

# PROMADENT SOFTWARE END USER LICENSE TERMS AND CONDITIONS (as of 08/2021)

## 1 Scope

- 1.1 These End User License Terms (hereinafter referred to as "**License Terms**") apply to the use of software products of PROMADENT UG ("**contractual software**") between PROMADENT UG, Im Nordfeld 13, 29336 Nienhagen (hereinafter referred to as "**PROMADENT**") and you as user of the contractual software (hereinafter referred to as "**Licensee**", whereby this term is to be understood as gender-neutral).
- 1.2 If the Licensee has purchased the contractual software through a dealer authorized by PROMADENT, the dealer is authorized by PROMADENT to agree to these License Terms with Licensee in connection with the purchase of the contractual software.
- 1.3 The Licensee and its Authorized Users are only permitted to use the contractual software pursuant to Section 2.1 if the Licensee is an entrepreneur (§ 14 German Civil Code).
- 1.4 Insofar as third party software (including open source software) is integrated into the contractual software, the conditions of the license and use of the third-party manufacturer or the in each case applicable open source license conditions to which the Licensee is referred to (e.g. by a corresponding marking in the program directory) shall apply with priority for its delivery and use. This License Agreement shall not apply to software components that are offered for download separately from the contractual software under an open source license; in this respect, the respective open source license terms shall apply exclusively.
- 1.5 The following agreements remain unaffected by these license terms:
  - Agreements between the Licensee and the dealer;
  - Agreements between the Licensee and PROMADENT, in particular the PROMADENT General Terms and Conditions.

## 2 Subject of the license terms, conditions of use

- 2.1 The subject of these license terms is exclusively the use of the contractual software by the number of authorized users agreed in the license. "**Authorized User**" means a natural person (employee, freelancer or agent) who uses the contractual software for the Licensee's purposes on the Licensee's behalf or in accordance with the Licensee's instructions. The use requires that the Licensee has acquired a valid license for the contractual software from the dealer.
- 2.2 The system requirements for the respective version of the contractual software can be found on the download page at <https://biss.promadent.de/download>.
- 2.3 The use of the contractual software is only possible with a USB dongle, which is provided to the licensee by the dealer.

## 3 Software adaptations through updates

- 3.1 PROMADENT is constantly working to improve its products. Therefore, PROMADENT is entitled to change the content and scope of services of the software within the scope of an update or upgrade at its

reasonable discretion if this is reasonable for the Licensee, in particular for the following reasons:

- for technical reasons, e.g. to rectify faults or malfunctions,
- to ensure the security of the operation of the contractual software or the system environment to improve security functions,
- for functional enhancements, or
- if modifications are required for optimization.

The changes are reasonable in particular if the existing scope of services is not cut back or existing functions are replaced by equivalent other functions.

- 3.2 The decision as to whether a dongle update, if available, is carried out is the Licensee's decision only. An Internet connection is required to use the PROMADENT update server. The Licensee is responsible for carrying out the updates himself unless he has commissioned a third party to do so.

## 4 Handover

- 4.1 PROMADENT provides the contractual software to the end user solely in executable, compiled form via download.
- 4.2 The software includes libraries that are licensed under BSD2 and GPLv2+Classpath Exception license. To the extent required by the license terms of the open source software used, the source codes for these libraries will be made available upon request; this offer is valid for 3 (three) years from delivery of the contractual software. Otherwise, the Licensee shall have no claim to the disclosure of the source code.
- 4.3 The licensee is obliged to return redundant USB dongles (e.g. in case of retrieval after loss) to PROMADENT.

## 5 Rights of use

- 5.1 The Licensee acknowledges that the Licensor - with the exception of third party rights to any open source software contained in the contractual software - is the sole owner of all rights to the contractual software and the know-how on which it is based.
- 5.2 The licensee undertakes not to circumvent the dongle protection.
- 5.3 The right of use consists of a single license for one authorized user. The contractual software may only be loaded into the main memory or executed at a workstation on 1 (one) computer owned by the Licensee for each individual license; the contractual software may be installed on several computers at the same time, but may only be loaded into the main memory or executed at a workstation on 1 (one) computer at a time for each license.
- 5.4 The permissible scope of use by the Licensee is based on the number of licenses purchased and the scope of the agreed rights of use. The scope of the agreed rights of use shall result in the event of a purchase of the Contract Software from

- 5.4.1 a dealer from the agreement on the rights of use in the agreement concluded between the Licensee and the dealer,

