End-User License Agreement for BE-terna Software (EULA)

Table of contents

This End-User License Agreement ("**EULA**") is a legal agreement between You ("**Customer**" or "**You**") and BE-terna GmbH, Bornaer Str. 19, 04288 Leipzig ("**BE-terna**"; BE-terna and You together the "**Parties**", each a "**Party**") referenced in the agreement concluded by You with BE-terna (the "**Main Agreement**", the Main Agreement together with the EULA the "**Agreement**").

The Agreement governs the installation, copy and use of the software indicated in the Main Agreement (the "**Software**"). You agree to be bound by the terms of the Agreement. If You do not agree to the terms of the Agreement, You are not allowed to install, copy or use the Software.

The Software is only provided to entrepreneurs within the meaning of sec. 14 German Civil Code, which means a 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.

Consumers may not use the Software.

1   USAGE RIGHTS AND RESTRICTIONS

1.1   Grant of Rights

(1)   Subject to the payment of all applicable fees by You to BE-terna, BE-terna grants You a limited, non-exclusive, non-transferable, non-sublicensable right to use the Software during the term of the Agreement, provided that You may only use the Software for Your internal business operations (which may also include the processing of orders of Your customers if and to the extent such processing is part of Your business operation).

(2)   You may permit Your employees and members of the management to use the Software (the "**Authorized Users**"). Respective access credentials for the Software may not be used by more than one individual, but may be transferred from one individual to another if the original user is no longer permitted to use the Software. You are responsible for breaches of the Agreement caused by Authorized Users. You may not grant any persons other than the Authorized Users access to the Software.

(3)   BE-terna reserves all rights to the Software not expressly granted to You in this EULA. The Software is protected by copyright and other intellectual property laws and treaties. BE-terna, its Affiliates within the meaning of sec. 15 et seqq. German Stock Corporation Act (the "**Affiliates**") or its suppliers own the title, copyright, and other intellectual property rights in the Software. The Software is licensed to You, not sold.

(4)   With respect to the Software, You will not:

1.   disassemble, decompile, reverse-engineer, copy, translate or make derivative works, provided that mandatory rights under Sec. 69d and 69e German Copyright Act remain unaffected;

2.   rent, lease, lend or provide the Software to third parties;

3.   transmit any content or data that is unlawful or infringes any intellectual property rights, or

4.   circumvent or endanger the Software's operation or security.

(5) BE-terna may suspend Your use of the Software if You are in breach of this EULA or Your continued use may result in material harm to the Software or its users. BE-terna will notify You of the suspension. BE-terna will seek to limit the suspension in time and scope as reasonably possible under the circumstances.

1.2 Third Party Software and Content

(1) The Software may include links to software made available by third parties which is subject to terms and conditions with those third parties (the "**Third Party Software**"). The Third Party Software is not part of the Software and subject to the applicable terms and conditions of the respective third party provider or operator.

(2) The Software may also integrate or contain links to third party content and data (the "**Third Party Content**"). The respective third party provider of the Third Party Content is responsible for the Third Party Content. BE-terna has no influence on the Third Party Content.

(3) BE-terna does not assume any responsibility, guarantee or other liability for the Third Party Software and the Third Party Content and all liability in connection with the Third Party Software and Third Party Content is hereby disclaimed, except in cases of willful misconduct of BE-terna.

2 RESPONSIBILITIES OF BE-TERNA

(1) BE-terna provides access to the Software and support to You as further described in the Main Agreement.

(2) The Software may be modified by BE-terna at any time if and to the extent such modifications do not lead to material detriment of the Software functionalities. BE-terna will notify You of any such modifications in advance. Modifications may include new features of the Software, which may be subject to new and/or additional terms. You may use such new features subject to Your acceptance of the new and/or additional terms.

(3) BE-terna and/or its Affiliates may create analyses utilizing data and information derived from Your use of the Software (e.g. to optimize resources and support; for research and development; to verify security and data integrity). Analyses will anonymize and aggregate such data information. BE-terna and its Affiliates may use the results of these analyses for its own and its Affiliates' business purposes.

