

Terms and Conditions for Software

1. Scope

- 1.1** These Terms and Conditions apply to all individual agreements ("**Individual Contracts**") by which the Customer purchases or leases one or several software products of Nexus.
- 1.2** To the extent an Individual Contract does not contain any explicit deviating stipulations, the stipulations of these Terms and Conditions shall apply to all Software sold or leased by Nexus to the Customer. For the avoidance of doubt, any deviating stipulations in an Individual Contract shall prevail over these General Terms and Conditions.
- 1.3** Any general terms and conditions of the Customer that deviate from or supplement the provisions of these Terms and Conditions shall not become part of any Individual Contract unless agreed by both Nexus and the Customer in writing.
- 1.4** Nexus's offers are non-binding, unless explicitly stated otherwise in the respective offer; therefore, the respective Individual Contract is concluded if the Customer accepts Nexus' offer and Nexus has confirmed the order by way of an order confirmation (as a rule in writing).
- 1.5** Unless explicitly agreed otherwise, with regard to purchases, the software product of Nexus is sold (i) as described at <https://doc.nexusgroup.com>, (ii) in object code format and (iii) including the pertaining user documentation in electronic form ("**Perpetual License**"). With regard to software lease, the software product of Nexus shall (i) have the features as described under <https://doc.nexusgroup.com>, (ii) be made available for the duration of the lease in object code format and (iii) include the pertaining user documentation in electronic form ("**Subscription License**").
- 1.6** Nexus shall provide the Nexus Software for download via the internet. The download link shall be provided to the Customer after full payment has been effected. The Nexus

Software will not be provided separately on a data carrier.

- 1.7** The Customer shall be in charge of the installation of the Nexus Software on its systems and any installation support provided by Nexus on Customer's request will be separately remunerated.

- 1.8** For the avoidance of doubt, the Customer is not entitled to receive a copy of the source code of the Nexus Software or any other way of access to such code.

2. Rights of Use

- 2.1** Within the scope of the perpetual licensing model agreed under the respective Individual Contract, Nexus shall grant to the Customer the permanent, non-sublicenseable and non-exclusive right to run the Nexus Software for its own purposes on its own computers and, to the extent required for running the Nexus Software and for backup purposes as per Section 2.5, to copy it. Apart from such right, no further rights of use in the Nexus Software are granted to the Customer. In particular, Nexus reserves its rights with respect to any change, copy, distribution, and publishing of the Nexus Software. The Customer warrants that only authorised employees (the named users) will get access to the Nexus Software. The Customer shall instruct its employees to comply with the provisions of these General Terms and Conditions.

- 2.2** Within the scope of the subscription licensing model agreed under the respective Individual Contract, Nexus shall grant to the Customer, to the extent that this is paid for, the temporary, non-transferable, non-sublicenseable and non-exclusive right to run the Nexus Software for its own purposes on its own computers for the duration of lease as set forth in the Individual Contract and, to the extent required, for running the Nexus Software and for back-up purposes as per Section 2.5, to copy it. Apart from such right, no further rights of use in the Nexus Software are granted to the Customer. In particular, Nexus reserves its rights with respect to any change, copy, distribution, and publishing of the Nexus Software. The Customer warrants

that only authorised employees will get access to the Nexus Software. The Customer shall instruct its employees to comply with the provisions of these General Terms and Conditions.

- 2.3** The Customer shall be entitled to print out and copy the user documentation for its own purposes. Any forwarding to or sharing with third parties is not permissible.
- 2.4** Nexus warrants that the Nexus Software is free of any third-party rights that would restrict or exclude its contractually agreed use. Should the contractual use of the Nexus Software be affected by third-party industrial property rights, Nexus shall be entitled to reasonably modify the Nexus Software in such a way that it no longer falls under the protection of such rights while at the same time preserving its essential usage functions, or to obtain authorisation that the Nexus Software may be used without restrictions without additional costs.
- 2.5** In the event the Customer was not provided with a backup copy, it shall be entitled to make one (1) machine-readable copy of the Nexus Software for backup purposes, ensuring that such copy is labelled as a "backup copy" in machine-readable form or plain writing. The Customer shall ensure that no backups or copies of the computer program are made within the scope of other data backups.
- 2.6** The removal of serial numbers, copyright notices or other programme identification features is prohibited. The same applies with respect to the suppression of the on-screen display of such features.
- 2.7** The Customer may not use or otherwise export or re-export the Software except as authorized by applicable law. The Customer represents and warrants that it is not located and will not use the Software in any country to which export or re-export is prohibited under applicable law (such as a country subject to U.S. Government embargo) and that the Customer is not listed on any U.S. Government, EU, UN or any other relevant government list of prohibited or restricted parties and will not export or resell the Software to any such targeted person or entity, or without any required export licenses and approvals.

