

# SOFTWARE DOWNLOAD TERMS

## 1. INTRODUCTION SOFTWARE DOWNLOAD

- 1.1 These software download terms and conditions shall govern the sale and supply of downloadable software programs through our website, and the use of those software programs.
- 1.2 You will be asked to give your express agreement to these software download terms and conditions before you place an order on the website of our e-commerce partner.
- 1.3 This document does not affect any statutory rights you may have as a consumer.

## 2. INTERPRETATION

- 2.1 In these terms and conditions:
  - (a) "we" means Splendit IT-Consulting GmbH (and "us and "our" should be construed accordingly);
  - (b) "you" means our business customer or prospective business customer under these terms and conditions (and "your" should be construed accordingly);
  - (c) "software programs" means those software programs that are available for purchase on our website; and
  - (d) "your software programs" means any such software programs that you have purchased through our website (including any enhanced or upgraded version of the software programs that we may make available to you from time to time).

## 3. ORDER PROCESS

- 3.1 The advertising of software programs on our website constitutes an "invitation to treat" rather than a contractual offer.
- 3.2 No contract will come into force between you and us unless and until we accept your order in accordance with the procedure set out in this Section 3.
- 3.3 To enter into a contract through our website to purchase downloadable software programs from us, the following steps must be taken: you must click "buy here" to start the purchasing process; you will be transferred to our e-commerce service provider's website, and our e-commerce service provider will handle your purchase process; after the successful processing of your order you will be linked to our licensing partner to get a valid license id;

## 4. PRICES

- 4.1 Our prices are quoted on our website and the website of our e-commerce partner.
- 4.2 We will from time to time change the prices quoted on our website, but this will not affect contracts that have previously come into force.

- 4.3 All amounts stated in these software download terms and conditions or on our website are stated inclusive of VAT.

## **5. PAYMENTS**

- 5.1 You must, during the checkout process, pay the prices of the software programs you order.
- 5.2 Payments may be made by any of the permitted methods specified on the website.

## **6. LICENSING OF SOFTWARE**

- 6.1 We will supply your software programs to you in the format or formats specified on our website, and by such means and within such periods as are specified on our website.
- 6.2 Subject to your payment of the applicable price and compliance with these software download terms and conditions, we grant to you a worldwide, non-exclusive, non-transferable licence to make any use of your software programs permitted by Section 6.3, providing that you must not in any circumstances make any use of your software programs that is prohibited by Section 6.4.
- 6.3 The “permitted uses” of your software programs are:
  - (a) downloading a copy of each of your software programs;
  - (b) installing a copy of each of your software programs on desktop, laptop or notebook computers;
  - (c) using your software programs in accordance with the documentation.
- 6.4 The “prohibited uses” of your software programs are:
  - (a) the publication, sale, licensing, sub-licensing, renting, transferring, transmission, broadcasting, distribution or redistribution of any software program (or part thereof) in any format;
  - (b) the editing, modification, adaptation or alteration of any software program (or part thereof), and the creation of any derivative work incorporating any software program (or part thereof);
  - (c) the use of any software program (or part thereof) in any way that is unlawful or in breach of any person’s legal rights under any applicable law, or in any way that is offensive, indecent, discriminatory or otherwise objectionable;
  - (d) the use of any software program (or part thereof) to compete with us, whether directly or indirectly;
  - (e) the reverse engineering, decompilation or disassembly of any software program (or part thereof); and
  - (f) the circumvention or removal of, or any attempt to circumvent or remove, the technological measures applied to any software program for the purpose of preventing unauthorized use, providing that nothing in this Section 6.4 will prohibit or restrict you or any other person from doing any act expressly permitted by applicable law.

