

## General Terms and Conditions of ~sedna GmbH

**Scope:** Time-limited provision of standard software (software subscription)  
**As of:** November 2022

### 1. General

- 1.1 These General Terms and Conditions (hereinafter "**GTC**") shall apply for all contracts between sedna GmbH, Salzufer 13F, 10587 Berlin, entered in the commercial register of Berlin Local Court (Charlottenburg) under HRB 78217 (hereinafter: "**~sedna**") and its customers (hereinafter: "**customer**") for the time-limited provision of standard software and also software maintenance thereof. Unless agreed otherwise, the GTC shall apply in the version valid at the time the customer places the order or at any rate in the version last notified to the customer in text form as a master agreement also for future contracts of the same type, without ~sedna having to cite the GTC again in each individual case.
- 1.2 These GTC and the documents cited therein shall apply exclusively. Differing, conflicting or supplementary General Terms and Conditions of the customer shall become an integral part of the contract only if and in so far as ~sedna has expressly agreed to the applicability of the same. This approval requirement shall apply in every case, for example even if ~sedna renders the performances to the customer unconditionally in awareness of the customer's General Terms and Conditions.
- 1.3 The offers of ~sedna are always non-binding. Contracts shall only come about upon written confirmation on the part of ~sedna. In so far as ~sedna does not expressly confirm oral agreements or agreements over the telephone in writing, the invoice issued by ~sedna shall apply as confirmation.
- 1.4 Individual agreements agreed with the customer in a specific case (including side agreements, additions and changes) shall always have priority over these GTC. A written agreement and/or written confirmation by ~sedna shall be definitive and required for such agreements.
- 1.5 References to the applicability of statutory provisions have a clarifying role only. Even without such clarification, the statutory provisions shall therefore apply, in so far as they are not directly amended or expressly excluded in these GTC.

### 2. Subject matter

The subject matter of the contract is the provision of standard software limited to the term of the contract and the granting of the rights required for contractually compliant use by the customer subject to Clause 3; no sale shall be involved. In addition – in so far as expressly agreed between ~sedna and the customer – the subject matter of the contract is the granting of a non-exclusive distribution right limited to the term of the contract subject to Clause 4, under which the customer shall be entitled to provide third parties with ~sedna standard software as sales partner in its own name and for its own account for temporary use and to grant the rights required for contractually compliant use.

### **3. Provision of software and granting of rights of use**

- 3.1 ~sedna shall provide the customer with a copy of the subject-matter standard software installation-ready in object code by download subject to the following provisions and shall provide the related user documentation in digital form as an "online manual" (hereinafter "**product**" or "**products**"). The customer shall have no claim to provision of the source code. For the case that the product is protected by means of a license key, the customer shall receive the license key solely for using the product as set forth in the contract, these GTC, the End User License Agreement and the user documentation.
- 3.2 The customer shall be entitled to use the products for its own purposes in its enterprise within the framework of the granted rights of use. Use of the products within the framework of the contract shall be governed by the End User License Agreement (EULA), which can be retrieved using the following link and constitutes an integral part of the contract: [<https://www.sedna.de/legal/>]
- 3.3 The owed characteristics of the product and the hardware and software operating conditions and also the system environment (clients, server and network) in which the product may be used are definitively determined by the contract, these GTC, the End User License Agreement and the user documentation. ~sedna shall be entitled to carry out minor changes to the agreed functionalities in the customer's interest.
- 3.4 Installation and configuration services and also consulting services are not the subject matter of the contract, but can be agreed between the parties separately.
- 3.5 Any stated delivery period or a stated start of use is always non-binding, unless expressly agreed otherwise in writing.
- 3.6 The customer shall not be entitled to provide the products to third parties, in particular to sell, rent out or otherwise provide the same for use, without ~sedna's permission. The customer must take suitable precautions to protect the products from unauthorised access by third parties. The customer shall store any original data media and the data media with the copies made as contractually agreed and the user documentation in a safe place.

### **4. Selling of software as sales partner**

- 4.1 If ~sedna has qualified the customer as a **~sedna sales partner** (see Clause 2), ~sedna shall grant the sales partner the non-exclusive right to disseminate, i.e., distribute and market, the products. ~sedna shall also remain entitled to distribute the products itself or via other sales partners.
- 4.2 Distribution by the sales partner may be effected solely by way of temporary provision (subscription) by the sales partner. The sales partner shall not be entitled to sell the products or provide them for permanent use.