3. Remuneration and Payment

- 3.1** With regard to the Perpetual License, remuneration (purchase price for the Nexus Software) is defined in the Individual Contract. To the extent the Individual Contract does not define the remuneration in whole or in part, Nexus's price lists applicable at the time of the conclusion of the Individual Contract shall apply.
- 3.2** The purchase price shall be invoiced to the Customer upon conclusion of the underlying Individual Contract.
- 3.3** The payment of the purchase price covers the sale of the Nexus Software, including the licence according to Section 2. The purchase price does not cover the costs of installation, implementation, parameterisation, customising and maintenance of the Nexus Software, or the induction and training of the Customer's employees. Such services shall be commissioned and invoiced separately, pursuant to these General Terms and Conditions.
- 3.4** Nexus shall charge the remuneration for Delivery Services as well as for Project for Works as agreed in the respective Individual Contract plus VAT as applicable. For the avoidance of doubt, any taxes applicable to the Customer which apply in connection with the business relationship between the Customer and Nexus (e.g. sales taxes or source taxes) are to be borne by the Customer.
- 3.5** The Customer shall pay the due remuneration in full within thirty (30) calendar days from receipt of the respective invoice.
- 3.6** With regard to the Subscription License, the remuneration (rental fee for the Nexus Software) is defined in the Individual Contract. To the extent the Individual Contract does not define the remuneration in whole or in part, Nexus' price lists applicable at the time of the conclusion of the Individual Contract shall apply.
- 3.7** The rental fee shall be invoiced quarterly in advance.
- 3.8** The payment of the rental fee covers the lease of the Nexus Software, including the licence according to Section 2. The rental fee

does not cover the costs of installation, implementation, parameterisation, customising and maintenance of the Nexus Software, or the induction and training of the Customer's employees. Such services shall be commissioned and invoiced separately, pursuant to these General Terms and conditions.

- 3.9** Nexus shall charge the remuneration for Delivery Services as well as for Project for Works as agreed in the respective Individual Contract plus VAT as applicable. For the avoidance of doubt, any taxes applicable to the Customer which apply in connection with the business relationship between the Customer and Nexus (e.g. sales taxes or source taxes) are to be borne by the Customer.
- 3.10** The Customer shall pay the due remuneration in full within thirty (30) calendar days from receipt of the respective invoice.
- 4. Modifications**
- 4.1** The Customer is not permitted to reconstruct the source code of the Nexus Software (decompiling) or to modify the program in any way.
- 4.2** Should the Customer need information on interfaces in order to ensure interoperability with another program, it shall be entitled to reconstruct the source code of the Nexus Software (decompiling) or to modify the program, if Nexus, despite a written request by the Customer, has stated that it is unwilling or unable to provide the required information. If Nexus declares its willingness to provide the required information, the Parties shall conclude a separate agreement on the provision of such information.
- 4.3** If the Customer performs any of the actions pursuant to Section 4.1, only the Customer and its employees shall be entitled to use the information gained solely for internal purposes of the Customer. Every other use, in particular the use for commercial purposes or the forwarding to third Parties, shall require the prior written consent of Nexus. Nexus shall not withhold such consent unreasonably.

