SOFTWARE TERMS & CONDITIONS

Software Terms & Conditions for the Free Provision of Standard Software

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Software Terms & Conditions

Software Terms & Conditions for the Free Provision of Standard Software by HAINBUCH GmbH Spannende Technik

1. General – scope

1.1 These Software Terms & Conditions apply to the free provision of standard software by HAINBUCH GmbH Spannende Technik (hereinafter "HAINBUCH") to the Customer (hereinafter "Customer"). Separate terms and conditions shall apply to other types of software licensing, and legal transactions.

1.2 These Software Terms & Conditions for the Free Provision of Standard Software (hereinafter "Software Terms & Conditions") shall apply exclusively. HAINBUCH does not recognize any conflicting or deviating terms and conditions on the part of the Customer, or any other terms and conditions of the Customer that are not stipulated in these Software Terms & Conditions, unless HAINBUCH has expressly agreed to their validity in writing.

1.3 All agreements entered into between HAINBUCH and the Customer for the purpose of fulfillment of a contract are set down in writing in these Software Terms & Conditions.

1.4 These Software Terms & Conditions shall only apply to entrepreneurs as defined in § 14 BGB (German Civil Code).

2. Subject matter of the contract – open source software

2.1 The subject matter of these Software Terms & Conditions is the granting, free-of-charge, of rights of use to the standard operating software (display software) of HAINBUCH (hereinafter "Software"). The definitive description of the software is provided in the license documentation, which is made available to the Customer upon request or without solicitation prior to or in conjunction with the signing of the contract.

2.2 The "license documentation" consists of a type code or material number, the license data sheet and installation/operating instructions.

2.3 The Software consists of the executable program code. The source code is not the object of the contract.

2.4 The Software may contain open source software and third-party software under a royalty-free license (hereinafter "OS software"). A list of the contained OS software and the respectively valid OS software license conditions shall be made available to the Customer upon request before the contract is signed or at the latest upon delivery of the software.

2.5 If software products from third parties that are not OS software, are provided with the Software, these third-party software products must only be used in conjunction with the Software. It is possible that special terms of use apply, of which the Customer shall be informed in a suitable manner.

2.6 HAINBUCH is entitled to technically safeguard the software against unauthorized use. The Customer may not remove or circumvent such protective measures of the Software.

3. Delivery of the Software – version

3.1   Unless otherwise agreed, HAINBUCH shall deliver the software to the Customer in the version that is current at the time of delivery.

3.2   Unless otherwise agreed, delivery and transfer of risk of the Software shall take place at HAINBUCH's discretion, either by handing over the software to the carrier for shipment to the Customer or by making the software available as a download and transferring the information required for the download.

4. Rights of use – backup copy

4.1   HAINBUCH grants the Customer either a time-limited or unlimited right to use the software and the license documentation. The differentiation is specified in the license documentation. If the license documentation does not contain any information in this regard, the license shall be granted for an unlimited period of time.

4.2   The license shall commence with installation of the software.

4.3   Upon commencement of the license, the Customer shall receive the free-of-charge, non-exclusive, non-transferable and non-sublicensable right to use the software and the license documentation in accordance with the license documentation, and in accordance with the following provisions.

Permissible use includes installation, loading into the RAM, displaying and running the software, as well as the intended use of the software by the Customer for the Customer's own business purposes.

Use is only permitted in the agreed destination countries. Unless otherwise agreed, this is the country, in which the Customer has his place of business.

4.4   The Customer may only reproduce the Software and the license documentation to the extent necessary for contractual use of the software.

4.5   "Backup copies" as defined in these Software Terms & Conditions are copies of the Software that are made as a precautionary measure in the event that the original Software is damaged or accidentally deleted.

The Customer may make backup copies of the software in accordance with the rules of technology to the extent necessary. Backup copies shall be marked as such and marked with the copyright notice of the original Software.