- 6.5 You warrant to us that you have access to the necessary computer systems, media systems, software and network connections to receive and enjoy the benefit of your software programs.
- 6.6 All deliveries under this Agreement will be electronic. You must have an Internet connection in order to receive and use any deliveries and services. It is your entire responsibility to secure an internet connection and all fee related thereto shall be at your own charge.
- 6.7 All intellectual property rights and other rights in the software programs not expressly granted by these terms and conditions are hereby reserved.
- 6.8 You must retain, and must not delete, obscure or remove, copyright notices and other proprietary notices on or in any software program.
- 6.9 The rights granted to you in these terms and conditions are personal to you, and you must not permit any third party to exercise these rights.
- 6.10 If you breach any provision of these terms and conditions, then the licence set out in this Section 6 will be automatically terminated upon such breach.
- 6.11 You may terminate the licence set out in this Section 6 by deleting all copies of the relevant software programs in your possession or control.
- 6.12 Upon the termination of a licence under this Section 6, you must, if you have not previously done so, promptly and irrevocably delete from your computer systems and other electronic devices all copies of the relevant software programs in your possession or control, and permanently destroy any other copies of the relevant software programs in your possession or control.

## **7. ADDITIONAL USERS**

- 7.1 If you are a business, then your employees may use the software in accordance with Section 6, provided that you must ensure that any person using the downloads in accordance with this Section 7.1 is made aware of and complies with the requirements of Section 6.

## **8. FREE TRIAL**

- 8.1 We may make available software programs on a free trial basis, and this Section 8 shall apply to such software programs.
- 8.2 Your rights to use of free trial software programs shall be restricted in such manner and/or to such period as we may specify when you download the software programs, and we may apply technological protection measures to the software programs to enforce these restrictions.
- 8.3 We may restrict your licence to use any free trial software program at any time, by giving you written notice of the restriction or activating the restriction in the relevant software program.
- 8.4 We may terminate your licence to use any free trial software program at any time, by giving you written notice of termination or deactivating the relevant software program.

## **9. WARRANTIES AND REPRESENTATIONS**

- 9.1 You warrant and represent to us that:
  - (a) you are legally capable of entering into binding contracts;
  - (b) you have full authority, power and capacity to agree to these terms and conditions within your company; and
  - (c) all the information that you provide to us in connection with your order is true, accurate, complete, current and non-misleading.
- 9.2 We warrant to you that your software programs will be supplied to you with reasonable care and skill.
  - (a) your software programs will match any description of it given by us to you; and
  - (b) we have the right to supply your software programs to you.
- 9.3 All of our warranties and representations relating to software programs are set out in these terms and conditions.
- To the maximum extent permitted by applicable law and subject to Section 10.1, all other warranties and representations are expressly excluded.

## **10. LIMITATIONS AND EXCLUSIONS OF LIABILITY**

- 10.1 Nothing in these software download terms and conditions will:
  - (a) limit or exclude any liability for death or personal injury resulting from negligence;
  - (b) limit or exclude any liability for fraud or fraudulent misrepresentation;
  - (c) limit any liabilities in any way that is not permitted under applicable law; or
  - (d) exclude any liabilities that may not be excluded under applicable law, and, if you are a consumer, your statutory rights will not be excluded or limited by these terms and conditions, except to the extent permitted by law.
- 10.2 The limitations and exclusions of liability set out in this Section 10 and elsewhere in these terms and conditions:
  - (a) are subject to Section 11.1; and
  - (b) govern all liabilities arising under these terms and conditions or relating to the subject matter of these terms and conditions, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty, except to the extent expressly provided otherwise in these terms and conditions.
- 10.3 We will not be liable to you in respect of any losses arising out of any event or events beyond our reasonable control.
- 10.4 We will not be liable to you in respect of any business losses, including (without limitation) loss of or damage to profits, income, revenue, use, production, anticipated savings, business, contracts, commercial opportunities or goodwill.
- 10.5 We will not be liable to you in respect of any loss or corruption of any data, database or software[, providing that if you contract with us under these terms and conditions as a consumer, this Section 11.5 shall not apply].

