

General Software Licensing Terms and Conditions

soffico GmbH (soffico)

- 1. Subject matter of the agreement**
 - 1.1. soffico will permanently provide the customer with the standard software listed in the program certificate ("software" below) as well as the related user manual ("objects of delivery").
 - 1.2. These terms and conditions also apply to the purchase of subsequent deliveries of additional software modules, supplementary software, or the acquisition of scenarios for Orchestra. They further apply to the deliveries of updates, upgrades, or other subsequent deliveries of the delivery objects (e.g. in connection with subsequent improvement).
 - 1.3. These terms and conditions do not govern the adjustment and further development of the software, software maintenance, orientation, or holding of training sessions by soffico. Consulting, actual-status analyses, installation, integration, data migration, or conversion are not the subject of the software license. Such services will be rendered on the basis of separately formed agreements.
 - 1.4. soffico will provide the delivery objects exclusively on the basis of these terms and conditions. The customer's contractual terms and conditions will not apply, even if soffico does not expressly object to them.
- 2. Delivery and scope of delivery**
 - 2.1. The software will be delivered in the form and language stated in the program certificate with a user manual (in German and in electronic form).
 - 2.2. The features of the software as well as their compatibility with different databases and database versions are indicated in the product description (White Paper Orchestra) or in the case of updates, by the release notes.
 - 2.3. If a delivery date is agreed, then the time for meeting said deadline is definitive in which soffico hands over the software and user manual to the shipping carrier or at which the software is provided in the customer portal for electronic retrieval and the customer is notified about this. The transfer of risk will also take place at these times. If the software and/or the user manual is damaged or destroyed after the transfer of risk, soffico will provide a replacement while charging for the copying and shipping costs. Sentences 1 and 2 apply *mutatis mutandis* in connection with supplementary performance.
 - 2.4. The customer will receive the software in executable machine code. There is no right to access the source code.
 - 2.5. The customer will perform installation of the software on its system environment on its own.
 - 2.6. Representations in test programs, product descriptions, and project descriptions, unless expressly designated as such, do not constitute any guarantees of condition.
- 3. Open Source Software Components**
 - 3.1. Together with the software, the customer shall receive, free of charge, components that are licensed as Open Source Software ("OSS") from third parties.
 - 3.2. Upon request, soffico will inform the customer in advance about the exact list of OSS components and the associated licenses.
 - 3.3. For all OSS components, the customer receives the associated source code together with copyright notices, disclaimers and any other notes from the respective licensor, if so specified in the respective OSS license.
 - 3.4. The licenses belonging to the included OSS do not impair the commercial exploitation of the purchased licenses (in particular not as a result of the viral effect inherent to some OSS licenses)
 - 3.5. The license terms applicable to the provided OSS shall apply exclusively and instead of these license terms. In particular, the license protection mechanisms and regulations on passing on the software as well as on liability do not apply to OSS components.
- 4. Licensing protective mechanisms**
 - 4.1. soffico is entitled to take reasonable technical measures to protect against non-contractual use. Such measures in all cases concern only preventing pirated software from being executed. As such, no personal data are transmitted to soffico or any third parties.
 - 4.2. The delivered software has an anti-copying mechanism. This mechanism ties the software to the system on which it is installed by means of a digital "watermark."
 - 4.3. The customer will receive a temporary license valid for 19 days, not bound to hardware, until the watermark is created. Within this time, the customer will be required to submit an activation inquiry within the software. The software will then use technical key data of the server on which it is running to create an activation inquiry with a digital watermark. Once the activation inquiry is transmitted to soffico, the customer will receive a license file for its server. After the license file is downloaded and the relevant server checked, the software can run on the server indefinitely for which the license file was created.
 - 4.4. The software may be transferred to other servers or the server infrastructure may be reorganized at any time. For that purpose, soffico will provide a new license file upon request.
 - 4.5. Generally, it is prohibited to remove or circumvent the copy protection. If uninterrupted use of the delivery objects should be impaired or prevented because of the copy protection and soffico does not rectify the disruption in a reasonable amount of time despite requesting this, the customer may circumvent or remove the copy protection on its own.
- 5. Copyrights and usage rights**
 - 5.1. Subject to full payment of the purchase price or an update fee, soffico grants the customer a non- exclusive, indefinite and geographically unlimited right to use the software at the workstations and for the interfaces as described in the program certificate, on computers on which it has been installed and the license file has been downloaded and, upon transmission of the copy protection, also on other computers at its business for its own purposes and as described in this agreement and in the manual.
