

Special PERI Terms and Conditions Licensing and Use of Software

valid from 06.01.2015



- 1. Scope**
 - 1.1 The Special PERI Terms and Conditions Licensing and Use of Software (hereinafter also referred to as "Terms") supplement the General Terms and Conditions of PERI GmbH (hereinafter referred to as "PERI") respectively in effect upon conclusion of the contract (hereinafter referred to as "PERI GTC"). PERI GTC can be retrieved from <https://www.peri.de/ww/de/info/geschaeftsbedingungen/agbs.cfm>.
In the event of contradictions between these Terms and the PERI GTC, these Terms shall prevail.
 - 1.2 These Terms are a translation of the German original version. Interpretations as to the wording of these Terms are always to be made based on the original German version.
 - 1.3 These Terms shall apply to business transactions entered into between PERI and entrepreneurs within the meaning of Section 14 German Civil Code (BGB), legal entities under public law or public sector funds under public law and consumers within the meaning of Section 13 BGB (hereinafter referred to as "**Licensee**").
 - 1.4 The following shall apply to the extent PERI concludes a contract on licensing and/or use of software with entrepreneurs within the meaning of Section 14 BGB, legal entities under public law or public sector funds under public law:
 - 1.4.1 The Terms shall apply to all services provided in the course of ongoing business relationships.
 - 1.4.2 The Terms shall also apply to future business relations between PERI and the Licensee, who already concluded a contract that included these Terms prior to contracting with PERI; this shall also apply if these Terms have not been expressly agreed upon.
 - 1.5 All other business relations between PERI and the Licensee shall not be affected by these Terms.
- 2. Protective Clause**

These Terms shall apply exclusively unless another contractual agreement was expressly made in writing or confirmed in writing by PERI. Other provisions, in particular the Licensee's General Terms and Conditions, shall not become an integral part of the contract, even if PERI does not expressly object to them.
- 3. Conclusion of Contract**
 - 3.1 A License or Use Agreement between the Licensee and PERI shall be subject to and come about solely under the following Terms.
 - 3.2 Offers made by PERI shall be non-binding.
 - 3.3 Acceptance of an offer by the Licensee does not comprise a contract until written order confirmation by PERI. The written order confirmation with its attachments finally define PERI's scope of services.
 - 3.4 All Licensee orders shall not become binding for PERI until the Licensee has received a full confirmation made in writing by PERI that includes the Licensee's application. PERI may also accept the Licensee's offer by delivery of the ordered goods or by sending the activation code or serial number. If PERI accepts the Licensee's offer by delivery of the ordered goods, the delivery note shall replace the order confirmation.
 - 3.5 In case of Licensee orders submitted orally or by telephone, the contract shall first be concluded when the Licensee receives PERI's written order confirmation and does not immediately object to it. The contents of the contract concluded upon basis of the verbal order (by phone) shall be determined by the written order confirmation from PERI and received by the Licensee.
- 3.6** To the extent PERI concludes a contract on licensing and/or use of software with entrepreneurs within the meaning of Section 14 BGB, legal entities under public law or public sector funds under public law, the Licensee expressly accepts the validity of these Contract Terms, which are attached to the order confirmation or offer, unless objecting thereto within three days after receipt of PERI's written order confirmation. In order for such an objection to become valid, it must be received by PERI within three days after receipt of PERI's written order confirmation.
- 3.7** Offer documents and documents relating to offers by PERI shall remain the property of PERI.
- 3.8** All agreements deviating from these contractual terms, and ancillary agreements to the entire contract, supplements and amendments of the contract concluded between PERI and the Licensee must be in writing to become effective and shall not become binding prior to written confirmation by PERI.
- 4. Granting of Rights**
 - 4.1 By paying the agreed license fee, the Licensee shall acquire the non-exclusive and non-transferable usage right to use the software programmes listed in the delivery note (hereinafter referred to as "**Software**") in accordance with the following Terms (hereinafter referred to as "**Licence**").
 - 4.2 The Licensee shall be entitled to install the Software as single-user version on one computer and for one user unless the Parties expressly agree otherwise. The Software shall be installed and used if it is loaded into the computer's working memory (i.e. RAM) or stored on a permanent memory (e.g. hard disk, CD-ROM, DVD, Bluray Disc, USB Stick).
 - 4.3 With granting of the Licence, the Licensee shall receive free authorisation to make or have made a single copy of the Software solely for own use, to the extent copying is made free of charge. Copying within the meaning of the above sentence shall be allowed in particular if the Software is copied to any storage medium (e.g. DVD/CD-ROM, Bluray Disc, USB Stick) for own scientific or non-commercial purposes and if it is ensured that PERI is stated as copyright owner in the copy.
 - 4.4 The Licensee shall have the right to create a single backup copy of the received Software.
 - 4.5 The Licensee shall not be entitled to change, edit, translate, reverse engineer, decompile, disassemble or create derivative works of the Software or to copy, publish, distribute, let or make available to third parties - for example by Internet - the software deviating from Clauses 4.3 and 4.4, whether temporary or permanent, whether in whole or in part.
- 5. Software Update**
 - 5.1 The Licensee shall be able to purchase available update versions from PERI in exchange for payment of the respective compensation for Software.
 - 5.2 It shall only be possible to purchase an update version if a maximum of two new releases of the Software have been published since the purchased version. If more than two new releases of the Software have already been published, the Licensee shall not be able to purchase a Software update; in such case a new