5. Resale and Pre-emption Right

- 5.1** With regard to the Perpetual License, if the Customer sells and assigns the used Nexus Software to a third party, the Customer shall stop all further use of the Nexus Software and delete all existing copies or return them to Nexus. The Customer shall confirm to Nexus in writing the deletion of all copies and provide information on the assignee to enable Nexus to verify compliance with its intellectual property rights and licence terms. Upon assignment, the Customer loses all of its rights of use in the Nexus Software.
- 5.2** The Customer shall not assign the Nexus Software to a third party if reasonable suspicions exist that such third party will violate the provisions of these Terms and Conditions, in particular that it will make unauthorised copies of the Nexus Software.
- 5.3** The Customer shall grant to Nexus a pre-emption right in the Nexus Software under which Nexus is entitled to enter into a purchase contract concluded between the Customer and a third party instead of such third party. In this context, the following shall apply:
- (a) The Customer shall only conclude the contract with the third party upon condition that Nexus will not exercise its pre-emption right.
 - (b) The Customer shall immediately notify Nexus in writing of the content of the contract concluded with the third party, including name and full address of the respective third party.
 - (c) Nexus shall submit a written declaration to the Customer regarding the exertion of its pre-emption right within ten (10) working days after receipt of the Customer's notification.
 - (d) Upon exertion of Nexus' pre-emption right, the contract between Nexus and the Customer shall be concluded at the conditions agreed between the Customer and the third party.
- 5.4** With regard to the Subscription License, without Nexus' written permission, the Customer may not sell, license, rent, lease, lend, or otherwise transfer the Nexus Software and/or any of its components to a third party, or permit a third party to use or

copy the Nexus Software. Organs, statutory representatives, employees or other vicarious agents of the Customer are no such third party.

6. Obligation to Notify Defects

6.1 The Customer shall examine the Nexus Software with respect to completeness and possible defects immediately but not later than seven (7) calendar days after download of the Nexus Software, including a test of the functionality of the programme components, and shall notify any defects to Nexus without undue delay but not later than fourteen (14) calendar days after download of the Nexus Software. If the Customer fails to provide the above notice, the Nexus Software shall be deemed approved, with the exception of defects which were not recognisable by such examination. In case such defect becomes apparent later, the Customer shall provide notice without undue delay after the discovery; otherwise the Nexus Software shall be deemed approved also with respect to such defect.

6.2 A notice of defects shall state the asserted defects as detailed as possible, indicating the circumstances of the environment, the installation, performed functions, the detected defect pattern, the effects of such defect on the functionality of the Nexus Software, and any on-screen defect messages (qualified defect message).

7. Claims for Defects

7.1 Nexus shall assume warranty obligations in case of defects of the Nexus Software pursuant to the provisions of this Section 7.

7.2 The nature and quality of the Nexus Software is conclusively described in the program specifications according to Section 1.5. Nexus does not assume any guarantee with respect to the nature and quality and/or durability of the Nexus Software nor any other guarantee, unless it has explicitly assumed a specified guarantee under an Individual Contract.

7.3 Nexus shall not be liable for any defects resulting from the use of a hardware and software environment that does not meet the system requirements described at <https://doc.nexusgroup.com>. The Customer may not assert any claims for defects

resulting from a program modification which was not carried out, arranged for or approved by Nexus. If the Customer installs the Nexus Software itself, it may not assert any claims for immediate or subsequent defects occurring in connection with the installation, unless the defect results from incorrect installation instructions by Nexus.

7.4 Nexus shall remedy any material defects and/or defects of title upon receipt of a timely and reasonable notice as per Section 6 by the Customer. Nexus may, at its own discretion, remedy the defect either by rectification or delivery of a new copy of the Nexus Software (right to subsequent performance) within a reasonable period of at least four (4) weeks. In particular, Nexus shall be entitled to remedy defects by delivery of new program packages (patches, updates) that are free of the reported defect. Where reasonable, such program packages shall be installed by the Customer. Otherwise, Nexus shall install the package via remote access. In the latter case, the Customer shall grant to Nexus the required remote access to the installation environment of the Nexus Software. If reasonable for the Customer, Nexus may, as a means of rectification, provide a workaround solution for the period until final remedy of the defect.

7.5 In the event of a new delivery, Nexus shall be entitled to deliver a new program version with an equivalent range of functions, unless this is unacceptable for the Customer, e.g. because it would require another operating system or substantially more powerful hardware. An initial training or user instruction for a modified program shall, in principle, not be deemed unacceptable for the Customer.