 - 5.2. The customer is entitled to reproduce the software only to the extent necessary for contractual use. The customer may load the software into the working memory and onto the hard drives of its hardware and also use it at the workstations enumerated in the program certificate (number of licenses).
 - 5.3. The customer may create the backups necessary for secure operation. They are to be marked as such and (where technically feasible) bear the copyright notice of the original data media. The user manual may be copied only for internal company purposes.
 - 5.4. The customer may sell or donate the delivery objects to third parties if the third party agrees that these contractual terms and conditions will continue to apply to it. Such declaration of agreement must be made in writing to soffico. If the customer transfers the objects of the agreement to our third party, then it will permanently cease to use the software and will retain no copies. The customer will give soffico written assurance of this. The customer will provide the third party with the original data media and the original user manual.
 - 5.5. The customer may not provide the software to third parties if there is a justified suspicion that the third party will violate these contractual terms and conditions, in particular whenever it is suspected that the third party will make or circulate unlicensed reproductions.
 - 5.6. All other types of use of the software, in particular translation, editing, arrangement, other reworkings (except for those exclusions set forth in sections 69d, 69e German Copyright Act) as well as any other distribution of the software (off-line or online), leasing and lending thereof, for a fee or free of charge will require the written consent of soffico.
 - 5.7. If the customer receives additions, updates, upgrades, or new releases of the software ("new edition" below) in connection with subsequent delivery, subsequent improvement, or software update, then these licensing terms and conditions will also apply to the new edition, subject to installation of the new edition by the customer. Upon installation of the new edition, the usage rights to the new edition granted to the customer under clause 5 will be transferred.
All usage rights will expire with regard to the previous versions used by the customer up to that point except for any rights of use acquired under section 3.5 with regards to OSS provided free of charge.
 - 5.8. In all cases where the customer's usage rights are terminated (e.g., withdrawal, subsequent delivery), the customer – except for OSS provided free of charge – will promptly surrender all delivered objects of the agreement and will delete copies of them to the extent that the customer is not legally required to keep them longer.
- 6. Compensation, payment terms, and offsetting**
 - 6.1. soffico will provide the customer with the software in exchange for licensing fees stated in the program certificate.
 - 6.2. All amounts are net amounts to which value-added tax will be added in each case.
 - 6.3. Payments are to be made within 14 days in euros after receipt of the invoice without any deduction taken.

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- 6.4. Any use of the software beyond what has been contractually agreed is permitted only upon prior written consent of soffico. In the event of multiple use without this consent, soffico is entitled to bill the amount incurred for this separately according to the current prices unless the customer gives proof that soffico suffered significantly less damage. Greater non-contractual compensatory damage claims remain unaffected.
- 7. Customer's inspection duties**
- 7.1. The customer is obligated to inspect and test the delivered software immediately, and to object to any defects in writing while providing a precise description (section 377 German Commercial Code). This will also apply to software that the customer receives in connection with the guarantee or support.
- 7.2. In order for supplementary performance (clause 9.3) to take place, it is necessary to be able to reproduce or determine the defects. The defect complaint must include information about the type of error, the module in which the error occurred, and the work that was performed when the error occurred.
- 7.3. For the purpose of troubleshooting, the customer will grant soffico access to the delivery objects both directly and/or by remote access.
- 7.4. The customer will take reasonable precautions in the event that the software does not work properly entirely or partly (e.g., daily backup, routine inspection of the data processing results).
- 7.5. Unless the customer expressly states otherwise in advance, soffico may assume that all data with which soffico comes into contact, e.g. in connection with supplementary performance (clause 9.3) are secured. Upon breaching this duty, the customer will suffer any resulting adverse effect and will bear any resulting costs.
- 8. Duty of care**
- 8.1. The customer will store delivered original data media at a location secured against unauthorized third-party access and will clearly instruct its employees to comply with the present contractual terms and conditions.
- 8.2. The customer will notify soffico immediately if unauthorized access of the original data media or the possibility of unauthorized reproduction of the software is suspected.
- 9. Material and legal defects**
- 9.1. soffico will provide the customer with the software free of any material or legal defects. The specifications stated in the white paper upon formation of the agreement or in the pertinent release notes for updates is definitive for determining the condition of the software. Errors that result in merely trivial reduction of the software's usability will not count. Functional impairments that result from the hardware and software environment provided by the customer, operator error, external compromised data, disruptions to computer networks or other reasons falling within the customer's own sphere of risk are not defects.
