

# General Terms and Conditions of PTM EDV-Systeme GmbH for the Sale of Licenses and the Conclusion of Subscription Contracts

## 1. General

1.1. These General Terms and Conditions (hereinafter referred to as "GTC") shall apply to all business transactions between PTM EDV-Systeme GmbH with its registered office at Bahnhofgürtel 59/1.St, 8020 Graz (registered in the commercial register under FN 173442 m) (hereinafter referred to as "PTM") and the Buyer (or User) with regard to the purchase of software licences (hereinafter also referred to as "Software Purchase Contract") or the licensing of software (hereinafter also referred to as "Subscription Contracts").

However, in the case of the purchase of goods or services by PTM from a seller or service provider, these GTC also apply with regard to the provisions of point 1.

1.2. Conflicting or supplementary terms and conditions of the Buyer or User of Software as a Service (SaaS) services (hereinafter: Buyer) shall not become part of the contract unless PTM has expressly agreed to their validity in text form. Additional or deviating agreements to these GTC that are made between PTM and the Buyer for the execution of a contract must be in text form. This also applies for the cancellation of the text form requirement. The rights to which PTM is entitled beyond these GTC on the basis of legal provisions remain unaffected.

1.3. These GTC apply exclusively and even if no reference is made to them in contracts concluded at a later date.

1.4. In case these GTC require text form, this shall be understood to include, inter alia, e-mails, letters, faxes and SMS. No signature is required. The receipt of declarations must always be proven by the sender.

## 2. To the conclusion of the contract

2.1. The prices (irrespective of whether they are announced in price lists, on the website <https://www.msrm-addons.com/> or in any other way) are non-binding and may be changed at any time. However, this does not apply if a binding written offer is made by PTM to the Buyer.

2.2. Unless otherwise specified below or otherwise agreed between PTM and the Buyer, the Buyer shall place its orders in text form.

2.3. Orders placed by the Buyer (in particular via the website <https://www.msrm->

addons.com/) constitute binding offers for the conclusion of a contract by the Buyer.

- 2.4. PTM shall in any case not be bound by orders placed by the Buyer unless these are fully consistent with an offer made by PTM.
- 2.5. In principle, the declaration of acceptance in text form by PTM is decisive for the content and the conclusion of the contract concerning Subscription Contracts. However, the following procedure may also apply within the framework of the contract initiation for certain Subscription Contracts:
  - (a) The Buyer will first receive a separate written offer from PTM in which a so-called "Payment Link" (link to Payment Center) is embedded.
  - (b) The acceptance of the offer by the Buyer is then effected by payment via the payment centre (by entering the Invoice or Quote-No.).
  - (c) In some cases, the Buyer may not receive a written offer at all, but instead request an invoice from PTM on the basis of the product descriptions on the website <https://www.msrm-addons.com/>. The payment is then made via the payment centre and the selected product is then activated for the Buyer. With the activation of the product, a contract is concluded between PTM and the Buyer in such cases.
- 2.6. When purchasing a software licence, the Buyer shall first receive a separate written offer from PTM. The Buyer's order based on PTM's written offer results in the conclusion of the contract. If the order differs from PTM's written offer, the contract shall not be concluded unless PTM expressly accepts the Buyer's order (and thus the new offer) in writing. After conclusion of the contract, the Buyer shall also receive a licence key (or LicenseKey) so that it can download and subsequently install the software.
- 2.7. Any contracts, supplements, ancillary agreements and amendments to the contracts are only valid if they are agreed by mutual consent in text form. Subsequent requests for changes require explicit confirmation in text form by PTM and furthermore entitle PTM to price adjustments and extensions of the agreed deadlines, whereby PTM is not obliged to make such changes or improvements.

### 3. Subject matter of the contract as well as transfer and installation

- 3.1. The subject matter of the contract is the transfer of the software for payment. The provision of the software (subscription contract) shall take place either within the framework of software as a service by means of telecommunication connections (here: Internet) or through the sale of the software (software purchase contract). This includes the corresponding documentation. The limited rights of use regulated below must be observed.
- 3.2. In the case of Subscription Contracts, the subject matter is the provision of the provider's software on the basis of a defined number of licences for use by the Buyer. PTM makes

the software available to the Buyers on servers managed by it. The servers provided are currently operated by various (sub)service providers of PTM. The provider expressly reserves the right to use another (sub)service provider for the provision of the servers (without the consent of the Buyer).

