

# GENERAL TERMS AND CONDITIONS

LICENSING CONDITIONS FOR THE  
PROVISION OF IZYTRONIQ SOFTWARE  
AGAINST PAYMENT



IZYTRON 



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## 1 Subject of the Contract

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- 1.1 The provided software (hereinafter referred to as “software”) is made available to the customer by the licensor for use against payment. The customer hereby agrees that only the following contractual terms and conditions shall apply to provision of the software and the corresponding contractual relationship between the customer and the licensor.
- 1.2 The product description in the documentation is conclusively decisive with regard to the nature of the functionality of the provided software.
- 1.3 The licensor has no obligation to provide any functionality which goes above and beyond this description. No such obligation may be derived by the customer, in particular from other representations of the software in public statements or in the licensor’s advertising, unless the licensor has expressly confirmed such extended functionality in writing. Guarantees require the express, written confirmation of the licensor’s managing director(s).
- 1.4 Installation and configuration services are not covered by the contract.

## 2 Copyrights and Property Rights, Rights of Use

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- 2.1 All copyrights and other proprietary rights relating to the software are retained exclusively by the licensor, unless they have been expressly assigned to the customer on the basis of the rights of use conferred herein. The licensor transfers to the customer the non-exclusive right to use the software for an unlimited period of time.
  - 2.1.1 In the case of the Business version, the licensor grants the customer a personal, non-exclusive license to install and use the software (single-user license). **The customer is entitled to install and use the software on one computer of his choice.**
  - 2.1.2 In the case of the Enterprise Premium version, the licensor grants the customer the right to use the purchased software within a network (network license). The customer is entitled to install the software to the server and to an unlimited number of computers within this network. Within the scope of the purchased number of simultaneously usable floating licenses (Premium team licenses), the software can be used simultaneously on the same number of different workstations logged in to this network.
  - 2.1.3 In the case of the Enterprise Ultimate version, the licensor grants the customer the right to extend the purchased right of use to include additional outdoor workstations (offline) beyond the scope of the license described in 2.1.2 (prerequisite). This right of use extends the range of functions of the Enterprise Premium version. The customer is entitled to install and use the software on one computer of his choice per Ultimate license extension.
  - 2.1.4 If the customer uses the Education version of the software, he may do so only for the purpose of basic and further training.
- 2.2 The rights of use transferred to the customer entitle the customer to:
  - load, transfer, run and store the software within his own internal data processing system,
  - copy the software for backup and archiving purposes. However, only the absolutely necessary number of backup copies may be retained.
- 2.3 The customer hereby expressly promises:
  - not to make the provided software or any copies thereof available to third parties,
  - not to reproduce the rights of use and pass them on to third parties,
  - to make only such modifications to, as well as translations, cumulations and disassemblies of the provided software, or to reverse engineer the provided software, as are absolutely necessary for the intended use of the software, and in particular not to remove any markings or notices,
  - **to reproduce the documentation only for his own purposes and only within the scope of the granted rights of use,**
  - in the event of a complete transfer of the rights of use to a third party, to grant such third party only the rights specified in these terms and conditions and to impose on such third party all obligations specified herein and to notify the licensor of such transfer in writing without undue delay.
  - Combination with any sort of third-party software is impermissible. However, the customer is entitled to combine the software with other programs insofar as such combination is part of the described software application (e.g. running the software with certain system software).

- 2.4 Installation of IZYIONIQ interface software (hereinafter referred to as “interface software”) is a prerequisite for use of the software. **This interface software is part of the software’s installation package and is provided to the customer free of charge.** The interface software must be installed by the customer at his own expense.
- The licensor is entitled to modify the interface software from time to time, for example if changes or bug fixes in the system environment make this necessary.** New versions of the interface software must also be installed by the customer at his own expense.
- The customer may use the interface software only to the extent necessary for use of the software. He is granted the right to use the interface software, which is limited to use of the software.
- The customer is not entitled to pass on the interface software itself, or copies thereof, in part or in full, to third parties, even for a short period of time, or to rent, lease, hire out or sell the interface software.
- 2.5 The customer shall grant the licensor access to his business premises during normal business hours after prior written notice in order to examine use of the programs and the documentation, as well as the whereabouts of the copies made by the customer. This examination shall be conducted by an expert third party at the expense of the licensor. If the customer has not complied with the relevant clauses concerning his contractual obligation, the customer undertakes to bear the costs of the examination.
- 2.6 Insofar as the software contains open source software from third party manufacturers, the customer must comply with the additional provisions of such third party manufacturers. The additional terms and conditions of these third party manufacturers are available for download from the licensor’s website in their respectively current versions. The customer undertakes to strictly comply with the **open source provisions**.

