

# Terms and Conditions of genua GmbH for the Software Rental

Part 1: General Terms and Conditions of Business

Part 2: License Conditions

Part 3: Scope of Service

## Part 1: General Terms and Conditions of Business

### 1. Scope of application

- 1.1 These General Terms and Conditions (GTC) shall apply to all contracts between genua GmbH, Domagkstraße 7, 85551 Kirchheim (hereinafter referred to as "genua") and the customer concerning deliveries and services relating to the rental of genua software, unless special licensing conditions exist for genua software products.
- 1.2 Customers can only be entrepreneurs within the meaning of Section 14 BGB (German Civil Code). An entrepreneur in this sense is any natural or legal person or a partnership with legal personality who or which, when entering into a legal transaction, acts in exercise of his or its trade, business or profession.
- 1.3 These GTC shall apply exclusively. Conflicting or supplementary terms and conditions of the customer shall have no application.
- 1.4 genua is entitled to amend these GTC insofar as the amendments are reasonable for the customer. genua shall inform the customer of the intended changes in good time by e-mail. If the customer does not object within four (4) weeks after receipt of the notification, the amendments to the GTC shall be deemed accepted. genua shall inform the customer of the right to object and the legal consequences of the expiry of the deadline stipulated in the notification.

## **2. Term**

- 2.1 The contractually agreed services shall be provided for the duration of the term specified in the quotation.
- 2.2 If a minimum term has been agreed in the offer, it shall be extended by one (1) additional year unless the contract term has been terminated with one (1) month's notice to the end of the minimum term.
- 2.3 The right to extraordinary termination for good cause remains unaffected by the above provisions.
- 2.4 All notices of termination must be given in writing.

## **3. Liability**

- 3.1 genua shall be liable for intent or gross negligence, for injury to life, limb, or health or according to the provisions of the Produkthaftungsgesetz (German Product Liability Act), and within the scope of any warranties assumed by genua.
- 3.2 For simple negligence, genua shall be liable in the event of a breach of material contractual obligations only for foreseeable damage typical of the contract. Material contractual obligations are those obligations, the fulfillment of which is necessary for the execution of this contract and upon fulfillment of which the other contract partner may normally rely. genua shall not be liable for foreseeable damage typical of the contract in the case of the simple negligent breach of non-material contractual obligations and for disruptions that have their cause in the sphere of the customer.
- 3.3 There shall be no further liability on the part of genua.
- 3.4 The aforementioned limitation of liability shall also apply for the personal liability of employees, representatives and organs of genua.

## **4. Confidentiality**

- 4.1 The parties agree to maintain confidentiality regarding confidential information and the trade secrets of the other party.
- 4.2 This obligation excludes such information
  - a) that the recipient can prove was already known upon concluding the contract or was subsequently obtained from a third party, provided that the provision of said information does not breach a confidentiality agreement, legal provisions or official orders;
  - b) that was publicly known upon concluding the contract or was subsequently made public, unless the disclosure of said information breaches this contract;

c) that has to be disclosed as a result of legal obligations, a court ruling or an official ruling. Where permitted and possible, the recipient who is obliged to disclose said information shall inform the other party in advance and give it the opportunity to take action to prevent the disclosure.

4.3 The parties shall grant access to confidential information only to advisers who are subject to professional secrecy or who prior to this have been bound to obligations equivalent to the confidentiality obligations of this contract. Furthermore, the parties shall only disclose the confidential information to those employees who need to know it for the performance of this contract and shall also oblige these employees to maintain confidentiality to the extent permitted by labor law for the time after their departure.

## **5. Data protection/Data security**

The contracting parties shall observe the relevant data protection regulations.

## **6. Offsetting, assignment**

6.1 The customer may only transfer rights and obligations arising from or in connection with this contract to third parties with genua's written consent.

6.2 Offsetting shall only be permitted against undisputed or legally established claims of genua.

## **7. Compliance with legal regulations regarding the use or export of encryption programs**

7.1 genua products may contain encryption programs whose export and/or use in European and non-European countries is or in the future could be subject to restrictions, registration and/or approval requirements, bans or other regulations. genua therefore assumes no liability or guarantee that these products or the encryption programs contained therein can currently or in the future be used without restriction in national and international data exchange or that they can be exported there without restriction when exported to other countries and re-exported from these countries into third countries without restriction. The exclusion of liability above does not apply in the event of intent or gross negligence on the part of genua.