- 3.3. As for documentation, PTM provides an installation manual and an online help, which allows explanations of the functionalities to be called up and printed out during the operation of the software.
- 3.4. For Software Purchase Contracts, the software shall also be made available to the Buyer via a download. In the case of purchase agreements, usage also takes place "on premise". The installation of the software (on premise use) is not owed by PTM. Training for the usage of the software does not take place. There is no entitlement to transfer on a data carrier unless explicitly agreed otherwise between PTM and the Buyer.

#### 4. Term including commitment period or minimum term, termination, updates and update obligation

- 4.1. The software is provided either as part of Software as a Service (SaaS) via the Internet (subscription contract) or as part of a purchase (Software Purchase Contract).
- 4.2. With SaaS, the agreed monthly or annual fee is owed, whereby an open-ended contract is concluded. The minimum commitment period depends on the software selected by the Buyer (monthly commitment or annual commitment).
- 4.3. The contract can be terminated by either party. The date of termination is the last of the month with a 1-month notice period. However, this does not apply to contracts with a minimum term. Such contracts can be properly terminated during the minimum term (taking into account and observing a 1-month notice period), but end at the earliest after the agreed minimum term has expired.
- 4.4. The immediate termination without observing a deadline due to a material violation of the contractual provisions or unreasonableness of the contractual partner is reserved for each party to the contract.
- 4.5. In the case of subscription contracts, the costs for updates and maintenance are already included in the respective prices and calculated on the basis of the contractual period of the current contract. The scope of support (included services, support and response times, contacts, etc.) for Subscription Agreements is set forth in the terms and conditions for Support & Maintenance at <https://www.msrm-addons.com/Support/Terms-Conditions>.

Adjustments, amendments, and additions to the services within the framework of subscription contracts as well as measures serving to determine and remedy any malfunctions shall only lead to a temporary interruption or impairment of the

accessibility of the services if this is necessary for technical reasons.

The monitoring of the basic functions of the services within the framework of the subscription contracts is generally guaranteed from Monday to Friday during business hours. In the event of serious defects- i.e. the use of the services is no longer possible or is seriously restricted - maintenance shall be carried out within three hours of knowledge and information by the user. PTM will immediately notify the user of the maintenance work and carry out this maintenance work in accordance with the technical conditions. If it is not possible to remove defects within 12 hours, PTM will notify the customer of this circumstance by e-mail within 24 hours, stating the reasons and the period that is expected to be required to remove defects.

The availability of the services offered and agreed in each case is 98.5 % on an annual average basis including maintenance work, but availability will not be impaired or interrupted for more than two calendar days in a row.

- 4.6. In the case of software purchase contracts, updates and maintenance (support & maintenance) are included for up to one year from the conclusion of the contract, whereby the obligation to update (according to Section 7 VGG (Austrian Verbrauchergewährleistungsgesetz) is limited to one year by mutual agreement. In the case of an additionally purchased product (upgrade) to the already purchased software, the original agreed maintenance date shall apply to updates and maintenance. The purchase of an upgrade to the already purchased software shall therefore not start the maintenance contract anew. More information with regard to the terms and conditions on Support & Maintenance is available at the following link <https://www.msCRM-addons.com/Support/Terms-Conditions>.

If the Customer wishes to receive Support & Maintenance services by PTM beyond a period of one year, the terms and conditions on Support & Maintenance at <https://www.msCRM-addons.com/Support/Terms-Conditions> are applicable and must be taken into account. In any case, it is recommended to order Support & Maintenance services from PTM within the 30-day grace period.

## 5. Fee

- 5.1. The Buyer shall pay the fee provided for and agreed outside these General Terms and Conditions for the provided software or for the purchase of the software, whereby the respective offers by PTM shall be understood as net amounts plus the statutory value added tax.

If no fee is specified for a software, an appropriate fee shall be deemed to have been agreed in any case.

- 5.2. Unless otherwise agreed, in the case of a purchase of the software, payment shall be made prior to use. In the case of Subscription Contracts, monthly payment shall be deemed to have been agreed in advance. If annual payment has been agreed, this must

also be made in advance. All payments shall be made in euros (EUR) or US dollars (USD), unless explicitly agreed otherwise.

- 5.3. In the event of default in payment, the amount recoverable from PTM shall be increased automatically and without prior notice by the legal entrepreneurial default interest under Austrian law. The Buyer or User is obliged to bear the reminder costs.
- 5.4. Compliance with the agreed payment dates constitutes an essential condition for the performance of the delivery or fulfilment of the contract by PTM. Non-compliance with the agreed payments entitles PTM (1.) in the case of Subscription Contracts, to prohibit the use of the software; or (2.) in the case of purchase, not to provide the software from the beginning. PTM shall then be entitled to the fee even without the possibility of usage by the Buyer.

