

Definitions

Seller: nanocode GmbH

Buyer: a business customer purchasing Products and/or licensing Software from the Seller within the scope specified in §1.

§1 Contract

1. These General Terms and Conditions apply exclusively to contracts with entrepreneurs within the meaning of section 14 of the German Civil Code (BGB), legal entities under public law, and special funds under public law; contracts with consumers within the meaning of section 13 BGB are excluded.
2. Deviating or additional agreements require the Seller's written consent, subject to paragraph 4. The Buyer's general terms and conditions, including purchasing terms, apply only if expressly accepted in writing by the Seller. Acceptance of an order or performance of deliveries or services, even with knowledge of such terms, does not by itself constitute such acceptance. The statutory priority of individually negotiated agreements remains unaffected.
3. All orders and assignments as well as special assurances require written confirmation from the Seller.
4. Priority of contract documents. In the event of inconsistencies, the following documents prevail in descending order of priority, unless the framework agreement itself specifies a different order for the documents below it:
 - a) the framework agreement (master agreement) concluded between the Seller and the Buyer;
 - b) the Seller's order confirmation, as agreed by both parties;
 - c) the Seller's quotation, as accepted by both parties;
 - d) the expressly incorporated specifications, statements of work, data sheets, and documentation, in their agreed versions;
 - e) these General Terms and Conditions.

Only documents forming part of the parties' agreement are included in this hierarchy. An order confirmation does not by itself amend terms already agreed. Mandatory law and the statutory priority of individually negotiated agreements under section 305b of the German Civil Code (BGB) remain unaffected. Matters not addressed in a higher-ranking document are governed by the applicable lower-ranking documents.

§2 Subject matter of the agreement

1. The subject matter of this contract is the licenses for the compiled computer programs and libraries, as specified in the order confirmation, and the associated documentation (hereinafter: Contractual Software), as well as granting the rights of use described in §5.
2. The Seller shall provide the Contractual Software and related documentation to the Buyer on a data carrier or by download or pre-installed on specific hardware.
3. The nature of the Contractual Software is determined in particular (but not exclusively) by the product description in the data sheet, in the quotation, and in the order confirmation, in the agreed versions incorporated under §1, paragraph 4; furthermore, it is determined whether and to what extent the Contractual Software is hardware-bound. If available, the information contained in the data sheet and in the quotation must be understood as performance specifications and not as guarantees. A guarantee is only granted if it has been expressly designated as such.
4. The Contractual Software shall correspond to the version tested and accepted by the Buyer. The Buyer is responsible for verifying its performance and compatibility with the Buyer's hardware and operating conditions.

§3 Delivery Dates, Transfer of Risk

1. Delivery dates and deadlines are binding if they have been expressly designated as binding in writing by both the Buyer and the Seller in each individual case. Otherwise, all delivery dates and deadlines are non-binding.
2. In the event of delays, the Seller shall inform the Buyer without undue delay and propose a revised delivery date.
3. If failure to meet a deadline is due to unforeseen obstacles beyond the Seller's control and for which the Seller is not responsible, the affected deadline shall be extended for the period caused by the obstacle. If it lasts longer than three (3) months, either party may withdraw from the affected part of the contract by notice in text form. Subject to §8, paragraph 5, damages due to delay are excluded only to the extent caused by that obstacle. Claims arising from prior delay or other delay for which the Seller is responsible remain unaffected and are governed by §8.
4. The Seller is entitled to make partial deliveries to the extent that this is reasonable for the Buyer. The risk transfers to the Buyer upon handover to the carrier.

§4 Prices

1. Prices are quoted for the Federal Republic of Germany.
2. Unless otherwise agreed in writing, Software is delivered electronically and no shipping costs apply.
3. Prices are exclusive of any taxes, duties, and governmental charges, which shall be borne by the Buyer.
4. Unless otherwise agreed in writing, payments are due within 10 days from the invoice date, net, without any deduction, plus the applicable statutory value-added tax at the time of invoicing. Even in the case of partial deliveries, the full invoice amount for the partial delivery is to be paid within 10 days.