- 4.3 The sales partner shall be entitled to grant its end customers temporary rights to use the products. To that end, the sales partner shall conclude software provision agreements ("subscription agreement") with its end customers which ensure that the end customers are not granted any further-reaching rights, in particular rights of use, than those arising from the contract between ~sedna and the sales partner, these GTC and the End User License Agreement (EULA). The sales partner has to ensure that the end customer acknowledges and expressly agrees to the EULA under Clause 3.2 vis-à-vis ~sedna before the subscription agreement is concluded with the sales partner.
- 4.4 The sales partner shall not be entitled to transfer the distribution right as a whole or in part to third parties or grant third parties distribution rights, unless ~sedna expressly consents in advance.
- 4.5 The sales partner shall distribute the products in its own name and for its own account. It shall act as an independent merchant vis-à-vis both end customers and also ~sedna. The sales partner shall not be entitled to legally represent ~sedna.

## 5. Software maintenance and support

- 5.1 Product updates and upgrades shall be offered to the customer by email notification within a reasonable period of their becoming available. If the customer takes up the offer, delivery or provision shall be effected in the manner stated in Clause 3.1; Clause 3 shall apply correspondingly.
- 5.2 Updates and upgrades shall only be rendered with respect to the customer's software previously provided directly by ~sedna.
- 5.3 Installation and configuration services, consulting services and restoring data are not the subject matter of the software maintenance, but can be agreed between the parties separately.
- 5.4 It shall be the customer's sole responsibility to install the update or upgrade. It is also the customer's responsibility to regularly back up data, especially before installing updates or upgrades.
- 5.5 ~sedna shall provide the customer with email support services during normal business hours. Particular response times are not assured. Nevertheless, ~sedna shall strive to respond within a reasonable period of time subject to the customer having furnished a sufficiently detailed fault description, which contains the fault behaviour, affected product components and steps already taken.

## 6. Fees and payment conditions

- 6.1 The pertinent charge for providing and maintaining the products together with the granting of required rights (hereinafter "**license fee**") shall be set forth in the contract.
- 6.2 The license fee is payable in advance and shall be invoiced at the start of the pertinent contract period and is due and payable within fourteen (14) days. For the licenses (type, scale and quantity of licensed products - "**follow-up licenses**") ordered after the initial order for a product ("**first license**"), the contractual end of the first license, in so far as the first license has not yet ended, shall be accordingly deemed the residual term for the pertinent follow-up licenses.
- 6.3 ~sedna is entitled, before the end of a term extension according to clause 7.3, to increase the current license fee at its reasonable discretion with effect for the extension of the term. The customer shall be notified to that effect in writing at least two (2) months in advance. Unless the

customer terminates the contract in accordance with Section 7.3, the increased license fee shall apply to the initial or subsequent licenses.

- 6.4 For the timeliness of all payments, the date on which the amount is credited to the ~sedna account stated in the invoice shall be definitive.
- 6.5 Default interest shall be nine (9) percentage points above the pertinent valid base rate.
- 6.6 Unless agreed otherwise in writing in a specific case, all fees are quoted in euros and "net" plus sales tax at the pertinent statutory rate, in so far as there is a duty to pay sales tax.

## **7. Term, consequences of payment default and termination**

- 7.1 The contract shall commence with the provision of the product (Clause 3).
- 7.2 In the event of payment default by the customer, ~sedna shall be entitled to suspend the right to use the rented products with one (1) week's advance notice until such time that the outstanding rent for the pertinent product is received by ~sedna. The period during which ~sedna has suspended the right of use is to be paid for by the customer on the basis of the agreed license fee despite the suspension of use; the suspension of use shall accordingly be deemed as liquidated damages owing to the payment default for which the customer is answerable.
- 7.3 The contract shall have a fixed term of twelve (12) months and may be terminated for the first time with one (1) months' notice to the end of the term. The contract shall then be continuously prolonged on an ongoing basis for successive terms of twelve (12) months, unless a party terminates it with one (1) months' notice to the end of a term.
- 7.4 The term of sub-year follow-up licenses during a contract year shall be harmonised with the term of the already licensed products such that those license extensions shall likewise be governed by the pertinent periods applicable under Clause 7.2 independently of the timing of the license extension in the current contract year.
- 7.5 This shall be without prejudice to the right to termination without notice for good cause. Good cause giving ~sedna a right to extraordinary termination shall arise in particular if the customer breaches the granted rights of use by using the products above and beyond the extent permitted under this contract and the breach is not ceased with a reasonable period following written warning by ~sedna.
- 7.6 Any termination must be submitted in writing.
- 7.7 Once a termination takes effect, the customer has to cease use of the product and remove all installed copies of the product from its computers and also return any backup copies made to ~sedna or demonstrably destroy the same without undue delay depending on the choice made by ~sedna.
- 7.8 Once a termination takes effect, any distribution right granted to the customer under Clause 4 shall also end.