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- Licence is required which the Licensee can newly purchase from PERI.
- 5.3 In case of purchasing an update version of the Software, the Licensee shall commit to return to PERI the previously used Software version and to completely delete the programme from all data carriers and memories within two weeks after delivery of the updated version of the Software.
- 6. Obligations of the Licensee**
- 6.1 The Licensee shall be obligated to pay the agreed license fee as one-off fee.
- 6.2 The Licensee must ensure that the simultaneous use of more than the agreed number of authorisations is not possible.
- 6.3 The Licensee shall be obligated to create a user account on the servers of PERI or the third-party provider if PERI or a third-party provider demands from the Licensee to create a user account to use the Software and the creation of a user account is necessary to use the Software. The Licensee shall be prohibited from reselling the user account created for it within the meaning of above sentence or to make it available to any third party.
- 6.4 The Licensee shall install the licensed Software by himself and at his own charge.
- 6.5 The Licensee shall bear the sole responsibility for protection of his data.
- 6.6 The Licensee shall be obligated to take all necessary safety measures to prevent any unauthorised copying or transfer of such copies to third parties.
- 7. Maturity of Invoices**
- All invoices shall be due 30 calendar days after invoice receipt.
- 8. Right of Retention, Set-off, Transfer**
- 8.1 The Licensee shall not be entitled to any right of retention unless the counter-claim on which the right of retention is based has been finally determined in a binding legal ruling or acknowledged by PERI. Set-off shall be permissible only with claims that have been acknowledged by PERI or have been finally determined in a binding legal ruling.
- 8.2 The Licensee may only assign claims against PERI, regardless of legal basis, to third parties with the written consent of PERI.
- 9. Liability for Defects**
- 9.1 If the Software is supplied free of charge, any liability for material defects and defects of title concerning information, Software, calculation results and graphics shall be excluded, in particular for their correctness, accuracy, absence of third-party protection and copyrights, completeness and/or usability. Cases of intent or malice shall be excluded from the foregoing limitation.
- 9.2 If the Software is supplied against payment, claims for defects shall be governed by provisions of the applicable law.
- 10. Licensee's Obligation to Give Notice of Defects**
- To the extent liability for defects is not excluded pursuant to Section 9, the Licensee's obligation to give notice of defects shall be determined by Section 377

Commercial Code (HGB); this shall apply solely if the Licensee is an entrepreneur within the meaning of Section 14 BGB, a legal entity under public law or a public sector fund under public law.

