
- (5) CUSTOMER / USER has the right to ask about his personal data free of charge at any time. Furthermore, CUSTOMER / USER has the right at any time to revoke their consent to the use of their personal data with effect for the future and to request correction or deletion of the data stored by EFFICIENT ELEMENTS.
- (6) In particular, CUSTOMER / USER has the following rights towards EFFICIENT ELEMENTS with regard to the personal data related to them:
  - Right to access information
  - Right to correction or erasure
  - Right to limitation of processing
  - Right of withdrawal of the consent to processing
  - Right to data transferability
- (7) CUSTOMER / USER also has the right to complain to a data protection supervisory authority about the processing of personal data by EFFICIENT ELEMENTS.
- (8) Please contact the person responsible for data protection at [privacy@efficient-elements.com](mailto:privacy@efficient-elements.com) to request information, to withdraw the consent to processing, and to request deletion; the person responsible for data protection will then provide the information immediately or confirm the withdrawal or the execution of the request for deletion. A deletion requested by CUSTOMER / USER will then be carried out subject to statutory retention obligations. If a deletion cannot take place completely due to legal storage obligations, EFFICIENT ELEMENTS limits the processing of the data concerned and informs CUSTOMER / USER accordingly.

## **§ 10 Limitation of Liability**

- (1) The following limitations of liability are valid with regard to all compensation claims regardless of their basis in law, in particular with regard to pre-contract and extra-contract claims.
- (2) EFFICIENT ELEMENTS is liable for any damages to the CUSTOMER / USER as EFFICIENT ELEMENTS can be charged with intent or gross negligence. EFFICIENT ELEMENTS shall be liable in accordance with the regulatory requirements in case of any culpable infringement of a material contractual obligation, even in case of ordinary negligence, whereby EFFICIENT ELEMENTS liability shall be limited to foreseeable, typically occurring damages. For all other claims and if neither intent nor gross negligence can be shown, EFFICIENT ELEMENTS is only liable to the CUSTOMER / USER for an amount not higher than 300% of the yearly LICENSE FEE as defined in the relevant ORDER.
- (3) The previously mentioned limitations of liability do not restrict any legal entitlements according to Product Liability Act. The liability for claims on injury to life, body or health is not affected by previously mentioned limitations, insofar as the claims are based on intent or gross negligence by EFFICIENT ELEMENTS or by any legal representative or assistant of EFFICIENT ELEMENTS. The liability for given guarantees is not limited, insofar as the given guarantee is expected to protect the USER from the occurred damages.

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- (4) It is the USER'S duty to make backup copies of his data at appropriate intervals and in an appropriate way. A violation of this duty is to be considered as contributory negligence.

## **§ 11 Intellectual Property, Confidentiality**

- (1) Software and other material provided in the scope of this contract, which is protected by proprietary law, including but not limited to images, text, graphics, audio files and video files, as well as the selection, coordination and arrangement of these materials (henceforth known as INTELLECTUAL PROPERTY), are protected under copyright law, trademarks, service marks and other property laws. These copyrights, trademarks etc. are the property either of EFFICIENT ELEMENTS or of third parties that have licensed their INTELLECTUAL PROPERTY to EFFICIENT ELEMENTS. All other trademarks, service marks and trade names used are the property of their owners. EFFICIENT ELEMENTS allows the CUSTOMER / USER to make temporary copies of all or part of its INTELLECTUAL PROPERTY and to download this for the purpose of using, viewing and browsing the INTELLECTUAL PROPERTY, insofar as nothing to the contrary is stated. The INTELLECTUAL PROPERTY can only be copied, reproduced, newly published, uploaded, posted, transferred or in any other way distributed if this is expressly permitted in the conditions of use. Using or modifying EFFICIENT ELEMENTS' INTELLECTUAL PROPERTY in any way represents a breach of copyright and other proprietary laws and is strictly forbidden.
- (2) The USER may not use, copy or make known to a third party any CONFIDENTIAL INFORMATION, unless this is expressly permitted in this contract or the CUSTOMER is required to do so based on legal requirements or a legally binding decision.
- (3) The USER commits to protect CONFIDENTIAL INFORMATION sufficiently according to common data protection standards against disclosure or misuse. If the USER should find out that CONFIDENTIAL INFORMATION has been disclosed or misused, the USER will immediately inform EFFICIENT ELEMENTS and cooperate with EFFICIENT ELEMENTS to avoid further disclosure or misuse of the CONFIDENTIAL INFORMATION.

## **§ 12 General Conditions**

- (1) The CUSTOMER grants EFFICIENT ELEMENTS the right to display the CUSTOMER'S company name and logo on the references page of the EFFICIENT ELEMENTS website and product marketing material. The CUSTOMER may revoke the right to display the CUSTOMER'S company name and logo at any point in time IN WRITTEN FORM.
- (2) This contract is subject exclusively to German law. The application of the Convention of Contracts for the International Sale of Goods (CISG) of 11.04.1980 – in its most current version – as well as other specifications of international contract law are excluded. If the CUSTOMER is a commercial customer, Munich (Germany) is the jurisdiction for any disputes resulting from and in connection with this contract.
- (3) This contract, including the ORDER and any offer to the USER that preceded it, represents the entire agreement between the CUSTOMER and EFFICIENT ELEMENTS as regards the content of this contract. Changes and additions to these GENERAL TERMS AND CONDITIONS are only effective if they are mutually agreed on IN WRITTEN FORM. Waiving the WRITTEN FORM requirement of this point must also be submitted IN WRITTEN FORM.

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- (4) EFFICIENT ELEMENTS renders all SERVICES and licensing of SOFTWARE exclusively on the basis of these GENERAL TERMS AND CONDITIONS. Contradicting Terms and Conditions are expressly rejected.
- (5) If individual regulations in these conditions are or become ineffective, this will not affect the general effectiveness of the remaining regulations contained in these conditions. This is also true in the case of any loopholes in the regulations.
- (6) In the place of an ineffective regulation or to fill any potential loopholes in these conditions, an effective and appropriate regulation should come into effect, which most closely resembles what the parties wanted to achieve based on their commercial aims.

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