## **8. Warranty**

- 8.1 ~sedna undertakes to provide the products free from defects which more than minimally negate or reduce suitability of the same for contractually compliant use. To that extent, ~sedna warrants that the contractually agreed characteristics of the products shall be continued during the term of the contract and also that contractually compliant use of the products shall not be hindered by any third-party rights. ~sedna shall rectify defects in material and title arising within a reasonable period.
- 8.2 The customer undertakes to report product defects to ~sedna at least in writing without undue delay after they are ascertained. In the case of defects in material, this shall be done with a comprehensible description of the error symptoms, the time when the defects appeared and the detailed circumstances, in so far as possible, supported by written records or other documents highlighting the faults. The complaint is to enable the defect to be reproduced. In so far as ~sedna makes a form for a fault report or bug fixing available to the customer, that form is to be used to report the fault.
- 8.3 Defects shall be rectified by ~sedna at its discretion either by free repair or replacement. ~sedna shall also have met its replacement duty by furnishing updates containing an automatic installation routine and offering the customer email support to solve any installation problems that may arise.
- 8.4 If ~sedna fails to rectify the defect or provide a workaround solution that gives the customer contractually compliant use of the product within a reasonable period, the customer can demand a reduction of the license fee. Termination by the customer pursuant to Section 543 (2) 1st sentence no. 1 Civil Code for failing to provide contractually compliant use shall not be permissible before ~sedna has been given sufficient opportunity to rectify the defect and that attempt has failed. Failure to rectify the defect shall only be assumed once it is impossible, has been refused or been unreasonably delayed by ~sedna or if it would be unreasonable for the customer due to other reasons.
- 8.5 The customer's rights under defect are excluded in so far as it makes changes or has changes made to the products without ~sedna's consent, unless the customer proves that the changes had no unreasonable effects on the analysis and rectification of the defects. It shall be without prejudice to the customer's rights under defect, in so far as the customer is entitled to carry out changes, in particular while exercising a right of self-remedy pursuant to Section 536 a (2) Civil Code, and this is done professionally and is also clearly documented.
- 8.6 The warranty does not cover defects caused by deviating from the operating conditions envisaged for the products.
- 8.7 The customer's claims under defect shall be time barred after twelve (12) months, unless a defect is due to a grossly negligent or intentional breach of duty or wilful non-disclosure of a defect; the statutory provisions shall apply in such cases.
- 8.8 The customer can assert claims for damages within the framework of the agreed liability restrictions (Clause 10).

## **9. Third-party property rights**

- 9.1 ~sedna shall defend the customer against all claims derived from a breach of an industrial property right or copyright and/or other property rights through the contractually compliant use of the product. ~sedna shall bear the costs and damages imposed on the customer by a court of law, in so far as the customer has notified ~sedna about such claims in writing without undue delay and all defence measures and settlement negotiations are left up to ~sedna.
- 9.2 If claims pursuant to Clause 9.1 have been asserted against the customer or are to be expected, ~sedna can at its expense change or replace the pertinent product to an extent reasonable for the customer. If this or bringing about a right of use is not possible with reasonable expense or effort, either party to the contract can terminate the contract for the program in question without notice, in so far as the product breaches the third-party property rights. In that case, ~sedna shall be liable to the customer for the harm it incurs through the termination subject to Clause 10.
- 9.3 ~sedna shall have no obligations, if the claims pursuant to Clause 9.1 relate to programs or data provided by the customer or that the product and data therein were not used in a valid, unchanged original version supplied by ~sedna or under operating conditions other than as stated in the performance description.

## **10. Liability**

~sedna shall be liable for harm or losses only subject to the following provisions:

- 10.1 For harm or losses arising from a slightly negligent breach of duty, ~sedna shall be liable up to the typical losses foreseeable for such contracts, which with the customer should have reckoned when the contract is concluded due to the circumstances known to the customer at that point in time; the liability for all harm is thereby capped at an amount equal to 100 percent of the agreed annual remuneration (without taxes) of the contract year in which the event triggering the harm occurred, albeit not more than 100,000.00 euros in all cases.
- 10.2 For all harm or losses arising from an intentional or grossly negligent breach of duty or a loss of life, personal injury or illness, ~sedna shall have unlimited liability.
- 10.3 Strict liability of ~sedna under Section 536a (1), 1st alternative Civil Code for defects which already exist when the contract is concluded is hereby excluded.
- 10.4 ~sedna shall be liable for the loss of data and restoration thereof to subject to Clauses 10.1 to 10.3 only in so far as such a loss would not have been avoidable through reasonable data backup measures on the part of the customer. This liability is capped at the expense or effort that would have been required to restore the data on the basis of proper regular data backup by the customer appropriate for the importance of the data; this shall not apply if the data backup was hindered or rendered impossible for reasons for which ~sedna is answerable.
- 10.5 Claims for damages under the above provisions include reimbursement of expenses claims.
- 10.6 In so far as warranties are to be rendered, they shall require a separate agreement which is to be appended to the present contract. The use of terms such as warranty, assurance or assured characteristic shall as such not ground a guarantee within the meaning of the Civil Code, but is to be understood solely as descriptive of the performance.
- 10.7 This shall be without prejudice to liability under the Product Liability Act.

