Special Terms and Conditions Software (06/2024)

1 General, scope of application

1.1 These Special Terms and Conditions: Software (hereinafter: "STC Software" or "STC") https://www.hpc-gridware.com/terms-conditions-software apply in addition to the General Terms and Conditions https://www.hpc-gridware.com/terms-conditions/ and all contracts provided by HPC-Gridware in the area of the sale and/or provision of hardware.

1.2 HPC-Gridware is also entitled to amend these STC within the existing contractual relationships with effect for the future, insofar as these amendments become necessary as a result of a subsequent disruption to the basis of the transaction and/or the equivalence relationship and/or a subsequent contractual loophole due to changed circumstances (e.g. due to the invalidity of provisions due to a change in legislation or case law) and are reasonable for the customer. The changes shall become effective if HPC-Gridware draws attention to the changes, the customer is able to take note of the changes and does not object to them within six weeks of receipt of the notification of change. If no objection is made within six weeks of receipt of the notification and the utilization of the services and/or services is continued after expiry of the objection period, the changes shall be deemed to have been effectively agreed from the expiry of the deadline. In the event of an objection, the contract shall be continued under the previous conditions. In the event of an objection, however, both parties are entitled to terminate the contract with a notice period of two weeks. HPC-Gridware shall draw the customer's attention to the aforementioned deadlines and the legal consequences of their expiry in the event that the option to object is not exercised whenever changes are announced.

2 Subject matter of the contract

2.1 HPC-Gridware provides the customer with the software specified in the service description (hereinafter also referred to as the product or products) under the agreed conditions. The software is installed in executable form (object code) or is made available ready for installation. Source code is generally not supplied unless a corresponding license, in particular an open source license, provides for the disclosure of source code.

2.2 Development documentation is not owed. Operating instructions or corresponding documentation, in particular from the software manufacturer or the respective open source project, can also be provided online.

3 Rights of use

3.1 Unless otherwise agreed, the customer shall receive the simple (non-exclusive) right to use the software in accordance with the contract during the term of the contract. The right of use cannot be sub-licensed and is not transferable.

3.2 For software for which HPC-Gridware only has a derived right of use and which is not covered by an open source software license (hereinafter: third-party software), the license conditions of the respective software manufacturer or the corresponding rights holder, to which reference is made in each case, shall apply in addition to and take precedence over the license conditions in Section 3.1 and the GTC.

3.3 For software covered by an open source software license (hereinafter: open source or open source software), the license conditions of the corresponding open source license, to which reference is made in each case, shall take precedence over the license conditions in Section 3.1 and the GTC.

3.4 If HPC-Gridware provides the customer with new versions, updates, upgrades or other innovations to the software during the term of the contract, the above rights shall also apply to these.

3.5 The customer shall not be entitled to any rights not expressly granted to the customer above. In particular, the customer is not authorized to use the software beyond the agreed term and/or use. The customer is not authorized to edit or de-compile the software, § 69e UrhG remains unaffected by this. In particular, the customer is not authorized to reproduce or sell the software. The customer is not authorized to make the software accessible to third parties, to transfer it or to allow it to be used by third parties; in particular, the software may not be rented, leased or lent.

4 Supplementary warranty limitations

4.1 The liability for material defects for the delivered products expires if the customer or third parties make changes to the delivered software that HPC-Gridware has not expressly agreed to in text form beforehand. This shall not apply if the customer proves that the error is not attributable to the modifications and that these have not made it more difficult to identify and rectify the error.

4.2 The liability for material defects and defects of title for the delivered software shall lapse if the customer does not accept patches, bug fixes, updates or upgrades provided, unless the customer proves that the error is not attributable to them. This only applies if the error in question would have been rectified by the non-installed patch, bug-fix, update or upgrade.

4.3 If services provided by HPC-Gridware are not covered by liability for material defects and/or defects of title and are also not covered by the service description, the customer shall bear the costs, including any traveling costs and expenses incurred, in accordance with the hourly and traveling cost rates of HPC-Gridware valid at the time the service is provided.

4.4 The limitations of liability and warranty set out in this section shall not apply if HPC-Gridware can be accused of willful intent or gross negligence, nor in the event of personal injury attributable to HPC-Gridware or fraudulent intent. Liability under the Product Liability Act also remains unaffected by this.

5 Supplementary limitations of liability

5.1 When providing the software, HPC-Gridware excludes any strict liability for initial defects in the software. Subsequent objections and/or claims due to obvious or hidden defects are therefore excluded.

5.2 The customer must take all necessary and reasonable measures to prevent or limit damage caused by the software. In particular, the customer must ensure that his data is regularly backed up. If the customer culpably breaches this obligation, HPC-Gridware shall not be liable for any resulting consequences, in particular not for the restoration and/or recovery of lost or damaged data.

5.3 HPC-Gridware shall not be liable for any infringement of the rights of third parties by the customer if and to the extent that this infringement results from exceeding the rights of use granted under this contract or the respective license conditions of the corresponding third-party or open source license.

6 Contract term, cancellation

6.1 The contract term is specified in the service description. The contract is automatically extended by a further year in each case if one of the parties does not terminate the contract in text form at least three months before the end of the contract term. In the event of cancellation by the customer, the customer shall bear the burden of proof of the cancellation and its proper and timely receipt by HPC-Gridware.

6.2 The contract may be terminated by ordinary or extraordinary cancellation. The list of extraordinary grounds for termination in these BVB is exemplary and not exhaustive.

6.3 Good cause shall be deemed to exist in particular in any case in which either

- the customer does not fulfill his obligation to pay the remuneration despite a reminder;

- or the customer is in arrears with the payment of the agreed remuneration for two consecutive dates or the customer is in arrears with the payment of the remuneration in an amount corresponding to the remuneration for two months in a period extending over more than two dates;

- or HPC-Gridware is held liable by third parties for alleged infringements of rights in connection with the work for the customer;

- or the customer is in breach of material contractual obligations. Depending on the severity of the offense, a prior warning may be necessary or dispensable in individual cases.

6.4 In the event of cancellation in accordance with Section 6.3, HPC-Gridware may additionally demand liquidated damages due immediately in one lump sum in the amount of one quarter of the monthly basic flat rate remaining until the end of the regular contract term. The customer reserves the right to provide evidence of lower damages.

6.5 The cancellation of additional services shall not affect the contractual relationship as a whole.

7   Data protection

The customer is advised that the provision of services may result in order processing within the meaning of Art. 28 GDPR, for which the customer may have to conclude a separate written agreement with HPC-Gridware. Unless the customer issues instructions to the contrary, HPC-Gridware will execute the service orders in accordance with Art. 6 para. 1 sentence 1 lit. b) GDPR.