3 DATA PROCESSED BY YOU

(1) You are responsible for any data that is being entered into the Software and/or processed through the Software by You. You are responsible for implementing and maintaining proper data backup procedures to secure Your data.

(2) You grant to BE-terna a non-exclusive right to use and process such data solely to provide and support the Software and for the purposes set forth in Section **Fehler! Verweisquelle konnte nicht gefunden werden.**. The license is sublicensable to Affiliates of BE-terna and to subcontractors of BE-terna which BE-terna engages in connection with the Software and associated services.

(3) You shall secure that You will process all personal data contained in the data entered by You into the Software in compliance with applicable data privacy and protection laws (e.g. the GDPR).

(4) You shall maintain and adhere to all necessary security standards for Your use of the Software.

(5) At the end of the term of the Agreement, BE-terna will delete all of Your data, unless applicable law requires retention by BE-terna. You are responsible to secure such data before its termination at the end of the term.

4 TERM AND TERMINATION

(1) Unless explicitly provided for otherwise in the Main Agreement, the Agreement may be terminated by You or BE-terna at any time with a notice period of one (1) month.

(2) The right to terminate for cause remains unaffected for both Parties. BE-terna may in particular terminate the Agreement if

- You materially breach the obligations set forth in the Agreement, unless You cure such material breach within thirty days after receipt of a written notice of Your material breach, or
- You file for bankruptcy, become insolvent, or make an assignment for the benefit of creditors.

(3) BE-terna may at its sole discretion suspend Your use of the Software and/or terminate the Agreement if You fail to pay any fee or other amount payable by You on its due date.

(4) Upon the effective date of expiration or termination of the Agreement:

- Your right to use the Software will end,
- Your data will be deleted by BE-terna, and
- termination or expiration of the Agreement does not affect other agreements between the parties.

5 FEES

If the Main Agreement provides for any fees for the Software payable by You to BE-terna, You may only use the Software as set forth in this EULA if You make the payment to BE-terna in due time.

6 WARRANTY (GEWÄHRLEISTUNG)

6.1 Warranty

(1) BE-terna warrants (*gewährleistet*) that the Software will substantially conform to the specifications set forth in the documentation of the Software.

(2) You are obliged to inspect the Software in line with sec. 377 German Commercial Code for apparent defects after the Software has been provided to You and to inform BE-terna immediately in case of an apparent defect.

(3) In case of any defects of the Software, You are obliged to provide BE-terna immediately with a detailed description of the defect in text form allowing BE-terna to analyze and reproduce the alleged defect.

(4) Provided that You notify BE-terna of a defect in accordance with the above provisions of this Section 6, BE-terna will, at its discretion, correct or replace the nonconforming part of the Software with the next update of the Software which will be provided to You.

(5) In case a correction or replacement of a defect is not possible with reasonable efforts, BE-terna may terminate the Agreement, provided that BE-terna shall reimburse the part of the fees already paid by You for the time after termination of the Agreement (if any).

6.2 Warranty Exclusions

The warranties in Section 6.1 do not apply if:

- the Software is not used in accordance with the Agreement or its documentation,
- the Software is operated on a software or hardware environment which does not meet the requirements set forth in the documentation,
- the non-conformance is caused by You or another third party, or by any product, database, content or service not provided by BE-terna (in particular in case You or a third party that is not associated with BE-terna should have modified the source code of the Software),
- the Software was provided for no fee or is a trial license of the Software or both or
- if the Software is provided to You free-of-charge in which case warranty claims against BE-terna shall only exist in case of fraudulent misrepresentation (*arglistige Täuschung*) by BE-terna.