## 6. Granting of rights/blocking of use and trial version

- 6.1. With the purchase of the software or within the framework of the provision of the software within the framework of a subscription agreement, the purchaser only acquires the licence to use the software, not the software itself.
- 6.2. PTM grants the Buyer a non-exclusive, non-transferable, non-sublicensable and time-limited (applies to Subscription Contracts) / time-unlimited (applies to Software Purchase Contracts) right to use and exploit the Software for the conditions agreed in the Agreement and to the extent of the purchased licences for simultaneous use on several workstations after payment of the agreed fee.
- 6.3. The following, among others, shall apply to **Software Purchase Contracts**:
  - (a) The purchaser is entitled to reproduce the software for use on a computer. The permitted acts of reproduction include the installation on a data carrier of the computer, the transfer of the software in whole or in part from this data carrier to the main memory and subsequently to the CPU and graphics card of the computer.
  - (b) The usage of the provided software is only permitted on the computer on which the software was first installed and activated.
  - (c) Installation of the software on a network server for the sole purpose of internal distribution to other computers is only permitted if the Buyer has a separate licence for each computer on which the software is used.
  - (d) The purchaser may not rent, lease, lend, give away or sublicense the Software. However, the Buyer is entitled - if technically possible at all - to permanently transfer the rights arising from the contractual relationship to a third party, provided that the Buyer transfers all copies of the software and all written accompanying material and the third party agrees demonstrably to the provisions of the concluded contract between PTM and the original Buyer.

- (e) The purchaser is not entitled to remove or circumvent the existing protective mechanisms of the software against unauthorised use, unless this is necessary to achieve trouble-free use of the programme.
- (f) The Buyer shall not reverse engineer, decompile or disassemble the Software unless and only to the extent explicitly permitted by applicable law, notwithstanding this limitation.

6.4. The following, among others, shall apply to **Subscription Contracts**:

- (a) With regard to the software selected by the Buyer, PTM grants the Buyer a right of use limited to the respective agreed term as well as a non-exclusive, non-transferable right of use to use the software named in the respective concluded contract in accordance with the respective agreements (in particular on the basis of the product descriptions) concerning the software within the scope of the SaaS services as intended.
- (b) The Buyer may only process the software insofar as this is covered by the intended use of the software according to the respective current product description.
- (c) It is noted that PTM is not owed the establishment and maintenance of a data connection between the IT system of the Buyer and the transfer point operated by PTM.
- (d) Upon conclusion of the contract, the software is made available to the Buyer so that he can use the software within the agreed scope, the agreed licences and for his purposes.
- (e) The Buyer may only reproduce the software insofar as this is covered by the intended use of the software according to the respective current performance and/or product description. Necessary reproduction includes loading the software into the main memory on PTM's server, but not even temporary installation or saving of the software on data carriers (such as hard disks or similar) of the hardware used by the Buyer.
- (f) The Purchaser may not rent, lease, lend, give away or sublicense the Software. However, the Buyer is free - if this is technically possible at all - to transfer the rights arising from the contractual relationship to a third party on a permanent basis, provided that the Buyer transfers all copies of the Software and all written accompanying material and the third party agrees to the provisions of the contract concluded between PTM and the original Buyer.
- (g) The Purchaser is not entitled to remove or circumvent the existing protective mechanisms of the software against unauthorised use, unless this is necessary to achieve trouble-free use of the programme.

(h) The Buyer shall not reverse engineer, decompile or disassemble the software unless and only to the extent explicitly permitted by applicable law, notwithstanding this limitation.

6.5. In addition, the provisions of the End-User License Agreement (EULA) apply to Software Purchase Contracts; available at [https://www.msrm-addons.com/LegalDocuments/EN\\_End\\_User\\_License\\_Agreement\\_\(EULA\).pdf](https://www.msrm-addons.com/LegalDocuments/EN_End_User_License_Agreement_(EULA).pdf).

## 7. TRIAL VERSIONS

(a) Considering the provisions set forth above, the Buyer is entitled to download a fully functional trial version of every software that PTM offers free of charge after registering on the PTM homepage.

(b) The trial versions have no functional restrictions compared to the full versions offered, but are only restricted in terms of the quantity structure or the constant written "Trial version" in some fields as text. In addition, the trial versions only have a time-limited or data volume limited function (AE).

(c) The Buyer has no legal right to use a trial version. PTM can discontinue or prohibit access to such a trial version at any time.

