

# General Terms and Conditions of Kern AG (Software Purchase)



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## Contents:

§ 1	Subject Matter of Contract, License	§ 8	Hosting
§ 2	Installation, Training, Updates, Maintenance	§ 9	Delivery, Testing, Warranty
§ 3	License Grant	§ 10	License Fees
§ 4	Scope of Use	§ 11	Retention of Title
§ 5	Copy Protection	§ 12	Limitation of Liability
§ 6	Transfer	§ 13	Final Provisions
§ 7	Protection of the License Material		

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## License and delivery terms for Kern software (purchase)

### § 1 Subject Matter of Contract, License

(1) The subject matter of the contract is the licensing of Kern AG's software and the provision of the corresponding License Material. The License Material comprises auxiliary programs, library, database and example files as well as an application description and further documentation material (documentation), each to the extent Kern AG owes the provision under the License Agreement. The agreed scope of the License Material, the exact designation and the remuneration (license fee) are defined in the License Agreement between Kern AG as Licensor and the client as Licensee.

(2) As far as Kern AG grants the client a license for a software (i) that is a component or supplement of the License Material and (ii) for which Kern AG only has a derived right of use (third-party software), the terms of use of the third-party software shall apply additionally and shall prevail. If and to the extent that the client is provided with open source software, the terms of use of the open source software shall apply exclusively. The client shall be notified of the prevailing terms of use of the third party software or open source software before the conclusion of the License Agreement and such terms of use shall then be agreed together with the License Agreement.

### § 2 Installation, Training, Updates, Maintenance

(1) The installation, implementation and use of the software is the responsibility of the client. This also requires the client to check the suitability of its hardware and software environment. Kern AG is prepared to support the client in this regard (in particular through preparation for use, installation and demonstration of the successful installation), including instruction, training or further consultation, which is to be ordered separately in each case and is not subject matter of the License Agreement.

(2) The client is only entitled to updates of the software or to software maintenance if an additional Maintenance Agreement has been entered into. This also applies to adjustments to legal or other framework conditions. If the client implements or supplements the software through updates

or extensions provided by Kern AG, the terms and conditions of the License Agreement including the present GTC Software Purchase shall apply for such supplemented or updated software as well.

## Part I – License Terms

### § 3 License Grant

(1) Kern AG grants the client the non-exclusive, perpetual right to use the software specified in the License Certificate (simple right of use) subject to the limitations set forth in the present GTC Software Purchase (in particular in its Part I) and in the License Agreement. Any use beyond the foregoing is not allowed. Towards the client, Kern AG remains the owner of all rights to the software and reserves all rights that are not explicitly granted.

(2) The right of use will not be granted before the client has paid the agreed license fee in full (condition precedent). Until then Kern AG may block the right to use the software. The same applies to any extension of software use in the case of subsequent licenses.

### § 4 Scope of Use

(1) The configuration of the licensed software and its usable components (e.g. modules, components and/or services or objects based on it), which the client is entitled to install and execute on the basis of the license, are specified in the License Agreement. The permissible use also includes to permanently or temporarily copy the software and its modules and components, in whole or in part, if the corresponding loading, display, running, transfer or saving of the program is necessary for proper use, including error correction.

(2) If the License Certificate specifies that the client only receives a single license, then the client may use the provided software on only one computer or device or by one person or one workstation at a time, provided that a virtual machine is deemed to be one computer.

(3) If licenses for multiple use in a network are acquired according to the License Certificate, the type and scope as well as the counting method (metrics) of the granted authorization for multiple use shall be based on the parameters



specified in the License Agreement. The metric is not based on the number of users (workstations or persons) or devices (computers, clients), so that the number of licenses assigned to the constituent modules, components and objects does not directly describe how many users or devices can access the software simultaneously.

(4) Insofar as the right to use or the license issuance depends, according to the License Agreement, on a system installation with a user-related login (e.g. SAP), the client must ensure that the logged on user name and the actual user are identical when executing the software.

(5) Any other use, in particular the making of copies or duplications of the software or documentation, is only permitted with the prior written consent of Kern AG. The client may make backup copies of the software as far as this is necessary for securing future use. The client shall keep records of the whereabouts of all copies and duplications and submit those records to Kern AG upon request.