- 10.6 We will not be liable to you in respect of any special, indirect or consequential loss or damage[, providing that if you contract with us under these terms and conditions as a consumer, this Section 11.6 shall not apply].
- 10.7 You accept that we have an interest in limiting the personal liability of our officers and employees and, having regard to that interest, you acknowledge that we are a limited liability entity; you agree that you will not bring any claim personally against our officers or employees in respect of any losses you suffer in connection with the website or these terms and conditions (this will not, of course, limit or exclude the liability of the limited liability entity itself for the acts and omissions of our officers and employees).
- 10.8 Our aggregate liability to you in respect of any contract to provide services to you under these terms and conditions shall not exceed the greater of:
  - (a) € 5.000,-; and
  - (b) the total amount paid and payable to us under the contract.

## **11. VARIATION**

- 11.1 We may revise these terms and conditions from time to time by publishing a new version on our website.
- 11.2 A revision of these terms and conditions will apply to contracts entered into at any time following the time of the revision, but will not affect contracts made before the time of the revision.

## **12. ASSIGNMENT**

- 12.1 You hereby agree that we may assign, transfer, sub-contract or otherwise deal with our rights and/or obligations under these terms and conditions.
- 12.2 You may not without our prior written consent assign, transfer, sub-contract or otherwise deal with any of your rights and/or obligations under these terms and conditions.

## **13. NO WAIVERS**

- 13.1 No breach of any provision of a contract under these terms and conditions will be waived except with the express written consent of the party not in breach.
- 13.2 No waiver of any breach of any provision of a contract under these terms and conditions shall be construed as a further or continuing waiver of any other breach of that provision or any breach of any other provision of that contract.

## **14. SEVERABILITY**

- 14.1 If a provision of these download terms and conditions is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions will continue in effect.

- 14.2 If any unlawful and/or unenforceable provision of these terms and conditions would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect.

## **15. THIRD PARTY RIGHTS**

- 15.1 A contract under these software download terms conditions is for our benefit and your benefit, and is not intended to benefit or be enforceable by any third party.
- 15.2 The exercise of the parties' rights under a contract under these terms and conditions is not subject to the consent of any third party.

## **16. ENTIRE AGREEMENT**

- 16.1 Subject to Section 10.1, these software download terms and conditions, together with our download licence agreement, shall constitute the entire agreement between you and us in relation to the sale and purchase of our downloads and the use of those downloads, and shall supersede all previous agreements between you and us in relation to the sale and purchase of our downloads and the use of those downloads.

## **17. LAW AND JURISDICTION**

- 17.1 These terms and conditions shall be governed by and construed in accordance with Austrian law.
- 17.2 Any disputes relating to these software download terms and conditions shall be subject to the exclusive jurisdiction of the courts of Austria.

## **18. STATUTORY AND REGULATORY DISCLOSURES**

- 18.1 We will not file a copy of these software download terms and conditions specifically in relation to each user or customer and, if we update these terms and conditions, the version to which you originally agreed will no longer be available on our website. We recommend that you consider saving a copy of these terms and conditions for future reference.
- 18.2 These software download terms and conditions are available in the English language only.
- 18.3 Our VAT number is ATU 57828667.
- 18.4 The website of the European Union's online dispute resolution platform is available at <https://webgate.ec.europa.eu/odr/main>

## **19. OUR DETAILS**

- 19.1 This website is owned and operated by Splendit IT-Consulting GmbH 19.2 We are registered in Austria under registration number FN246458p, and our registered office is at 3001 Mauerbach, Hauptstraße 132.
- 19.3 Our principal place of business is at 3001 Mauerbach, Hauptstraße 132.
- 19.4 You can contact us:
  - (a) by post, using the postal address given above;
  - (b) using our website contact form;
  - (c) by telephone+43 (0)1 97 11 319; or
  - (d) by email, using office@splendit.at or office@jsparrow.eu