7.6 If the Individual Contract provides that Nexus shall carry out the installation upon instruction of the Customer, warranty rights shall become time-barred after one (1) year of completed installation of the Nexus Software by Nexus. Otherwise, the Customer's claims for defects shall become time-barred one (1) year from the date of the download of the Nexus Software by the Customer. In the event of a wilful concealment of defects, statutory warranty provisions shall apply.

7.7 With regard to the Perpetual License, if subsequent performance fails, the Customer will be entitled to request an adequate decrease of the agreed purchase price. The

Customer shall not be entitled to rescind the respective Individual Contract.

- 7.8** With regard to the Subscription License, for the duration of any period of limited use due to a defect, the Customer shall be entitled to request an adequate decrease of the agreed rental fee as of the date on which Nexus has received the notice as per Section 6 from the Customer. In such case, Nexus will issue a service credit together with its next invoice.
- 7.9** With regard to the Subscription License, the Customer's right to termination for good cause shall remain unaffected.
- 7.10** The Customer shall reimburse Nexus for all expenses incurred by Nexus due to the Customer's request to rectify a defect if it turns out after inspection that no defect of the Nexus' services exists and the Customer could have realized that no defect exists after reasonable verification.
- 7.11** The present terms and conditions are subject to [Nexus Lifecycle Policy](#).

8. Maintenance and Servicing of Nexus Software

Maintenance and servicing, including the provision of updates or upgrades are not part of any Individual Contract for the purchase of Nexus Software. If requested by the Customer, the Parties shall conclude a Nexus Software maintenance contract and/or a Nexus Software servicing contract.

9. Retention of Title (Perpetual License)

- 9.1** Should an Individual Contract provide for different payment terms than those pursuant to Section 3, the right of ownership in the Nexus Software and in the pertaining documentation shall remain with Nexus until full settlement of all of Customer's payment obligations.
- 9.2** If Nexus asserts its right of retention or rescinds from the contract, the Customer shall immediately cease to use the Nexus Software and delete all copies made by it. The Customer loses all rights of use in the Nexus Software.

10. Return of the Nexus Software (Subscription License)

- 10.1** Upon termination of the Individual Contract, all rights of use granted hereunder with respect to the Nexus Software shall immediately cease. The Customer shall immediately cease using the Nexus Software and provide to Nexus a written confirmation that it has complied with the foregoing obligations.
- 10.2** The Customer shall comprehensively and irrevocably delete any parts of the Nexus Software installed on its system and all existing copies of the Nexus Software.

11. Protection of the Nexus Software and Audit

- 11.1** The Customer shall protect the access to the License key, the Nexus Software and any access information against any unauthorised third-party access.
- 11.2** Nexus reserves the right to request a written report from the Customer on the current usage and number of installed licenses which the Customer has to provide within seven (7) calendar days upon written request.
- 11.3** Upon seven (7) calendar days' prior written notice, Nexus shall, itself or through an appointed third party, be entitled to review the proper contractual use of the Nexus Software, in particular the details of the Customer's use of the Nexus Software, which are relevant under the agreed licensing model ("**Software Audit**"). Software Audits may only be conducted once per calendar year, unless Nexus has reason to believe that the Customer is in breach of the Individual Contract. The Customer shall provide all required documents and support the review of its use of the Nexus Software. Nexus shall be entitled to carry out the audit on the premises of the Customer during normal business hours. To facilitate the review of compliance with the licensing provisions, the Customer shall grant Nexus (or a third party commissioned by Nexus) access to all relevant business premises, to furnish all required and requested information and documents, to grant access to such computers on which the Nexus Software is installed, and, upon request, grant all required access rights to such computers, including

administrator rights. Nexus procures not to unreasonably disturb the operational procedures of the Customer. After termination of the audit, Nexus shall inform the Customer in writing of the respective results.

- 11.4** Should the Customer intend to use the Nexus Software beyond the extent agreed under the respective Individual Contract, it shall acquire the required rights of use against payment of the applicable licence fee. Should the Customer culpably exceed its rights of use significantly (e.g. a continuous unpermitted use of more than 10%), it undertakes to pay to Nexus a contractual penalty. The contractual penalty shall amount to 50% of the licence fee payable for such additional use. The obligation to pay respective licence fees shall remain unaffected. Nexus shall not be obliged to state its entitlement to contractual penalties upon acceptance of the licence fee.