7.2 The customer is responsible for ensuring that the respective legal regulations of the relevant countries are adhered to when using, exporting or re-exporting the programs. The customer releases genua from all claims and costs that result from genua being held liable or subject to sanctions by third parties or by the authorities of the countries concerned due to a violation of such legal provisions for which the customer is responsible.

## **8. Choice of Law/Place of Jurisdiction**

- 8.1 This contract shall be governed exclusively by German law to the exclusion of those norms which refer to the legal system of other countries.
- 8.2 The exclusive place of jurisdiction for all disputes arising from and in connection with this contract shall be Munich. This applies even if the customer has no general place of jurisdiction in Germany.
- 8.3 Notwithstanding clause 8.2, genua shall be entitled to bring an action against the customer at the customer's general place of jurisdiction.

## **Part 2: License Conditions**

### **1. Scope of application/Contracting parties**

These License Conditions shall apply in addition to the General Terms and Conditions of Business (Part 1) to all license agreements relating to the rental of genua software unless special license conditions exist for genua software products. The licensor is genua and the licensee is the customer.

### **2. Granting of rights**

- 2.1 Upon conclusion of the contract and full payment of the fee, the customer shall receive the simple, geographically unrestricted, non-transferable and non-sublicensable right to use the software, limited in time to the term of the license agreement. The contractual use includes the installation as well as the loading, displaying and running of the installed software.
- 2.2 Unless otherwise agreed in the offer, the rental of one (1) license entitles the customer to install and operate the Software on one (1) physical client or virtual machine. If the customer wishes to install and operate the Software on more than one client or virtual machine at the same time, the customer must rent a single license for each client or virtual machine.
- 2.3 In addition, the customer shall be entitled to reproduce, edit or decompile the software only if this is legally permissible and only if the information required in respect of this is made available by the customer at genua's request.
- 2.4 The customer is not entitled to pass on the copy of the software provided to it to third parties. It is also not permitted to lend or rent out the software or make it accessible to third parties in any other way.
- 2.5 An exception to paragraphs 1 and 3 is the right of a genua distribution partner to resell the software in order to distribute it within the framework of the distribution partnership. This resale must be governed by these General Terms and Conditions of Business.

2.6 The right to use the software may be revoked if the customer repeatedly commits a serious breach of the restrictions on use or otherwise uses the software without authorisation. A serious breach shall be deemed to have occurred, for example, if the customer uses the software unlawfully. In this case, genua may terminate the contract with immediate effect.

### **3. Protection of the software**

The customer is obliged to take suitable measures to protect the software against access by unauthorized third parties.

### **4. Compliance**

The customer is obliged to observe all relevant laws when using the software. This also applies with regard to data protection laws and in the event that the export of the software is covered by export control.

## **Part 3: Scope of Service**

### **1. Services and provision of services**

1.1 genua shall make the software available to the customer by download after conclusion of the license agreement.

1.2 The hardware environment to be provided by the customer for the operation of the software must comply with the specification provided by genua.

1.3 genua shall, at its own discretion, offer updates of the software for download via the Internet. The updates may include both system updates to improve performance or bug fixes, as well as new signatures for attack detection and/or defense against malware.

1.4 genua is entitled to make changes to the software by way of updates which are minor or customary in the trade or which correspond to technical advancements in the industry, insofar as this is reasonable for the customer. Insofar as genua further develops or adapts the software within the framework of updates, the customer shall be entitled to the aforementioned rights of use to the further developments and adaptations.

1.5 genua may commission subcontractors to provide the services.

### **2. Bug fixing**

2.1 genua warrants that the contractually agreed quality of the software will be maintained throughout the term of the contract and that no rights of third parties will conflict with the contractual use of the software. The licensor shall remedy any material defects and defects of title in the software within a reasonable period of time.

2.2 The customer is obliged to notify genua in writing of any defects in the software immediately after they are discovered. In the case of material defects, this shall be done by specifying the time of occurrence of the defects and the detailed circumstances.