- 5.4.2 PROMADENT from the agreement concluded between PROMADENT and the Licensee as well as the license conditions according to the following clauses.
- 5.5 The Licensee shall be entitled to reproduce the contractual software for its own internal business purposes for use insofar as this is technically necessary in order to install it, load it into the working memory, display it and use it as intended. Permissible acts of reproduction include installation on a computer of the Licensee, as well as the acts of reproduction necessary to execute and operate the contractual software, this includes loading the contractual software into the working memory, in order to be able to use the program as intended.
- 5.6 The right of use is granted to the licensee as
- non-exclusive,
  - unlimited in time,
  - geographically limited to the territory in which the licensee has its registered office,
  - non-sublicensable and
  - non-transferable
- right to use the contractual software.
- 5.7 The granting of rights is subject to the suspensive condition of full payment of the purchase price. Until this point in time, PROMADENT shall tolerate the use of the contractual software in accordance with the above provisions. The above rights shall be granted in the event of the occurrence of the condition according to sentence 1 under the resolutive condition that PROMADENT supplements or replaces the contractual software by way of supplementary performance or as a gesture of goodwill. If PROMADENT supplements or replaces the provided contractual software, the Licensee shall have the same rights to this subsequently provided contractual software as to the supplemented or replaced contractual software. Until the installation of the additionally provided contractual software, PROMADENT shall tolerate the use of the previous version to the extent described.
- 5.8 The Licensee may not transfer the contractual software and the rights granted for use to third parties without the prior consent of PROMADENT, and in particular may not make the contractual software publicly available (including, but not limited to, on the Internet), rent or lease it or distribute it to third parties.
- 5.9 The Licensee is not entitled to translate, edit or otherwise rework, decompile, reconstruct and disassemble the contractual software. Decompiling for the purpose of establishing the interoperability of an independently created computer program pursuant to § 69e UrhG is excepted. Apart from that, the licensee may not make any changes to the contractual software himself or through third parties. This also applies to the correction of possible program errors.
- 5.10 The conditions listed under 5.9 limited only to the program parts of the contractual software that are not under an open source license.
- 5.11 Pursuant to Section 69d (2) UrhG, the Licensee may make a backup copy if it is necessary for securing future use. The backup copy must be marked as such. If the Licensee can prove that the original version can no longer be found or has become unusable, the backup copy shall take the place of the original.

## **6 Warranty**

- 6.1 If the Licensee has acquired the contractual software from the dealer, the Licensee shall assert its legal rights with regard to material defects or defects in title of the contractual software only against the Dealer, unless statutory regulations provide for exceptions to this.
- 6.2 If Licensee has purchased the contractual software from PROMADENT, the applicable provisions of PROMADENT's General Terms and Conditions shall apply.

## **7 Liability**

- 7.1 PROMADENT is liable for intent and gross negligence as well as for damages resulting from injury to life, body or health in accordance with the statutory provisions.
- 7.2 In the event of slight negligence, PROMADENT shall only be liable for the breach of an essential contractual obligation (cardinal obligation), whose fulfilment is a prerequisite for the proper performance of the contract and on whose observance the licensee may regularly rely on. In this case, the liability is limited to the amount of the foreseeable damage which must typically be expected. Apart from that, PROMADENT shall not be liable in the event of slight negligence.
- 7.3 Subject to the foregoing provisions, in the event of loss of data PROMADENT shall only be liable for the effort that would be required to restore the data if the data had been properly backed up by Licensee.
- 7.4 The above provisions shall also apply in favour of the contractor's legal representatives and vicarious agents.
- 7.5 The above limitations of liability shall not apply if the Licensee has fraudulently concealed a defect or has assumed a guarantee for the quality of the goods. Liability under the German Product Liability Act (ProdHaftG) remains unaffected by these provisions.

## **8 Final provisions**

- 8.1 The place of jurisdiction for all disputes arising from and in connection with these license conditions is the registered office of PROMADENT.
- 8.2 This contract shall be governed by German law, to the exclusion of those provisions that refer to the law of another country. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods of 11.4.1980 (UN Sales Convention) shall not apply.
- 8.3 Amendments and supplements to these provisions must be made in writing. This formal requirement can only be changed by written agreement.
- 8.4 In the event that there is a regulatory gap, the contracting parties undertake to replace the missing provision with a contractual provision that corresponds to the corresponding will of the parties. The same shall apply if a gap in the provisions arises because a provision is invalid or void and no statutory provision is available to fill the gap.

**Status: 08/2021**