

General terms and conditions of EasternGraphics Swiss AG for transfer of software: Software GTCs

(As at 2022-04-01)

I. Scope of application

(1) The General Terms and Conditions ("General GTCs") of EasternGraphics Swiss AG, Lerchentalstrasse 27, 9016 St. Gallen, Switzerland ("EGR-Swiss") for the provision of software shall apply to all contractual relationships with customers in connection with the transfer of software and shall be deemed to be an integral part of the contract, unless otherwise agreed in writing in an individual agreement between EGR-Swiss and the customer or otherwise regulated in the pCon software license conditions.

(2) The Software GTCs shall be supplemented by the General GTCs, which shall form part of the contract in addition to the Software GTCs.

II. EGR-Swiss services

(1) EGR-Swiss shall transfer to the customer the software indicated in the price quotation, the confirmation of order or the contract, as appropriate, in machine-readable object code. The software shall not be sold but licensed. The software shall be transferred either on a storage medium or by remote data transfer (such as download from the Internet). Documentation such as a user manual or operating instructions for the software is not owed unless this is expressly agreed in writing.

(2) The performance description conclusively describes the functions and performance of the software when used in accordance with the contract. Public statements, recommendations or advertising do not constitute a description of the quality of the software.

(3) The services of EGR-Swiss within the framework of the provision of the software shall not include in particular:

- the delivery of new programme versions,
- the installation,
- customer-specific adaptations,
- training and
- other services going beyond the transfer of the software.

Furthermore, EGR-Swiss shall not owe any services that enable the connection and exchange of data with other software, even if interfaces are included in the software of EGR-Swiss.

III. Customer's duty of cooperation

(1) The system requirements issued by EGR-Swiss for the respective software shall specify the system environment required for proper operation of the software (e.g. minimum clock frequency of the processor, memory space, operating system etc.). It is the customer's responsibility to ensure that a suitable system environment exists in good time and on a permanent basis.

(2) Before commissioning the software, the customer is obliged to test all functions of the software under the customer's system environment. Likewise, the customer must examine the absence of defects in any data carriers and documentation upon handover. If defects are detected by the customer, these shall be notified to EGR-Swiss immediately in writing, by e-mail or via a ticket system provided by EGR-Swiss for this purpose.

(3) The customer shall be obliged to prevent unauthorized access and access by third parties to the software. The customer shall keep the original data carriers and any backup copies in a place secured against unauthorized access and access by third parties.

(4) The aforementioned duties to cooperate are essential contractual obligations.

IV. Rights of use

(1) The owner of all rights to and manufacturer of the software is EasternGraphics GmbH, Albert-Einstein-Straße 1, 98693 Ilmenau, Germany (licensor). The licensor's pCon software license conditions apply. Due to the software transfer contract between EGR-Swiss and the customer on the basis of these Software GTCs, the customer is granted the right of use by the licensor on the basis of the copyright law (UrhG) of the Federal Republic of Germany according to the pCon software license conditions. This right of use is subject to the timely and complete payment of the license purchase price.

(2) The customer shall be obliged to inform EGR-Swiss immediately of any use exceeding the license. For the period of non-agreed use (overuse) the customer undertakes to pay EGR-Swiss compensation in accordance with EGR-Swiss's price list. The calculation of the compensation shall be based on a four-year linear depreciation. If EGR-Swiss becomes aware of the use contrary to the contract without the customer having informed EGR-Swiss of this beforehand, the customer shall pay EGR-Swiss a contractual penalty amounting to 25% of the compensation in addition to the aforementioned compensation.

VI. Liability for defects

(1) The legal provisions shall apply to the rights of the customer in respect of defects in the software transferred unless otherwise laid down in the following clauses.

(2) Claims in respect of software defects shall be governed by a guarantee period of one year. This one-year period shall commence on transfer of the software to the customer. The statutory guarantee period shall, however, apply if EGR-Swiss has deliberately failed to declare a defect or has given a quality guarantee for the software. A quality guarantee shall take effect only if given in writing.

(3) EGR-Swiss shall ensure that the software fulfils the specifications described if used in accordance with the contract and has no defects which will impair its effectiveness for the contractually agreed use to anything but an insignificant degree. Insignificant deviations from the specifications shall not be construed as defects. The customer is aware that software of the present complex type is incapable of absolutely faultless development in the present state of the art.

(4) The customer shall have a duty immediately to inform EGR-Swiss in writing, by email or by fax of any defects arising and to state and describe how the defect manifests itself, what its effects are and under what circumstances it appears. There shall be a right to claim in respect of the defect only if the defect notified is reproducible or can be demonstrated in machine-generated output.

(5) EGR shall remedy a defect properly notified by the customer by way of supplementary performance, i.e. by repair or replacement. The right of choice of the means of the supplementary performance for the remedy of a defect shall lie with EGR. The right of EGR under the applicable law to refuse the chosen type of supplementary performance shall remain unaffected. Insofar as such is reasonable for the customer, EGR shall have the right to provide the customer with a new version of the software by way of remedy of defect (e.g. update, maintenance release/patch), which either no longer contains the defect complained or will remove it; or to develop an alternative solution.

(6) If the supplementary work has failed to provide a remedy within a reasonable period, the customer shall set a reasonable extension (period of grace) for EGR to facilitate a repeat attempt as long as to set such an extension is reasonable for the customer and as long as EGR has not made a final refusal of supplementary performance. If these conditions are fulfilled, the customer shall be permitted to withdraw from the contract after failure of the second attempt of supplementary performance or to reduce the agreed purchase price and if appropriate, because EGR is at fault, to demand compensation in lieu of performance or recompense for time and effort applied in vain. When the last extension has brought no success, the customer shall declare within a reasonable period whether he is continuing to demand supplementary performance or is claiming the the above-mentioned rights. There shall be no right of withdrawal in the case of insignificant defects. All claims by the customer to the supply of defect-free software shall lapse on declaration by the customer of withdrawal or of reduction.

(7) EGR-Swiss shall not be liable if a defect has occurred after a change in the conditions of use and/or operation, after installation and/or operating errors, after interventions in the software such as modifications, adaptations, connection with other programmes and/or after use contrary to the terms of the contract, unless the customer proves that the defect was already present at the time of handover of the software or has no causal connection with the above-mentioned events.

(8) EGR shall have no liability for the correctness of data from the customer or third parties to be found in the software or for any defect resulting therefrom.

(9) Should it transpire that a defect notified by the customer does not in fact exist or is not caused by the software, the customer shall pay EGR-Swiss for the effort involved in analysis and other work in accordance with calculations based on the current price list of EGR-Swiss for the tasks in question.

(10) EGR-Swiss shall be entitled in the case of justified withdrawal on the part of the customer to demand reasonable compensation for the extent to which the customer has benefitted by using the software up to the dissolution of the contract. This compensation for benefit from use shall be calculated on the basis of a total period of four years of use of the software, with a reasonable deduction for the impairment of the software due to the defect which caused the withdrawal.

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VII. Applicability of the General GTCs

The General GTCs of EGR-Swiss shall supplement these Software GTCs and shall apply subordinately in the event of contradictions.