

## End User License Agreement

By installing, copying, registering or using the software, you agree to the following terms and conditions. If you do not agree to these terms, you may not install, copy, register, or use the software.

### **Preamble**

This End User License Agreement is a legal agreement between you as a natural or legal person, hereinafter "Licensee (LN)" and COMARA GmbH, Industriestr. 21, 78112 St. Georgen, Germany, hereinafter "Licensor (LG)". COMARA is the manufacturer and developer of the software.

According to the current state of the art, it is not possible to create software in such a way that it works error-free in all applications. The object of this contract is therefore only software that is basically usable in the sense of the program description (according to our offers/order confirmations).

### **§ 1 Copyright**

1. The software as well as the program and data conception are proprietary.
2. The indications contained in prospectuses, advertisements, authorized or non-authorized documentations and similar documents are only descriptions and do not contain an agreement about the nature of the products and are no implied guaranty of the nature of the products.

### **§ 2 Software Licenses and Right of Use**

1. By purchasing a user license, the Licensee receives a registered full version and the right for an unlimited use of the software according to these terms and conditions. The Licensee will receive a machine code of the software. There is not any right for the provision of the source code.
2. To assign rights and software user license to a third party is forbidden.
3. The right of use will terminate if the Licensee violates this Agreement.
4. It is only allowed to install and use one single user license on one single machine. If there are some machines that should be provided with user license, then there is a single user license necessary for every single machine.
5. A single user license can be installed on a single computer / on a single control unit and be used at different times by different people. If several people work with the software on different computers/control units, a user license is necessary for every computer/control unit on which the program is installed or used or can be used.
6. Any modification, decompilation or disassembly of the software is not permitted and will be legally prosecuted as they are an infringement of the copyright.

7. It is not permitted to develop, transfer and use methods with the aim of removing the software restriction or to forward passwords to download or activate full versions. Any intention will be legally prosecuted.
8. It is not permitted to give away, lend, rent or lease the software.

### **§ 3 Licensee's obligations**

1. The Licensee is obliged to
  - assure that the registered full version and the corresponding passwords for the download and the activation of the software may not be disclosed to third parties;
  - check the results created by the software (data backup by the data backup software) on completeness and correctness immediately after its creation;
  - back up the results and data created by the software on a regular basis and control the operability of the data backup;
  - store the software and the data necessary for the activation of the full version securely.
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2. Furthermore, the Licensee is obliged to
  - let the manufacturer know if the Licensee has not received the full version within 8 days after order and payment and if the activation has not been carried out within 8 days after order and payment (e.g. because of a technical problem);
  - assure that the manufacturer knows the Licensee's currently valid e-mail address e.g. to inform about updates or to transfer technical data if necessary;
  - appropriate precautions must be taken for the case that the software in full or in part does not work properly. He will test the software thoroughly for its usability regarding the intended use before he starts to use it. Furthermore, he will back up his data according to the latest state-of-the-art standards. The licensee makes sure that the current data provided in machine readable data format are reproducible with reasonable effort.

### **§ 4 Licensor's Obligations**

1. The Licensor is obliged to send the activation key for the once provided software once.
2. The Licensor shall make the software available to the Licensee together with the documentation (e-mail, data carrier or printed material) and carry out the activation within 8 days after order and payment or capacitate the Licensee to carry out the activation.

### **§ 5 Warranty**

1. The customer is obliged to control the delivered software immediately - but at the latest within 8 days from delivery of the full version or its activation - depending on what was delivered first - and to complain in writing about the defects indicating an exact description.
2. The reproducibility or the detection of the defects is a requirement for the supplementary performance. The notice of defects must contain information concerning the type of defect, the module in which the defect has occurred as well as the work that had been carried out when the defect occurred.
3. The notice of defect must only be sent to the Licensor.