§5 License Grant and Scope

1. The Seller grants the Buyer a non-exclusive, non-transferable (except as expressly permitted below) right to use the Contractual Software, in unmodified object-code form, solely for the agreed contractual purpose and within the technical scope specified in the quotation, order confirmation, or documentation. Unless otherwise agreed in writing, the license is not limited in time.
Unless expressly agreed otherwise in a higher-ranking contract document under §1, paragraph 4, the Software is licensed for the Buyer's own research and development, including evaluation, testing, prototyping, and related internal operations in live operating environments. Integration into series-production vehicles or other products supplied to end customers as part of series production requires such express agreement.
2. Device / system scope. Where the Contractual Software is designated as hardware-bound or licensed for a specific system, the license is limited to that device or licensed system. If the Buyer changes the hardware, the Buyer shall delete the Contractual Software from the previously used hardware before installation on the new hardware.
3. Reproduction. The Buyer may reproduce the Contractual Software only to the extent necessary for its use, including installation to mass storage and loading into RAM. One backup copy for archiving and disaster recovery is permitted. All copyright notices, trademarks, and other identifiers must be reproduced unchanged. Documentation may not be reproduced except as expressly permitted. Mandatory rights to make backup copies necessary for lawful use remain unaffected.
4. Distribution, resale, hosting, and sublicensing. The Buyer shall not distribute, resell, rent, lease, lend, sublicense, or otherwise make the Contractual Software or documentation available to third parties, including by way of hosting, cloud provision, or providing remote access, unless expressly permitted in a contract document having priority under §1, paragraph 4. Lawful transfers under paragraph 8 remain unaffected.

5. Consultants and subcontractors (permitted access). Notwithstanding the preceding paragraph, the Buyer may grant access to the Contractual Software to its employees and third-party service providers (including consultants and subcontractors) solely for the purposes of installation, operation, maintenance, or integration of the Buyer's products, provided such third parties are bound by written confidentiality and use restrictions at least as protective as those in this Agreement. Any further distribution or sublicensing is prohibited.
6. Reverse engineering. The Buyer shall not decompile, disassemble, or otherwise reverse engineer the Contractual Software, except to the extent permitted by mandatory law, including lawful observation, study, or testing of its functioning and decompilation necessary to achieve interoperability under sections 69d and 69e of the German Copyright Act (UrhG). The Buyer may request interoperability information from the Seller. Prior notice or consent is not a condition for exercising mandatory statutory rights.
7. Version scope. The license authorizes the use only of the specifically licensed version, unless an update or upgrade is expressly provided by the Seller under a separate agreement or support entitlement.
8. Transfer. Transfers require the Seller's prior written consent unless mandatory law permits the transfer without consent, in particular where the distribution right in a software copy is exhausted. Such transfers must comply with the statutory requirements. The Buyer shall cease use and permanently delete or render unusable all retained copies of the transferred Software, including backup copies. Splitting a multi-user license is not permitted unless allowed by mandatory law. On reasonable request, the Buyer shall provide evidence of compliance; this does not make a lawful transfer subject to the Seller's approval.
9. Payment condition / provisional use. The right to use the Contractual Software shall pass to the Buyer only upon full payment of the purchase price. Until then, the Buyer is granted a temporary, revocable right to use the Contractual Software for internal purposes only. If the Buyer fails to make payment by the due date stated in the invoice or order confirmation, the Seller may set a reasonable cure period by notice in text form. If the cure period expires without full payment, the temporary right shall cease, and the Seller may block access keys, suspend updates and support services, and deny further use.
10. No implied rights. All rights not expressly granted to Buyer are reserved by Seller.

§6 Retention of Title

1. Delivered tangible Products, such as hardware, remain the property of the Seller until all claims arising from the business relationship with the Buyer have been paid in full ("Reserved Goods"). This section applies exclusively to tangible Products; Software licenses and rights of use, including for pre-installed Software, are governed by §5.
2. The Buyer shall handle the Reserved Goods with care and, at its own expense, adequately insure them against loss and damage at replacement value.
3. The Buyer may resell the Reserved Goods in the ordinary course of business. The Buyer hereby assigns to the Seller, by way of security, all claims arising from such resale in the amount of the final invoice value (including VAT) of the Seller's claim; the Seller accepts this assignment. The Buyer remains authorized to collect these claims as long as it duly meets its payment obligations towards the Seller. The Buyer may not pledge the Reserved Goods or transfer them by way of security.
4. Any processing or transformation of the Reserved Goods is carried out on behalf of the Seller. If the Reserved Goods are processed, combined, or mixed with items not belonging to the Seller, the Seller acquires co-ownership of the new item in proportion to the invoice value of the Reserved Goods to the other items.
5. The Buyer shall notify the Seller in text form without undue delay of any seizure or other intervention by third parties affecting the Reserved Goods or the assigned claims.
6. At the Buyer's request, the Seller shall release securities at its choice to the extent that their realizable value exceeds the secured claims by more than 10%.