- 9.2. soffico does not guarantee software that has been changed by the customer unless the customer can prove that the change did not cause the reported defect.
- 9.3. soffico will honor its guarantee in the event of material defects through supplementary performance, specifically through rectification of the defect or providing a replacement, at its option. Subsequent fulfillment may be made in particular by providing a new program version or by soffico demonstrating options for preventing the effects of the defect. The customer must accept a new program version even if this requires that the customer perform adjustment work that is tolerable.
- 9.4. The customer will support soffico as needed with the analysis and rectification of defects and, upon request of soffico, provide the relevant project data from which the defect can be reconstructed or simulated.
- 9.5. Subsequent fulfillment will be made in the event of legal defects by soffico enabling the customer to use the software free of legal impediment. soffico may exchange the affected software for equivalent software meeting the contractual terms and conditions if this is acceptable to the customer. If third parties assert proprietary rights against the customer, the customer will notify soffico of this immediately in writing. At its option and by arrangement with the customer, soffico will defend against or satisfy the claims. The customer may not independently recognize the third-party claims. soffico will defend against the third-party claims at its own expense and will indemnify the customer from any and all costs and damages associated with defending against the claim to the extent that they are not based on the customer's breach of duty.
- 9.6. If the attempt at supplementary performance fails, the customer has the right to reduction or to withdraw from the agreement on the basis of these terms and conditions. Clause 10 will apply to compensatory damage claims.
- 9.7. If soffico render services with regard to troubleshooting without being obligated to do so, then soffico will be compensated based on the standard hourly rates. This will apply in particular if a defect cannot be verified or is not attributable to soffico.
- 10. Liability**
- 10.1. soffico's liability for damages, regardless of the legal basis, in particular for impracticality, delayed delivery, breach of duties in contractual negotiations or tort, is limited in accordance with this clause.
- 10.2. soffico is liable without limitation, where relevant, according to the German Product Liability Act, for deceptive concealment of a defect, for damages arising from injury to life, limb, or health, in the event of intent, or gross negligence.
- 10.3. For culpable breach of material contractual duties, compliance with which is especially significant to achieving the objective of the agreement (cardinal duties), soffico will bear only limited liability for the contractually typical damage foreseeable at the start of the agreement.
- 10.4. Notwithstanding the cases stated in clauses 10.2 and 10.3, soffico is not liable for damages caused by slight negligence.
- 10.5. To the extent that the liability for damages by soffico is excluded or limited, this will also apply with regard to any personal liability for damages on the part of employees, staff, and representatives of soffico.
- 11. Limitation period**
- 11.1. Claims of the customer for compensatory damages, material defects, or legal defects (clauses 9 and 10) will expire within one year from delivery. If the legal defect consists of an *in rem* right of a third party on the basis of which the software may be reclaimed, the statute of limitations will apply.
- 11.2. A limitation period of one year from the start of the statute of limitations will apply to any other claims of the customer arising from the agreement or from a contractual relation (section 311 (2) German Civil Code). The claims will expire at the latest at the end of the maximum statutory periods (section 199 (3, 4) German Civil Code).
- 11.3. In the event of personal damages (including infringement of freedom) as well as intent and gross negligence, the statutes of limitations will apply.
- 12. Right to use as reference**
- The customer grants soffico the right to identify it as a reference customer, subject to revocation. soffico may use the logos of the customer's company name as the customer uses it in the course of business.
- 13. Final provisions**
- 13.1. The laws of the Federal Republic of Germany will apply to this agreement, UN commercial law being excluded (CISG).
- 13.2. The customer may offset only by means of undisputed or legally final claims. The customer retains/has rights of retention only on account of undisputed or legally final counterclaims arising from the respective contractual relationship and in the event of gross breaches of duty by soffico.
- 13.3. No side agreements have been made. Any changes or additions to this agreement must be made in writing in order to be valid. This also applies to the written form requirement. Written form is not observed by transmission of email unless they bear a qualified electronic signature (126a German Civil Code).
- 13.4. Exclusive jurisdiction is Augsburg insofar as the client is a business/a merchant or legal person under public law.
- 13.5. If any part, term, or provision of these terms is or becomes legally ineffective or unenforceable, the validity of the remaining provisions shall not be affected thereby. In this case, the parties shall negotiate a provision that comes closest to the economic purpose of the provision in a legally permissible manner; this shall apply *mutatis mutandis* in the event of a gap in the terms and conditions.