12. Withholding of Performance and Set-off

- 12.1** The Customer shall be entitled to withhold or refuse performance with regard to claims that are undisputed or have been acknowledged by a final court decision or which are counterclaims from the same contractual relationship with Nexus. Other withholding rights are excluded.
- 12.2** The Customer shall only be entitled to set-off claims against those claims of Nexus if the Customer's claims are undisputed or have been acknowledged by a final court decision or are counterclaims from the same contractual relationship with Nexus. Other set-off rights are excluded.

13. Force Majeure

- 13.1** Malperformance shall not constitute a breach of contract to the extent it is caused by unpreventable occurrences, in particular epidemics and pandemics, earthquake, deluge, flooding, fire, explosion, blackout, embargos, governmental restrictions, riots, terrorist attacks, war or other military action, civil unrest, rebellion, vandalism, sabotage, strike at Nexus's or sub-supplier's plant, or other causes not attributable to the affected Party ("**Force Majeure**"). The obligations of the affected Party shall be suspended for the duration of Force Majeure.

- 13.2** The performance period shall be extended by the delay caused by the occurrence of Force Majeure plus an adequate restarting period.

- 13.3** In the event concrete indications exist that the impediment of performance due to Force Majeure will continue for more than one hundred and twenty (120) calendar days, either Party shall be entitled to terminate in writing any Individual Contract. If a one-off Individual Contract has not yet been performed, each of the Parties shall be entitled to rescind from the contract. All further rights shall be excluded in case of Force Majeure.

14. Liability

- 14.1** All rights of the Customer to claim damages or compensation for wasted expenditure shall, regardless of their legal nature, be subject to this Section 14.

- 14.2** Nexus shall be fully liable for damages caused by an intentional violation of its obligations.

- 14.3** Nexus shall also be fully liable for damages caused by a grossly negligent violation of its obligations, with the following exception: If the violation has been committed by a simple vicarious agent and has caused other damage than damage to life, body or health, Nexus' liability shall be limited to the foreseeable typical damage (as provided for in Section 14.5).

- 14.4** In case of simple negligence (i.e. not gross negligence), Nexus shall be liable as follows:

- 14.4.1** Nexus shall be fully liable for damages (i) to life, body or health, (ii) caused by a violation of a contractual guarantee or (iii) in case of claims under the Product Liability Act.

- 14.4.2** In all other cases than those addressed in Section 14.4.1, Nexus shall only be liable for the violation of such obligations that are material for the proper implementation of the Individual Contract and on the fulfilment of which the Customer relies and regularly may rely (essential duties). In such cases, liability shall be limited to the

foreseeable typical damage as provided for in Section 14.5.

14.4.3 Nexus liability for simple negligence in all other cases not addressed in Sections 14.4.1 and 14.4.2 is excluded.

14.5 The Parties agree that the foreseeable typical damage shall not exceed a maximum amount corresponding to the purchase price paid for the defective Nexus Software.

14.6 Unless explicitly agreed otherwise, the Customer shall be responsible to back-up its data in accordance with current technical standards. If any data is destroyed or lost, Nexus' liability shall be limited to such amount that would have been required for the recovery or replacement of such data if the Customer had made proper backups. Recovery expenses shall extend to the actually incurred additional costs for recovery and/or replacement of the data.

14.7 All other liability of Nexus shall be excluded. The limitations of liability and exclusions of liability pursuant to this Section 14 shall not affect the liability of Nexus pursuant to the mandatory statutory provisions of the Product Liability Act, due to the fraudulent concealment of a defect or the assumption of a contractual guarantee for the quality of an item.

14.8 The provisions of this Section 14 shall also apply in favour of Nexus' vicarious agents in case the Customer raises claims directly against any of them.

15. Marketing

Each Party shall be entitled to reference the name and trademark and/or the logo of the respective other Party on its website and in presentations for the term of the contractual relationship, unless the other Party objects in writing.