(6) The client may modify or extend the License Material and in particular the software only, as long as the software itself is not edited or modified. Adaptions or other modifications and the duplication of the results obtained are only permitted if they are necessary for the agreed use including error correction and if Kern AG does not, without undue delay, correct the error itself after client's request. Modifications, enhancements, adaptations, or other reworkings must be made recognizable, for example, by storing them in separate directories.

(7) The client has no claim to the source code and is also only entitled to decompilation (retranslation into the source code or other forms of preliminary stages) if and to the extent that the client is legally permitted to do so under Sec. 69e UrhG (German Copyright Law).

(8) Kern AG reserves all other rights to which the copyright holder is entitled, such as those of publication, distribution including rental, exhibition and public reproduction (e.g. performance, presentation) including making it available to the public.

### § 5 Copy Protection

(1) Kern AG takes technical precautions to ensure compliance with the scope of use and is entitled to take copy protection measures to ensure that the software is used in accordance with the terms of the contract, including the automated retrieval of certain data or codes of the device configuration.

(2) To use the software, a license key is required, which is sent to the client in digital form. The license key is individualized and may only be used for the use of the purchased software by the client and must be kept securely by the client. The license key may not be passed on to third parties.

### § 6 Transfer

(1) The right of client to use the software in accordance with the License Agreement may be transferred or otherwise passed on to a third party only after first notifying Kern AG thereof in writing. The aforementioned right of use may not be transferred or passed on unless (i) the client discontinues its use, deletes all modules, components and objects of the software and any further License Material including any and all copies or partial copies thereof, forwards the original software versions being used by the client including any further License Material to the new licensee, and (ii) the new licensee states in writing to Kern AG that it is willing to assume all rights and duties of the client based on the License Agreement existing with respect to the relevant software and any further License Material.

(2) Before any such rights are transferred or passed, the client must provide Kern AG with written notice about the name of the recipient and the company's address.

(3) Kern AG shall supply the new licensee with the requisite license key, if all of the conditions set forth in this Sec.

6 have been met. The license key cannot be generated unless or until the new licensee first discloses the requisite SAP installation number.

(4) Leasing of the software or other temporary transfer of use, whether for payment or free of charge, is prohibited.

(5) The client is not entitled to grant sublicenses.

### § 7 Protection of the License Material

(1) Irrespective of the rights of use granted and the transferred physical ownership of the tangible License Material (e. g. printed documentation), Kern AG retains all rights to the intangible Licensed Material (e. g. software) including all physical or intangible copies or partial copies made by the client.

(2) The client is obliged to keep the protective features contained in the License Material, such as copyright notices, other legal reservations or references, as well as the registration numbers unchanged.

(3) The client is obliged to limit the access to the files in such a way that access to the program files including the possibility to copy them is only possible for the administrator, but not for the regular users. In addition, the client shall ensure that the fulfillment of its obligations under this License Agreement, in particular with regard to the scope of use and the prohibition of illegally copying the software, is ensured by appropriate measures towards client's employees and other persons who have access to the License Material and its embodiments.

### § 8 Hosting

(1) If the client intends to forward the software to an Application Service Provider (ASP) within the scope of hosting, it must inform Kern AG of this in advance without being asked. Kern AG is entitled to demand more detailed information about the ASP. Notwithstanding the obligations under Sec. 6, the client shall take appropriate measures to ensure that the rights of Kern AG to the software are protected in the event of hosting.

(2) The client shall be liable for any intentional or negligent violation of Kern AG's rights within the scope of such hosting caused by the client or by third parties to whom the client passes on the software, in particular by unauthorized production of copies, modification or redistribution of the software.

## Part II – Terms of Delivery

### § 9 Delivery, Testing, Warranty

(1) The client shall receive from Kern AG upon delivery – depending on the stipulation in the License Certificate (e-mail/download) – a program copy of the software together with the documentation in form of corresponding files via e-mail or a notification of the provision of corresponding files for one-time retrieval via download from the Internet.