4. The Licensor makes considerable efforts by using quality assurance methods to achieve that the software products are to a large extent free of defects. However, it must be indicated that, according to the state-of-the-arts standards, it is not possible to develop a software completely free of defects. Therefore, the Licensor shall warrant by correcting the software by patch – even several times – or by a replacement delivery – even several times.
5. If the Licensor's efforts to correct the software do not succeed or if the Licensor does not offer an error-free program version, the Licensee has the right to rescind the Agreement (rescission) or to reduce the purchase price by an appropriate amount (warranty claim).
6. The Licensee does not have the right to rescind the Agreement in case of a minor lack of conformity with the contract or minor defects.
7. If the Licensee demands a rescission of the contract because of defects as to quality or defects of title after a failed performance of the Agreement, he/she is not entitled to claim damage in addition, as far as legally admissible.
8. The Licensor cannot be held liable for programs and parts of programs changed or upgraded by the Licensee – as this is a breach of the Agreement – or for any defects, malfunctions and damages that arise out of an improper operation or faults in the hardware, in operating systems or because of the non-observance of data backup regulations and other actions outside the Licensor's field of responsibility.
9. In order to fulfil the Agreement in case of defects, the Licensor ensures that the Licensee can use the software in perfect condition. The Licensor is allowed to replace the software by an identical software corresponding to the conditions of the Agreement if this can be accepted by the Licensee. The Licensee must inform the Licensor immediately if a third party asserts property rights against the Licensee. The Licensor shall fend off or satisfy the claims at his own choice and in consultation with the Licensee. The Licensee must not admit any claims of third parties. The Licensor shall fend off the claims of third parties at his own expense and indemnify the Licensee from all costs and damages resulting from fending off the claims provided that they are not based on a neglect of duty by the Licensee.
10. The Licensor can also not be held liable if the Licensee refuses an examination of the reported defect.

## **§ 6 Liability**

1. The Licensor will pay for damages or reimburse futile expenses regardless of whatever legal reason (e.g. neglect of duty, unauthorized action) only to the following extent:
  - to the full amount for cases of deliberate actions and in case of a guarantee concerning the agreed quality,
  - for gross negligence, to the amount of a typical and foreseeable damage which could be avoided by exercising due care.
  - in other cases, only if the obligations of the Agreement have been violated, in case of claims regarding defects and in case of a delay. The Licensor, however, can only held liable for the typical and foreseeable amount of the damage limited to EUR 200,000 per case of damage and to EUR 500,000 for all the cases of damage related to this Agreement.
2. The liability for personal injuries and according to the Product Liability Law remains unaffected. The Licensor can also raise an objection due to a contributory negligence.

3. In the case of data loss, the Licensor is only liable for the damage which would have also occurred in the case of a correct data backup of the customer (Licensor's Obligations, section 2).

### **§ 7 Product Modifications**

The Licensor reserves the right to modify the product in a way that does not affect the general operability. Furthermore, the Licensor is obliged to notify the Licensee of any product modifications and to point out the possibility to purchase the modified software.

### **§ 8 Limitation**

1. Claims of the Licensee regarding defects as to quality or defects of title (see Warranty) become time-barred within one year after delivery of the full version or its activation depending on what has been delivered first. The legal limitation periods shall apply if the defect of title is due to in rem rights of a third party based on which the handover of the software can be required.
2. For any other claims of the Licensee regarding the Agreement and a contractual obligation (§ 311 section 2 of the German Civil Code), the limitation period of one year beginning with the legal start of the limitation period shall apply. The claims become time-barred at the end of the legal limitation periods (§ 199 section 3, section 4 of the German Civil Code).
3. For personal injuries (including violation of liberty) as well as for malicious intent and gross negligence, the legal limitation periods for claims shall apply.

### **§ 9 Confidentiality and Data Safety**

1. The contracting parties commit themselves to maintaining confidentiality about all business and production secrets that one contracting party learned about the other party through the contract and the collaboration and about all information designated as confidential information. The information and documents must not be made accessible to third parties that are not involved in the contract. The contractual parties keep the contractual objects in a safe place in order to avoid any misuse by third parties.
2. The obligation of confidentiality does not apply to information and documents which have been public knowledge or have already been made available at the date of disclosure or have already been known to the receiving party at the date of disclosure or have been made available later legitimately by a third party.
3. With this, the Licensee is informed that the Licensor will collect, save, process, and, if necessary, transfer the data that are necessary to perform the contract and in accordance with the data protection regulations.

### **§ 10 Final Provisions**

1. Only the provisions of this License Agreement shall be legally binding to the parties. Differing contract and purchase provisions shall not be accepted.

2. Supplementary agreements have not been made. Amendments and supplements to this Agreement must be made in writing and signed by both parties in order to be legally valid. The appendices are part of the Agreement.
3. Should one or several of the provisions of this Agreement be or become invalid or be unenforceable, this shall not affect the validity of the remaining provisions. Instead of the invalid or unenforceable provisions, the valid and enforceable provision that comes closest in sense and intention to the invalid provision shall be considered as agreed.
4. In addition to these provisions, this Agreement is governed exclusively by the law of the Federal Republic of Germany, excluding the UN purchase law.
5. The place of jurisdiction is the court responsible for the Licensor's headquarters - if the Licensee is a merchant - as far as legally admissible. The Licensor shall also be entitled to file a suit at the Licensee's place of jurisdiction.