The backup copy may only be used in the event of deterioration or destruction of the copy of the software originally provided by HAINBUCH. The Customer shall also be subject to these Software Terms & Conditions with regard to use of the backup copy.

4.6   The Customer shall be prohibited from distributing the software and the license documentation or otherwise transferring Software and license documentation to third parties, or making them available to third parties (including renting, leasing, lending or sublicensing).

4.7 The Customer shall be prohibited from editing, modifying, reverse engineering, decompiling, disassembling or otherwise determining the source code of the software or parts thereof, and from creating derivative works of the software. The mandatory, non-binding provisions of §§ 69d, 69e UrhG (German Copyright Act) shall remain hereby unaffected.

4.8 In the context of these Software Terms & Conditions, "patches" shall be defined as corrective deliveries to close security gaps or to eliminate errors, including the upgrading of functions. In the context of these Software Terms & Conditions, "upgrades" shall mean replacement of the version of the Software with a newer version with significant functional enhancements. For the purposes of these Software Terms & Conditions, "Updates" shall mean modifications of the current version of the Software that contain program improvements or new and/or modified functionalities.

If HAINBUCH voluntarily provides the Customer with upgrades, updates, patches or bug fixes, these upgrades, updates, patches or bug fixes shall also be subject to these Software Terms & Conditions, unless otherwise agreed.

HAINBUCH shall be under no obligation to provide the Customer with upgrades, updates, patches or bug fixes.

4.9 All other rights to the Software and the license documentation that are not expressly granted, in particular all rights to the brand, trade secrets, know-how or other intellectual property in the software, shall remain with HAINBUCH.

Markings of the software and the license documentation, in particular copyright notices, trademarks, serial numbers or similar markings may not be removed, changed or made unrecognizable.

5. License remuneration

HAINBUCH makes the software available to the Customer free of charge.

6. Obligations of the Customer to cooperate

6.1 The Customer shall be solely and exclusively responsible for ensuring that the software is suitable for the Customer's purposes; if in doubt, he must seek advice from competent third parties before entering into the contract.

6.2 The Customer is solely and exclusively responsible for ensuring that his hardware and software environments comply with the system requirements of the software; if in doubt, he must seek advice from competent third parties before enter into the contract.

6.3 The Customer shall be responsible for installation of the software. At the request of the Customer, HAINBUCH may, if necessary, undertake the installation for a separately agreed fee.

6.4 When using the software, the Customer shall be obligated to comply with the duty of care necessary for its use.

6.5 The Customer shall comply with the instructions provided by HAINBUCH for operation of the software.

6.6 The Customer shall be obligated to take suitable measures to protect the software from access by unauthorized third parties, in particular to store all copies of the software in a protected place.

6.7 The Customer shall be obligated to take reasonable precautions in the event that the software does not work properly in whole or in part (e.g. through daily data backup).

6.8 The Customer shall be obligated to notify HAINBUCH immediately in writing of any defects or errors in the software.

6.9 If HAINBUCH voluntarily provides the Customer with upgrades, updates, patches or bug fixes for the software, the Customer must install and use these upgrades, updates, patches or bug fixes.

7. Liability for defects

7.1 After the software has been made available free of charge, HAINBUCH's liability for material defects and defects of title shall be excluded, unless HAINBUCH has intentionally or with gross negligence breached its obligations or HAINBUCH has acted fraudulently.

7.2 The characteristics of the software shall be determined exclusively and definitively from the license documentation. The information contained in the license documentation must be understood exclusively as performance descriptions and not as guarantees.

8. Liability

8.1 After the software has been made available free of charge, HAINBUCH shall be liable for damages due to defects or due to violation of other contractual or non-contractual obligations, only in the case of intent or gross negligence. The above limitation of liability shall not apply in the event of fraudulent intent, injury to life, limb or health, assumption of a guarantee or liability under the German Product Liability Act.

8.2 Any further liability on the part of HAINBUCH shall be excluded, unless a deviating provision is expressly contained in these Software Terms & Conditions.