11. Liability on the part of PERI

- 11.1 PERI's liability for defects shall be determined by Section 9.
- 11.2 PERI shall not be liable
- 11.2.1 for the loss or damage of data that have been stored on the terminal or on a storage medium of the Licensee;
- 11.2.2 for the loss or damage of other software programmes that are installed or stored on the terminal or on a storage medium of the Licensee;
- 11.2.3 if the Software is incompatible with the terminal or a storage medium of the Licensee.
- 11.3 In any other case, PERI shall be liable for damages - regardless of the legal basis - solely in cases of intent and gross negligence. In addition, PERI shall also be liable in cases of ordinary negligence
- 11.3.1 for damages arising from injury to life, body or health,
- 11.3.2 for damages arising from breach of a material contractual obligation (cardinal obligation); in this case PERI's liability shall be limited to the compensation of the foreseeable, typical damage.
- 11.4 PERI shall also be liable for damages for the Licensee arising from gross negligence on the part of PERI's bodies or executives.
- 11.5 The liability limitations set out above shall not apply if PERI fraudulently concealed a defect, has given a guarantee as to the quality or is subject to mandatory liability pursuant to product liability law.
- 11.6 Any further liability - for whatever legal reasons - and compensation for damage shall be excluded.
- 11.7 To the extent liability of PERI is excluded or limited, this shall also apply to the liability of its legal representatives, employees and agents of PERI.
- 11.8 A reversal of the burden of proof is not tied to the provisions of this Section 11.

12. Term and Termination

- 12.1 The Licensee shall have the right to exercise the right of use granted to it for an unlimited period of time.
- 12.2 PERI shall be entitled to terminate without notice the usage right granted to the Licensee, for important reasons, in particular for serious violation of copyrights to the Software by the Licensee.
- 12.3 All usage rights of the Licensee expire upon receipt of notice of termination.
- 12.4 In the event of termination, the Software must be returned in its original version and all existing Software copies must be destroyed and deleted from all data carriers.

13. Storage of Personal Data

PERI stores personal data subject to legal regulations.

14. Confidentiality

- 14.1 The Licensee and PERI shall refrain from exploiting and making available to others trade and company secrets of the respective other party that were confided to them or became known by them on occasion of the cooperation during the existence and after termination of the contract.
- 14.2 The Licensee and PERI shall use technical information, in particular plans, experiences, findings or designs,

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- which become available to them during their contractual relationship or which they receive from each other, solely as part of their cooperation and treat them confidentially and refrain from making them available to third parties even after the end of the maturity of this contract. This confidentiality obligation shall not apply in the case of information which is proven to be
- known by the respective receiving Contracting Party in advance of the cooperation occasioned by this contract,
 - received rightfully from a third party by the respective receiving Contracting Party,
 - generally known upon conclusion of this contract or becomes generally known afterwards without causing a breach of the obligations contained in this contract,
 - developed in the course of own development by the receiving Contracting Party.
- 14.3 The Licensee and PERI shall commit the employees and agents working for them in accordance with this confidentiality regulation.
- 15. Applicable law**
Applicable law is exclusively the law of the Federal Republic of Germany subject to the exclusion of the United Nations Convention on the International Sales of Goods (CISG) dated 11 April 1980.
- 16. Place of Jurisdiction and Performance**
- 16.1 The place of jurisdiction for all disputes arising under the contract shall be the location of PERI GmbH's headquarters, Rudolf-Diesel-Straße 19, 89264 Weißenhorn, GERMANY; the foregoing applies only to the extent the Licensee is not a consumer. PERI reserves the right to bring legal action in the place of statutory jurisdiction applicable to the Licensee.
- 16.2 The place of performance is the location of PERI GmbH's headquarters, Rudolf-Diesel-Straße, 89264 Weißenhorn, GERMANY.
- 17. Supplementary rules applicable to Software licensed by or for an agency of the US government**
In the event Software is licensed by or for an agency of the US government, the limited rights applicable to US government software users apply on a supplementary basis: This Software, as well as documentation if applicable, are subject to limited rights applicable to US government software users; use, reproduction or data transmission are covered by the restrictions FAR 12.212 (commercial computer use - limited rights) and DFAR 227.7202 (rights for technical data and computer software).