6.3 Disclaimer

Except as expressly provided in the Agreement, BE-terna does not make any representation or warranties, express or implied, statutory or otherwise, regarding any matter, including the merchantability, suitability, originality, or fitness for a particular use or purpose, non-infringement or results to be derived from the use of or integration with any products or services provided under the Agreement, or that the operation of the Software will be secure, uninterrupted or completely error free.

7 THIRD PARTY CLAIMS

7.1 Claims Brought Against You

(1) BE-terna will defend You against claims brought against You by any third party alleging that Your use of the Software in accordance with the Agreement infringes or misappropriates a patent claim, copyright or trade secret right.

(2) BE-terna's obligations under Section 7.1 (1) will not apply if the claim results from (i) Your breach of any provision of the Agreement or the documentation of the Software or, (ii) any use of the Software in conjunction with any product or service not provided by BE-terna, or (iii) use of the Software provided for no fee.

(3) In the event a claim is made or likely to be made, BE-terna may at its sole discretion (i) procure for You the right to continue using the Software under the terms of the Agreement, or (ii) replace or modify the Software to be non-infringing without a material decrease in functionality. If these options are not reasonably possible for BE-terna, Be-terna may terminate the Agreement upon written notice. In this case, BE-terna is obliged to reimburse the part of the fees already paid by You for the time after termination of the Agreement (if any). Fees paid by You for the time before the termination do not need to be reimbursed by BE-terna if and to the extent You were able to use the Software in conformity with its documentation.

7.2 Claims Brought Against Be-terna

You shall defend and indemnify BE-terna and/or its Affiliates against claims brought against BE-terna and/or its Affiliates by any third party related to the data that is being processed by You with the Software and/or in connection with any use of the Software by You that does not conform with the Agreement or documentation if and to the extent such claim has been caused culpably by You.

7.3 Third Party Claim Procedure

(1) The Party against which a third-party claim that may be subject to the defense and indemnification obligations set forth above is brought will timely notify the other Party in writing of such claim, reasonably cooperate in the defense and may appear (at its own expense) in such defense through counsel reasonably acceptable to the indemnifying Party.

(2) The Party that is obligated to defend a claim will have the right to fully control the defense.

(3) The Party against which the third-party claim is brought may not settle or otherwise bindingly dispose of the claim without the prior written consent of the other Party, provided that such consent shall not be unreasonably withheld.

8 LIMITATION OF LIABILITY

(1) BE-terna shall be liable to You in case of intent and gross negligence in accordance with the statutory provisions.

(2) In other cases, BE-terna shall be liable – unless otherwise provided for in Section 8 (4) below – only in the event of a breach of a contractual obligation, the fulfilment of which is essential for the proper execution of the agreement and on the observance of which the User may regularly rely (so-called cardinal obligation or *Kardinalpflicht*"), limited to compensation for foreseeable and typical damage. In all other cases the liability of BE-terna is excluded subject to the provision in 8 (4).

(3) Any liability of BE-terna under sec. 536a German Civil Code for defects that existed at the time of conclusion of the Agreement is hereby excluded.

(4) BE-terna's liability for damages resulting from injury to life, body or health and under the German Act on Product Liability (*Produkthaftungsgsetz*) or other mandatory liability under applicable law shall remain unaffected by the limitations and exclusions of liability of this Section 8.

9 CONFIDENTIALITY

(1) Each Party shall, and shall cause its Affiliates and third party providers to treat as confidential and shall not make available or disclose and shall procure that its Affiliates and third party providers not make available or disclose any information or material of the other Party, its Affiliates or its third party providers that is or has been (i) disclosed by such other Party, its Affiliates or its third party providers under or in connection with this Agreement, , or (ii) learned, acquired, or generated in connection with this Agreement and the activities contemplated hereby, in each case (i) and (ii) whether orally, electronically, in writing or otherwise, including copies and including the terms of the Agreement (together the "**Confidential Material**") to any person, or make or permit any use of such Confidential Material without the prior written consent of the other Party.