8.3 Contributory negligence on the part of the Customer shall be taken into account.

8.4 The above limitations of liability shall also apply to the personal liability of HAINBUCH employees, representatives and/or bodies, as well as to all vicarious agents of HAINBUCH.

9. Term – revocation – termination - termination of right of use – Return

9.1 Unless otherwise specified in the license documentation, the granted use of the software shall apply for an unlimited period of time.

9.2 If use of the Software is granted for a limited period of time and nothing to the contrary is specified in the license documentation, the contract shall be entered into for the term of one contract year. The contract year is defined as the 12 months from commencement of the license. In this case, the contract shall be automatically extended for an additional contract year, unless it is terminated by either party three (3) months prior to expiration of the contract.

9.3 HAINBUCH shall be entitled to revoke or terminate the granting of the rights of use at any time and without notice for cause. Cause shall exist, in particular, if the Customer uses the software beyond the extent permitted by these Software Terms & Conditions. HAINBUCH reserves the right to assert claims for damages. Legal rights and claims shall remain unaffected.

9.4 Notices of termination and revocation must be in writing.

9.5 The Customer's right of use with regard to the software provided and the license documentation shall end – without any revocation or termination being required -- (a) if any term of the contract ends or (b) in the case of a replacement delivery, in the case of upgrades and updates. In the case of (b), these Software Terms & Conditions shall apply to the replacement delivery, upgrades and updates.

9.6 If the Customer's right of use ends, the Customer shall delete or destroy all data carriers, copies of the software, including backup copies and the license documentation provided. The Customer must confirm such deletion to HAINBUCH in writing, without solicitation.

10. Confidentiality

10.1 For the purposes of these Software Terms & Conditions "Confidential Information" shall mean the Software, including source code (with the exception of any OS software components), the license documentation and other materials that HAINBUCH has marked as "confidential", or which otherwise must be regarded as confidential.

10.2 The Customer shall be obligated to treat the Confidential Information confidentially and to not make it accessible to third parties, unless this is necessary for exercising the rights to which the Customer is entitled under these Software Terms & Conditions.

10.3 To protect the Confidential Information, the Customer shall use the same level of care (but no less than a reasonable level) as the Customer would use for the customer's own Confidential Information.

10.4 The confidentiality obligations stipulated in this number 10 shall not apply to information,

    a. which at the time it was made known to the Customer was already evident, generally known, or was state of the art.
    b. that was already known to the Customer at the time of disclosure.
    c. which subsequently becomes evident, generally known or state of the art, without the Customer being to blame for this.
    d. which is disclosed or made accessible to the Customer by a third party entitled to do so.

e. with regard to which HAINBUCH has given its prior written consent in the case of a dissemination, disclosure or making accessible to third parties on the part of the Customer.

The burden of proof for the presence of an exception as specified above shall rest with the Customer.

11. Place of performance – place of jurisdiction – applicable law

11.1 For all rights and obligations arising from these Software Terms & Conditions, the registered office of HAINBUCH shall be the place of performance for both parties.

11.2 The District Court of Marbach am Neckar shall be agreed as the place of jurisdiction for legal disputes that fall under the substantive jurisdiction of the Local Courts, and the Regional Court of Stuttgart shall be agreed as the place of jurisdiction for legal disputes that fall under the substantive jurisdiction of the Regional Courts.

11.3 The contractual relationship shall be subject to the law of the Federal Republic of Germany, without regard to conflicts of laws provisions. Applicability of the Vienna UN Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.

12. Use of data – data protection

12.1 HAINBUCH shall be entitled to store, use, transfer and/or exploit all information provided and generated by the Customer in conjunction with the software, with the exception of personal or company-related data, beyond the purpose of the contract for any purposes, such as statistical, analytical and internal purposes. This right shall be perpetual and irrevocable.

12.2 If personal data is processed, HAINBUCH shall comply with the statutory provisions concerning data protection. In this case, the details of the data collected and their respective processing are set out in the Privacy Policy.