(d) The "pay-before-download principle" applies to downloads, i.e. only after successful payment does the Buyer receive a so-called "license key". Only this "license key" turns the installed trial version to the full version for the purchaser.

## 8. Delivery and force majeure clause

PTM shall not be liable for the impossibility of providing the Software due to force majeure (any event that is beyond PTM's control and results in the complete or partial non-fulfilment of its obligations) or other events that were unforeseeable at the time of the conclusion of the contract and beyond PTM's control (e.g. operational disruptions of any kind, difficulties in the procurement of materials or energy, transport delays, strikes, lawful lockouts, shortages of labour, energy or raw materials, official measures or missing, incorrect or untimely deliveries by suppliers of the supplier).

## 9. Retention of title

In the event of a sale of the software, the following shall apply: Assets transferred in connection with a software purchase agreement shall remain the property of PTM in any case until the purchase price and all associated costs and expenses have been paid in full.

## 10. Warranty law

10.1. Technical data, specifications and performance data in public statements, in particular in advertising material, are not quality data. The functionality of the software is based on the information and data presented on the homepage or the information and data listed

in an offer from PTM.

- 10.2. PTM shall provide and maintain the software in a condition suitable for use in accordance with the contract, whereby reference is made under Clause 4 of these GTC with regard to updates and the obligation to update.

The obligation to maintain does not include the adaptation of the software to changed conditions of use and technical and functional developments, such as changes to the IT environment, in particular changes to the hardware or the operating system, adaptation to the functional scope of competing products or establishing compatibility with new data formats.

- 10.3. The Buyer shall support PTM in determining and eliminating the defect and shall immediately grant access to the documents from which the detailed circumstances of the occurrence of the defect result.

- 10.4. For Software Purchase Contracts, the following shall apply in addition: PTM rejects any warranty with regard to the suitability or usability of the software for a specific purpose if the purpose has not explicitly become the subject matter of the agreement entered into between PTM and the Buyer. PTM gives no warranty and certainly no guarantee that the functions contained in the software meet the requirements of the Buyer (the intended purpose of the Buyer which has not become the subject matter of the contract) or that the operation of the software will function without interruption or error or that errors in the software must be corrected.

- 10.5. There is no warranty claim for trial versions.

## 11. Limitation of liability

The following applies outside of warranty law:

- 11.1. PTM accepts no liability for damages of any kind whatsoever. However, this exclusion does not apply in the event of intent on the part of PTM or its fulfilment of obligations.

- 11.2. Any liability, except in the case of intent (the burden of proof lies with the buyer) and for mandatory liability in accordance with any legal provisions, shall in any case be limited to the amount of the respective order sum. In the case of Subscription Contracts, the order amount shall be the amount to be paid over a period of one month (monthly commitment) or one year (annual commitment).

Thus, there is no liability claim for trial versions in any case.

- 11.3. Claims for damages shall become lapsed at the latest upon expiry of one year from the transfer of the software (provision of the software within the framework of SaaS or download of the software), if these have not been asserted in court. These must be asserted in court within three months of knowledge at the latest, otherwise they become lapsed, whereby the aforementioned one-year period must always be observed in the

case of other limitation.

Settlement discussions do not suspend the expiry of these deadlines unless this is explicitly assured in text form by PTM.

- 11.4. The exclusions and limitations of liability set out in this Clause shall also apply to the same extent in favour of the legal persons, legal representatives, employees and fulfilment obligations of PTM.

## 12. Data privacy

The processing of data is carried out in accordance with the legally applicable provisions. More detailed information can be found in the privacy policy:

[https://www.msrm-addons.com/LegalDocuments/EN\\_DataPrivacyDeclaration\(Website\).pdf](https://www.msrm-addons.com/LegalDocuments/EN_DataPrivacyDeclaration(Website).pdf)

## 13. Final provisions

- 13.1. The **exclusive** place of jurisdiction for all disputes arising from the business relationship between PTM and the Buyer is the registered office of PTM. However, PTM shall also be entitled to take legal action at any other permissible place of jurisdiction.
- 13.2. The legal relationship between PTM and the Buyer shall be governed by **Austrian law** unless explicitly agreed otherwise in text form. The provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply. Nor do the reference or conflict of laws rules of private international law apply.
- 13.3. If any provision of these GTC is invalid, void or unenforceable in whole or in part or contains a legal loophole pursuant to certain national or international legal provisions, this shall not affect the validity of the remaining provisions. In such a case, the invalid, void or unenforceable provision shall be replaced by a valid or enforceable provision that comes as close as possible to the purpose of the invalid or unenforceable provision.

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