- 10.8 The liability for foregone profit and unrealised savings is hereby excluded. ~sedna shall not be liable for the customer's lack of economic success.
- 10.9 The above liability restrictions shall also apply mutatis mutandis in favour of ~sedna's employees and agents.

## **11. Force majeure**

In cases of force majeure, the affected party shall be released from its performance obligation for the duration and on the scale of the impact. Force majeure is every event outside the scope of influence of the pertinent party through which the latter is completely or partly prevented from meeting its obligations, including fire damage, lightning strikes, flooding, strikes and lawful lock-outs and also operational disruptions for which it is not at fault or public-authority orders. The affected party shall notify the other party without undue delay about the onside and end of the force majeure and do its utmost to overcome the restrictions arising from said force majeure and to limit the impact thereof as far as possible. The parties shall coordinate the next steps in the event of force majeure arising. This notwithstanding, each party shall be entitled to rescind the affected contract, if the force majeure continues for more than six (6) weeks from the agreed performance date. This shall be without prejudice to every party's right to terminate the contract in the case of protracted force majeure for good cause.

## **12. Confidentiality**

- 12.1 The parties have a duty to keep business secrets and other confidential information (information and records marked confidential or to be considered confidential from the circumstances, in particular information about business procedures, business relationships and know-how) confidential. This duty shall continue for a period of three (3) years after the contract ends.
- 12.2 Excluded from this duty is such confidential information, (a) which was already demonstrably known by the recipient when the contract was concluded or furnished thereafter by a third party known without this breaching a confidentiality agreement, statutory provisions or public-authority orders; (b) which was public knowledge when the contract was concluded or became public knowledge thereafter in so far as this did not involve a breach of this contract; (c) which had to be disclosed due to statutory provisions or the order of a court of law or public authority; in so far as permissible and possible the recipient under an disclosure obligation shall inform the other party in advance and give it an opportunity to challenge the disclosure.
- 12.3 The parties shall only give access to confidential information to such persons who are bound by a professional duty of confidentiality or who have first been bound by obligations comparable to the confidentiality obligations under this contract. In addition, the parties shall only disclose the confidential information to those employees who have to know it in order to carry out this contract and bind those employees to confidentiality.

## **13. Data protection**

- 13.1 The parties shall comply with the pertinent data protection provisions.
- 13.2 If ~sedna is to come into contact with the customer's personal data, this shall require the prior conclusion of a written order processing contract pursuant to Art. 28 of Regulation (EU) 2016/679 of the European Parliament and the Council on the protection of individuals with regard to the processing of personal data (General Data Protection Regulation – GDPR). In that case, ~sedna

shall provide the customer with such an agreement. ~sedna shall process personal data within the meaning of the GDPR and the Federal Data Protection Act (FDPA) in every case only within the framework of the customer's instructions. The customer shall in every case remain the controller for any personal data processed by ~sedna within the framework of fulfilling the contract. The customer alone shall be responsible for the permissibility of the data processing carried out as per its instructions.

#### **14. Final provisions**

- 14.1 The customer may transfer rights and duties under or in conjunction with the contract to third parties only after ~sedna's prior written consent.
- 14.2 The customer can only offset a counterclaim against ~sedna's claims or exercise a price reduction or retention right if its claim is uncontested or declared final and binding by a court of law.
- 14.3 The parties are aware that the products (including updates and upgrades thereof) may be subject to export and import restrictions. In particular, there may be permit requirements and/or their use or associated technologies may be subject to restrictions abroad. The customer shall comply with the applicable export and import control regulations of the Federal Republic of Germany, the European Union and the United States of America, and all other pertinent regulations. Fulfilment of the contract by ~sedna is subject to the proviso that this is not prevented by any impediments arising out of national or international foreign trade legislation or by any other regulations.
- 14.4 Changes and additions to this contract must be made in writing. This shall also apply for changing or revoking this written form clause. Transmission by fax and email shall satisfy the written form requirement, in so far as receipt of the same can be proven.
- 14.5 Claims under non-compliant performance, regardless of any legal basis, shall be time barred one (1) year from when the customer could have become aware of the same, albeit no later than two (2) years after the harming event, unless shorter statutory time bars apply.
- 14.6 The place of fulfilment is where ~sedna has its registered offices. German law shall apply to the exclusion of the laws on the international sale of goods and laws referring to foreign jurisdictions. Exclusive legal forum is Berlin.
- 14.7 Should individual provisions of the contract be or become void or infeasible, this shall not otherwise affect the validity of the other provisions. The parties shall strive to replace the void or infeasible provision by a valid and feasible provision most closely meeting the legal and commercial purpose of the contract. This shall apply mutatis mutandis in the event of a lacuna in the contract.