### 3 Support Services, Duties and Obligations of the Parties

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- 3.1 The licensor makes no promise concerning support for installation of the software. Services provided by the licensor, in particular support and advice on the use of the software, are not the subject of these general terms and conditions and shall only be provided by the licensor by separate agreement.
- 3.2 The customer is expressly advised that he must regularly make backup copies of the data on his computer at sufficient intervals (as a rule weekly). If the customer does not comply with this provision he violates his obligation to mitigate damages. The licensor shall not be liable for any damages incurred as a result of such violation.
- 3.3 The customer undertakes to test the software without delay prior to use and to report any errors that arise or become apparent to the licensor without delay. During the entire period of use, the customer shall describe to the licensor, either himself or through a qualified employee, any errors and problems that occur and the circumstances surrounding system failures as precisely as possible.
- 3.4 If, after conclusion of the contract, third parties assert claims against the customer for infringement of commercial proprietary rights such as patents, utility models, trademarks, design patents and copyrights (hereinafter referred to as “proprietary rights”), the customer undertakes to notify the licensor of such claims in writing without delay. The customer also undertakes not to acknowledge such infringements without the prior written consent of the licensor and to support the licensor in the defense of his rights to a reasonable extent. If the customer discontinues use of the software in order to mitigate damages or for other reasons, he shall be obligated to point out to the third party that discontinuation of use does not constitute acknowledgement of infringement of any proprietary rights. The customer shall be liable to the licensor for any damage resulting from failure to comply with this obligation.
- 3.5 The customer undertakes to comply with the provisions of the Export Administration Act of the USA, as well as any applicable German other export and import regulations when exporting the software.

### 4 Warranty

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- 4.1 Insofar as not otherwise expressly agreed, the provided software corresponds to the current state of the art and conforms to the product information and specifications made available by the licensor. The licensor does not warrant the suitability of the software for purposes above and beyond the fulfilment of the contractual obligations.
- 4.2 The customer is herewith advised that, in accordance with the current state of the art, despite greatest possible conscientiousness and care, program errors cannot be excluded with **100%** certainty and that it’s not possible to develop software that detects every existing virus or other malware.
- 4.3 The warranty does not cover defects which are based on the fact that the provided software is used in a hardware and/or software environment which does not meet the requirements specified in the product description and for which the software has thus not been expressly approved.

- 4.4 The customer undertakes to inspect the software for obvious defects immediately upon receipt and to notify the licensor of any defects without delay. Warranty for the aforementioned defects is otherwise expressly excluded. This also applies accordingly if such a defect becomes apparent at a later point in time. Paragraph 377 of the German Commercial Code shall apply.
- 4.5 In the event of a product defect, the licensor shall initially be entitled to provide supplementary performance. In the event of replacement delivery, the customer shall also accept a new version of the software, unless it's unreasonably impaired as a result. In the event of a defect of title, the licensor shall, at his own discretion, provide the customer with a legally unobjectionable opportunity to use the software or modify the software so that it no longer infringes upon the rights of third parties.
- 4.6 The licensor is entitled to render the aforementioned services at the customer's premises. The licensor can also satisfy his obligation to remedy defects by making updates that are provided with an automatic installation routine available for download by the customer from his website and offering telephone support in the event that installation problems occur within the scope of the warranty (subsequent performance).
- 4.7 The customer's right to withdraw from the contract in the event that rectification/replacement delivery fails twice, as well as his right to a price reduction, shall remain unaffected. The right of withdrawal does not apply to insignificant defects. Insofar as the customer claims compensation for damages or reimbursement of futile expenses, the provisions in section 5 of these general terms and conditions shall apply.
- 4.8 Mandatory statutory provisions under applicable law shall remain unaffected.

## 5 Liability

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- 5.1 The licensor shall always be liable to the customer:
- 5.1.1 for damage caused by himself, or his legal representatives or vicarious agents, either intentionally or through gross negligence,
  - 5.1.2 in accordance with applicable product liability law,
  - 5.1.3 for damages resulting from injury to life, limb or health for which the licensor, his legal representatives or his vicarious agents are responsible.
- 5.2 The licensor shall not be liable in the event of simple negligence, except insofar as he has breached a material contractual obligation, the fulfilment of which is a prerequisite for the proper performance of the contract or the breach of which jeopardizes the fulfilment of the purpose of the contract and upon the observance of which the customer may ordinarily rely.
- 5.3 In the case of property damage and financial loss, liability shall be limited to the foreseeable damage typical for this type of contract. Liability for remote consequential damages, such as lost profits and/or lost savings, is excluded.
- 5.4 The licensor shall not be liable if and to the extent that errors are attributable to modifications of or additions to the software or to its improper handling, or improper use of the remote function and/or the sequences function of the software by the customer and/or third parties.
- 5.5 The preceding limitations of liability shall also apply with respect to all representatives of the licensor, in particular with respect to his managing directors, legal representatives, employees and other vicarious agents.

## 6 Final Provisions

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- 6.1 Amendments and addenda to these general terms and conditions must be made in writing. This applies as well to the annulment of this contractually agreed upon written form.
- 6.2 Should individual provisions of these general terms and conditions be or become invalid, this shall not affect the validity of the remaining provisions. The invalid provision shall be replaced by a new provision which comes as close as possible to the purpose intended by the invalid provision. The same shall apply if a loophole requiring amendment becomes subsequently apparent.
- 6.3 The licensor is entitled to transfer the rights and obligations arising from these general terms and conditions to a third party at any time.
- 6.4 The contractual relationship shall be governed by the laws of the Federal Republic of Germany to the exclusion of the UN Convention on Contracts for the International Sale of Goods.
- 6.5 The exclusive place of jurisdiction for all disputes arising from or in connection with this contract is Nürnberg, Germany.

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