16. Confidentiality

16.1 The Parties undertake not to disclose to any third party confidential information of the respective other Party of which they gain knowledge within the scope of negotiating and implementing any Individual Contract, and to likewise bind their respective

employees within the scope of the applicable employment law to secrecy.

16.2 Confidential information within the meaning of these Terms and Conditions is all information (whether in writing, electronically, orally, digitally embodied or in any other form) which is transferred from the holder to the recipient or to a person associated with the recipient within the meaning of Sects. 15 ff. AktG (German Stock Corporation Act) within the aforementioned scope. Confidential information includes, in particular, trade secrets, products, manufacturing processes, know-how, inventions, business relationships, business strategies, personnel matters, digitally embodied information (data), as well as any documents and information of the holder which are subject to technical and organizational secrecy measures and which are marked as confidential or are to be considered confidential due to the nature of the information or the circumstances of the transmission.

16.3 This obligation does not apply to such confidential information,

16.3.1 which were demonstrably already known to the other Party when the Individual Contract was concluded or which subsequently become known to the other Party by third parties, without this infringing any confidentiality agreement, statutory provisions or official orders.

16.3.2 which are publicly known at the time of the conclusion of the Individual Contract or are made publicly known thereafter, unless this is based on a breach of the Individual Contract.

16.3.3 which must be disclosed by virtue of statutory obligations or by order of a court or authority. To the extent permissible and possible, the Party subject to the disclosure obligation shall give prior notice to the other party and the opportunity to take action against the disclosure.

17. Term and Termination (Subscription License)

17.1 The Individual Contract shall enter into force on the date set out in the Individual Contract

("Starting Date") and shall have a minimum contract period of thirty six (36) months from the Starting Date. Thereafter, the Individual Contract will automatically be extended for a further twelve (12) months if it is not terminated before the end of the respective contract period with three (3) months' notice.

17.2 Each Party shall be entitled to terminate the respective Individual Contract for good cause in case of a compelling reason if the terminating Party, taking into account all the circumstances of the specific case and weighing the interests of both Parties, cannot reasonably be expected to continue the contractual relationship until the agreed end or until the expiry of a notice period. If the compelling reason consists in the breach of a duty under the contract, as a rule, the contract may be terminated only after the expiry without result of a pe-riod specified for relief or after a warning notice without result. Any statutory termination rights shall remain unaffected.

18. In particular, Nexus reserves the right to terminate the respective Individual Contract without notice if the Customer is in default, on two (2) successive dates, of payment of the rent or of a portion of the rent that is not insignificant, or if the Customer in a period of time extending over more than two (2) dates is in default of payment of the rent in an amount that is as much as the amount of rent for two (2) months.

19. Data Protection

19.1 Nexus regards data protection as a significant prerequisite for successfully conducting business, and we are committed to take any necessary measures to assess and safeguard the personal data we process. Therefore, we continuously review and update our practices in accordance with applicable data protection rules and regulations (including EU Regulation 2016/679, more commonly referred to as the GDPR). We have for instance implemented technical and organizational measures to ensure that such data protection related requirements are applied both by us as well as by our external service providers and other suppliers.

For more information about how Nexus processes personal data, please visit our

webpage: www.nexusgroup.com/privacy-policy.

20. Applicable law and Place of Jurisdiction

20.1 These Terms and Conditions and any Individual Contract shall exclusively be governed by German law. The regulations of the UN Convention on Contracts for the International Sale of Goods dated 11 April 1980 (CISG) shall be excluded.

20.2 If the Customer is a merchant within the meaning of the German Commercial Code (HGB), a legal entity under public law or a special fund under public law, the exclusive - also international - place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is Düsseldorf. The same applies if the Customer is an entrepreneur within the meaning of Sect. 14 BGB. Priority statutory provisions, in particular those relating to exclusive jurisdiction, shall remain unaffected.

21. Miscellaneous

21.1 All changes, amendments, supplements or substantiations to the provisions of these Terms and Conditions as well as special guarantees and arrangements shall require the written form. The aforesaid also applies to any amendments of this Section 21.1.

21.2 Should a provision of these Terms and Conditions or any Individual Contract be or become invalid, this shall not affect the validity of the remaining provisions.

21.3 Any oral agreements shall be confirmed in writing.