§7 Warranty

1. At the time of transfer of risk, the delivered Products and licensed Software (together: "Deliverables") shall be free from defects that impair their fitness for the agreed contractual use. Minor deviations that do not affect functionality in any meaningful way shall not constitute a defect, provided that the Deliverables remain reasonably usable for the agreed contractual purpose.
2. For licensed Software, the Seller warrants that it substantially conforms to the functions and performance characteristics specified in the documentation applicable at the time of granting the license. The technical data, specifications, performance descriptions, benchmarks, typical compression ratios, and throughput values in the documentation, data sheet, quotation, or product description describe the expected characteristics of the Software under standard operating conditions. They do not constitute guarantees of a specific result, unless expressly designated in writing as a "guarantee" by the Seller. Performance may vary depending on input data, system configuration, hardware capabilities, and operating conditions.
3. Performance results, including compression ratios, may vary based on data patterns, entropy, data structure, content variability, and preprocessing. The Buyer is responsible for evaluating suitability for its intended use.
4. Benchmarks, examples, and sample data sets are provided solely for illustration and do not create a warranty of similar results on the Buyer's systems.
5. The Seller shall, at its discretion, remedy defects by repair or replacement within a reasonable period after being notified in text form (e.g., by email) by the Buyer. In the event of replacement delivery, the Buyer shall return the defective item to the Seller.
6. Claims for defects become time-barred two (2) years from delivery, unless otherwise agreed in writing. The cases listed in §8, paragraph 5, and mandatory statutory limitation periods, including those for supplier recourse, remain unaffected. Warranty does not cover damage resulting from normal wear and tear, improper installation, unauthorized modifications, improper operation, or maintenance performed by third parties without the Seller's prior written consent.
7. Repair or replacement does not by itself extend or restart the limitation period; statutory rules on suspension and restart, including an acknowledgment of a claim, remain unaffected. The Buyer shall grant the Seller reasonable time and opportunity for defect remediation. If the Buyer culpably prevents remediation, the Seller is relieved of its remediation obligation only to the extent and for as long as performance is thereby prevented. The statutory conditions for further remedies remain unaffected.
8. If repair or replacement definitively fails, the Buyer may demand a reasonable reduction of the purchase price or withdraw from the contract, in each case subject to the statutory requirements. Claims for damages are subject to §8. Rectification shall be deemed to have failed if the Seller has been granted sufficient opportunity to remedy the defect without achieving the desired success, if rectification is impossible, unreasonably delayed, refused by the Seller, or otherwise unreasonable for the Buyer.
9. Where section 377 of the German Commercial Code (HGB) applies, the Buyer shall inspect the Deliverables without undue delay after delivery, to the extent practicable in the ordinary course of business, and notify the Seller of any defects without undue delay. Defects not discoverable on such inspection must be notified without undue delay after discovery. Notices shall describe the defect sufficiently to permit investigation and shall be sent in text form (e.g., by email). Failure to inspect or notify has the legal consequences provided by section 377 HGB, including deemed acceptance with regard to the relevant defect. The statutory exceptions, in particular fraudulent concealment, remain unaffected.

§8 Liability

1. Subject to paragraph 5, the Seller is liable for ordinary negligence only in the event of a breach of a material contractual obligation. Such obligations are those whose performance is essential to proper execution of the contract and on whose observance the Buyer may ordinarily rely. In these cases, liability is limited to the damage foreseeable at the time of conclusion of the contract and typical for that contract. Liability for ordinary negligence is otherwise excluded. The Seller does not warrant that the Software will operate uninterrupted, free of errors, or meet all combinations or requirements specified by the Buyer.

2. Subject to paragraph 5, in the cases of paragraph 1 the Seller's aggregate liability in connection with an order is limited to that order's net value, i.e., the total contractually agreed remuneration for the Deliverables and services under that order excluding VAT, irrespective of amounts already paid, but to no less than EUR 500,000. Where claims are attributable to multiple orders, the limit is the sum of the net values of the affected orders, but no less than EUR 500,000.
3. These liability provisions apply irrespective of the legal basis of a claim and also protect the Seller's legal representatives, employees, and persons engaged in performing its obligations. Statutory limitation periods apply to claims for damages; claims for damages arising from defects are subject to §7, paragraph 6. In all cases, paragraph 5 remains unaffected.
4. Subject to paragraph 5, liability for indirect, incidental, special, punitive, or consequential damages is excluded to the extent that such damages fall outside the foreseeable, contract-typical damage recoverable under paragraphs 1 and 2. This applies in particular to:
 - loss of data,
 - loss of revenue or profit (whether direct or indirect),
 - loss of production or business,
 - depletion of goodwill or reputation,
 - costs for procurement of substitute products,
 - third-party claims against the Buyer,
 - compensation paid by the Buyer to its customer.Unless the Seller has expressly assumed responsibility for backups, the Buyer shall maintain appropriate, current backups suited to the agreed use and the risk of data loss. Any culpable failure to take reasonable measures to avoid or mitigate damage shall be assessed under section 254 BGB; it does not automatically exclude liability for data loss.
5. The exclusions and limitations of liability and the contractual limitation periods in this Agreement do not apply to:
 - death, personal injury, or damage to health caused intentionally or negligently by the Seller, its legal representatives, or persons engaged in performing its obligations,
 - intent or gross negligence,
 - fraudulent concealment of a defect,
 - obligations arising from an expressly assumed guarantee, to the extent of the guarantee,
 - violations of mandatory product liability law,
 - liability that cannot be excluded under applicable mandatory law.
6. If products are constructed or customized according to designs, specifications, or instructions provided by the Buyer, the Buyer shall indemnify and hold the Seller harmless from third-party claims, liabilities, costs, or damages for alleged infringements of intellectual property rights to the extent caused by those designs, specifications, or instructions and attributable to the Buyer. This does not cover infringements attributable to the Seller's own contribution. The Seller shall promptly notify the Buyer of such claims, allow the Buyer a reasonable opportunity to participate in the defence, and provide reasonable cooperation. Necessary and reasonable legal costs covered by this indemnity shall be advanced by the Buyer.
7. If the Buyer exports the Deliverables, the Buyer shall comply with all applicable export control regulations and, when exporting goods of U.S. origin, the corresponding U.S. export regulations.

