

Software Clause of Bender GmbH & Co. KG

Status: 01.03.2022

§ 1

Scope of Application

This Software Clause supplements our General Terms and Conditions of Sale ("GTCS") and shall apply to the provision of software to the customer as part of or together with our products ("Software"). In case of inconsistencies between the Software Clause and the GTCS, the Software Clause shall prevail.

§ 2

Rights to Use

- (1) If the customer is a distributor for our products ("Distributor") on the basis of a written distribution agreement, we grant the Distributor the non-exclusive right
 - (a) to distribute the Software in accordance with the distribution agreement in the agreed territory in the form (embedded, stand-alone or any other form) provided by us;
 - (b) to grant any company or entity that uses or intends to use the Software for its own business purposes the rights to use the Software for its own business purposes, in unmodified form and in accordance with the terms of the distribution agreement.
- (2) The Software shall exclusively be provided in machine readable format (object code).
- (3) Save as provided for in sec. 69 lit. e (decompilation) of the German Act on Copyright and Related Rights ("UrhG"), the customer shall not be entitled to modify, decompile, translate, or isolate parts of the Software. The customer shall not remove alphanumeric or other identifiers from the data medium and shall transfer such identifiers unchanged to any back-up copy
- (4) For Software for which we have only derived rights to use and that is no open source Software (third party software), the provisions of this § 2 shall be amended and superseded by the conditions of use agreed between the us and our licensor to the extent that they refer to the customer (such as an end user license agreement); we shall notify the customer of such conditions and make them available upon request.
- (5) For open source Software, the provisions of this §2 shall be superseded by the conditions of use underlying the open source Software. We shall notify the Distributor of the fact that open source Software and pertaining conditions of use exist and make such conditions of use accessible to the customer or, if required according to the conditions of use, provide the customer with them.

§ 3

Transfer of Risk

If the Software is provided via electronic communication media (e.g. via the internet) the risk shall pass when the Software leaves the sphere of our influence (e.g. when making a download).

§ 4

Defects as to Quality

- (1) Software is considered to be defective only if the customer can prove that there are reproducible deviations from the specifications. A defect shall not be deemed to exist if it does not occur in the latest version (including updates, upgrades or patches) supplied to the customer, and the customer can be reasonably expected to use it (which is the case within three (3) months after the latest version was made available to the customer).
- (2) Notifications of defect by the customer shall be given in written form without undue delay. Defects and the relevant data processing environment shall be described as precisely as possible.
- (3) Claims based on defects do not exist in the case of any of the following:
 - (a) insignificant deviations from the agreed characteristics;
 - (b) only minor impairment of usability;
 - (c) damage from faulty or negligent handling by the customer or third parties;
 - (d) damage from particular external influences not assumed under the contract;
 - (e) modifications or amendments made by the customer or third parties, and any consequences resulting therefrom; or
 - (f) incompatibility of the Software provided with the data processing environment of the customer.
- (4) Unless we choose otherwise, we will correct the defect in the Software as follows:
 - (a) We will provide a replacement by way of an update or an upgrade of the Software if available to the us or obtainable with reasonable efforts. If the customer has been granted a multiple license, it may make a corresponding number of copies of the update, or, as the case may be, upgrade.
 - (b) Until an update, or, as the case may be, upgrade is provided, we will make available to the customer an interim solution bypassing the defect, provided that this does not result in unreasonable expenditures and that the customer would otherwise, due to the defect, be unable to complete work that cannot be delayed.
 - (c) If a data medium or documentation supplied proves to be defective, the customer's right shall be limited to demanding that we replace it with a non-defective version.
 - (d) We shall have the right to choose whether we correct the defect at the location of the customer or at our own location. If we choose to correct the defect at the customer's location, the customer shall assure that the required hardware and software as well as the required operating conditions (including the required computing time) and qualified operating personnel are available. The customer shall submit to us the documents and information available to it and required for defect correction.
 - (e) The customer shall enable us access for remote maintenance if so requested.