(2) Descriptions of the software are not to be regarded as a guarantee of a certain quality unless they are expressly promised as such. The agreed quality of the software and any further License Materials results from the functional description and specification as contained in the documentation or from a description of services specially provided to the client for this purpose. Kern AG provides to Licensee for its review the relevant documentation with functional description and specification prior to signing a License Agreement. The use of the License Material as required under the contract is defined in the License Agreement for the licensed version of the software but cannot be derived from public statements like information in brochures, on the Internet or in other advertising material, from which, however, objective requirements of the Licensed Material can be derived.

(3) The client is obliged to examine and test the delivered software and any further License Material without undue delay after receipt in accordance with § 377 HGB (German Commercial Code). If a defect becomes apparent, the



client shall notify Kern AG without undue delay, at the latest, however, after the first productive use. The client is obligated to cooperate in the examination of the defect and must provide Kern AG with all necessary data and information and, if necessary, also provide the licensed software for examination.

(4) Kern AG may, at its own discretion, initially remedy defects either by delivering a defect-free item or by repairing the defect - if necessary several times - (rectification of defects). Kern AG is entitled to refuse rectification of defects if it is associated with unreasonably high costs. For the purpose of rectification Kern AG can also provide an updated software version free of defects (update) or show the client a reasonable possibility to permanently avoid the triggering or the effects of the defect (workaround).

(5) If the rectification of defects fails or is refused by Kern AG, the client can demand a reduction of the license fees or withdraw from the related License Agreement (rescission) according to the statutory requirements; in addition, the client can then demand compensation for damages or compensation for wasted expenditures under the statutory requirements and within the limits of § 12.

(6) The warranty period for defects is one year. Notwithstanding the foregoing, the regular statutory limitation periods apply if Kern AG is liable for any intentional acts or omissions, fraud, gross negligence, product liability according to the German Product Liability Act (ProdHaftG), the lack of a certain quality guaranteed by Kern AG as well as for losses based on an injury to life, body or health. The warranty period commences according to the applicable statutory provisions.

(7) The client bears the risk of use. It shall be incumbent upon them to determine the use of the software and the selection of suitable hardware and, if necessary, to test the software under its own conditions of use before the client uses the software in a productive environment. Kern AG assumes no warranty for this.

#### **§ 10 License Fees**

(1) All payments to be made by the client, including the statutory VAT, are due upon delivery and are payable without deduction within 30 days of invoicing.

(2) Offsetting and retention against the claims of Kern AG is only permissible in the case of undisputed or legally binding counterclaims; the rights of the client with respect to defects remain unaffected.

#### **§ 11 Retention of Title**

(1) The client is not allowed to make use of the granted license until full payment of the license fees has been made.

(2) Until then, the client is prohibited from pledging, transferring by way of security or transferring License Material including any documentation.

#### **§ 12 Limitation of Liability**

(1) Kern AG is liable for damages, which are based on intent or gross negligence or fraud or which result from an accepted guarantee of a certain quality, according to the statutory regulations.

(2) In the case of a slightly negligent violation of an essential contractual obligation, Kern AG is only liable to a limited extent for the compensation of damages typical and foreseeable for this type of contract. Essential contractual obligations are those whose violation endangers the achievement of the purpose of the contract or whose fulfillment makes the proper execution of the contract possible in the first place and on whose compliance the client regularly relies or may rely on.

(3) Other liability for slight negligence is excluded.

(4) Kern AG is not liable for lack of economic success. No liability is assumed for the loss of data if and to the extent that this could have been avoided by ongoing data backup measures at reasonable cost.

(5) Claims due to injury to life, body or health or based on the German Product Liability Law (Produkthaftungsgesetz) remain unaffected.

#### **§ 13 Final Provisions**

(1) Changes and amendments to these GTC (Software Purchase) and the License Agreement must be made in writing.

(2) Should individual contractual provisions be or become invalid in whole or in part, the remainder of the contract shall remain valid. The loophole shall be replaced by a clause that comes closest to the loophole in terms of content and economic effect.

(3) Place of fulfillment and exclusive place of jurisdiction is the registered office of Kern AG (Freiburg i. Br.).

(4) German law applies to the exclusion of conflict of laws and the UN Sales Convention.

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