§9 Confidentiality

1. Confidential Information within the meaning of this Agreement refers to all information and documents of the Seller that are marked as confidential or that must be regarded as confidential from the circumstances, in particular information about the Seller's products, including the source code, the documentation and other sensitive documents, operating procedures, business relationships and know-how.
2. The Buyer agrees to keep such Confidential Information strictly confidential and to protect it by appropriate technical and organizational measures. This obligation continues for five (5) years after the end of the contractual relationship. For source code and other trade secrets within the meaning of the German Trade Secrets Act (GeschGehG), it continues for as long as the information remains a trade secret.

3. Only such Confidential Information is exempt from the obligation of confidentiality,
 - a) which was demonstrably already known to the Buyer at the time of conclusion of the contract or is subsequently disclosed to the Buyer by third parties, without this violating any confidentiality agreement, statutory provisions, or official orders;
 - b) that is publicly known at the time of conclusion of the contract or is subsequently publicly disclosed, unless this is due to a breach of this contract;
 - c) that has been demonstrably developed by the Buyer independently, without use of Confidential Information;
 - d) that must be disclosed on the basis of legal obligations or by order of a court or authority. To the extent permitted and possible, the Buyer who is obligated to disclose information shall give the Seller advance notice and an opportunity to respond to disclosure.
4. The Buyer will provide access to Confidential Information only to consultants who are subject to professional secrecy or who have been previously placed under obligations of confidentiality in accordance with this contract. Furthermore, the Buyer shall disclose the Confidential Information only to those employees who have a need to know such for the performance of this contract and shall obligate these employees to maintain confidentiality to the extent permitted by labor law for the period after their departure.
5. The Seller shall treat Confidential Information received from the Buyer with the same degree of care as its own Confidential Information.

§10 Intellectual Property Rights

1. All intellectual property rights in and to the Deliverables, including without limitation software, algorithms, designs, documentation, methods, and know-how, shall remain exclusively with the Seller. No rights are transferred other than the limited license expressly granted under this Agreement.
2. Intellectual property rights in any customer-specific adaptations, configurations, or modifications developed by the Seller shall also remain with the Seller, unless expressly agreed otherwise in writing. The Buyer may use such adaptations, configurations, and modifications to the same extent as the Contractual Software under §5.
3. This Agreement does not grant the Buyer any ownership rights in the Seller's proprietary technology. All rights in the Buyer's data remain with the Buyer. The Seller acquires no rights in the Buyer's data, except to the extent necessary to perform the contract.

§11 Final Provisions

1. The Buyer may transfer the rights and obligations arising from this contract only with the written consent of the Seller. Lawful transfers under §5, paragraph 8, and mandatory statutory rights of assignment or transfer remain unaffected.
2. Should any provision of these terms be or become invalid, the validity of the remaining provisions shall be governed by section 306 BGB. In place of a provision that has not become part of the contract or is invalid, the applicable statutory provisions shall apply.
3. If the Buyer is a merchant within the meaning of the German Commercial Code (HGB), a legal entity under public law, or a special fund under public law, or has no general place of jurisdiction in Germany, the courts having jurisdiction for Mannheim, Germany, have exclusive jurisdiction for all disputes arising out of or in connection with this contract, to the extent legally permissible. The Seller may also bring proceedings at the Buyer's registered office or place of business, provided that it is in a Member State of the European Union or a state bound by the 2007 Lugano Convention and the court has jurisdiction under the applicable rules. Mandatory statutory provisions on exclusive jurisdiction remain unaffected.
4. This Agreement is governed by the substantive law of the Federal Republic of Germany, excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG). A different choice of law expressly agreed in a higher-ranking contract document under §1, paragraph 4, takes precedence.
5. These General Terms and Conditions are drafted in English. If a translation is provided, the English version prevails in the event of any discrepancy.