(2) Notwithstanding the foregoing, either Party may disclose Confidential Material on an as needed basis to its Affiliates and its Affiliates' officers, legal representatives and employees and to any subcontractors of such Party as required for the purpose of complying with the receiving Party's obligations under the Agreement, provided that they are subject to confidentiality obligations with respect to such Confidential Material which are equivalent in scope and nature to the confidentiality obligations of the receiving Party hereunder.

(3) This Section 9 shall not prohibit disclosure or use of any Confidential Material if and to the extent:

- the disclosure or use is required by applicable laws;
- the disclosure or use is required for the purpose of any judicial proceedings arising out of this Agreement or any other agreement entered into under or pursuant to this Agreement or the disclosure is made to a tax authority in connection with the tax affairs of any Party;
- the Confidential Material is or becomes publicly available (other than by breach of this Agreement);
- the Confidential Material has been legally obtained from a third party which is not restricted from disclosing such Confidential Material by law or regulation or by contractual obligations;
- the Confidential Material has been legitimately in the other Party's possession prior to disclosure;
- the Confidential Material is independently developed without reference to, use or benefit of any Confidential Material;
- the Confidential Material is disclosed with the written consent of the other Party, or
- the disclosure is permitted under Sec. 5 of the German Trade Secrets Act (*Gesetz zum Schutz von Geschäftsgeheimnissen*),

provided that prior to a disclosure or use of any Confidential Material pursuant to this Section 9 (3), the Party required to disclose or use the Confidential Material shall, if legally permitted and practically feasible, promptly notify the other Party of such requirement with a view to providing such other Party with the opportunity to contest such disclosure or use or otherwise to agree the timing and content of such disclosure or use.

(4) Each Party shall immediately inform the other Party in the event that it becomes aware of the possession, use or knowledge of any of such other Party's Confidential Material by any person not authorized to possess, use or have knowledge of the Confidential Material and shall at the request of such other Party provide such reasonable assistance as is required by such other Party to mitigate any damage caused thereby.

10 REGULATORY MATTERS

(1) The Software and/or Confidential Material of BE-terna may be subject to export control laws of various countries, including the laws of the United States, EU, and Germany. You will not submit the Software or any Confidential Material of BE-terna or parts thereof to any government agency for licensing consideration or other regulatory approval, and will not export, re-export or import any Software or Confidential Material of BE-terna or parts thereof to countries, persons or entities if prohibited by export laws.

(2) BE-terna may terminate this Agreement with without notice if BE-terna may not deliver or grant You access to the Software or Confidential Material of BE-terna due to an embargo, trade sanction or other comparable restrictive measure.

11 MISCELLANEOUS

(1) Except as otherwise expressly set forth in the Agreement, neither Party shall be entitled to assign any rights or claims under this Agreement without the prior written consent of the respective other Party.

(2) Amendments, supplements or the cancellation of the Agreement (including this Section 11 (2)) and any waiver in relation to the Agreement shall be valid only if made in writing. Stricter statutory form requirements shall remain unaffected.

(3) The Agreement is governed by and shall be construed in accordance with the laws of Germany, without regard to the United Nations Convention on Contracts for the International Sales of Goods (CISG).

(4) In case You are a merchant, a legal person under public law or do not have a general venue in Germany, all disputes and claims arising out of or relating to this Agreement, or the breach, termination or invalidity thereof, shall be subject to the exclusive jurisdiction of the courts in Leipzig, Germany.

(5) Should any individual provision of the Agreement be or become in whole or in part invalid or infeasible, or should there be an omission in the Agreement, this shall not affect the validity or feasibility of the remaining provisions, without any Party having to argue (*darlegen*) and prove (*beweisen*) the Parties' intent to uphold the Agreement even without the invalid or infeasible provision or the omission.

In place of the invalid or infeasible provision or in order to remedy the omission, the Parties undertake to agree on an appropriate, valid and feasible provision that comes closest to what the Parties intended or would have intended in accordance with the purpose of the Agreement had they considered the matter at the outset.

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