

GETRIEBEBAU NORD

Member of the NORD DRIVESYSTEMS Group



DRIVESYSTEMS

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General Terms and Conditions of Business of Getriebebau Nord GmbH & Co. KG for provision of software free of charge

Section 1 Scope of application

- (1) The Terms and Conditions of Business stated below form the sole basis for our provision of software to the user free of charge, and for the precontractual obligations associated with this.
- (2) Within the meaning of these Terms and Conditions of Business, users are exclusively companies in the sense of Section 14 BGB, legal persons under public law, special funds under public law or qualified authorised electricians.
- (3) The version of the General Terms and Conditions of Business which is valid at the time of conclusion of the contract applies for the provision of software free of charge. This can be accessed free of charge in a storable and printable form under "www.nord.com".
- (4) Differing General Terms and Conditions of Business of the user only apply if we have explicitly consented to this in writing.
- (5) As a supplement, the statutory regulations of the provision of software free of charge apply, in particular Section 516 et seq. BGB (Gifts).

Section 2 Conclusion of the contract

- (1) The contract is concluded either by the user accepting the software which is provided for download on our homepage, or by us providing the user with the software for downloading on request by e-mail.

- (2) Both parties agree that provision of the software shall be made free of charge.

Section 3 Subject of the contract and scope of services

- (1) The user shall be provided with the software in the version which is valid at the time of conclusion of the contract, with rights of use according to the following Section 4.
- (2) Prior to conclusion of the contract, the user has examined whether the software corresponds with their requirements. They are aware of essential functions of the software according to our description.
- (3) According to the present state of the art, it is not possible to produce software which functions faultlessly in all applications. We therefore do not accept any liability for fault-free product descriptions, programs or other representations. These are general descriptions of performance.
- (4) The user receives the software, which consists of the machine program as well as a special user manual for the said. The user has no claim to provision of the source code.

Section 4 Rights of use of the software

- (1) We are exclusively entitled to the rights (copyright, and patent or trademark rights) for the software which is provided to the user for use free of charge.
- (2) The user is entitled to use the program to process data for justified internal and external purposes. For these purposes the user may copy and share the program. For this purpose we grant the user the necessary authorisations as a simple right of use. Further rights of use do not exist. Section 8 applies for the duration of the right of use.
- (3) The user may produce the necessary number of backup copies. Copyright notices may not be deleted, modified or suppressed. Copies which are no longer needed must be deleted or destroyed.
- (4) The user is not entitled to reverse engineer, decompile, disassemble or otherwise attempt to examine the source code or the structure of the software or parts thereof. Furthermore, the user is prohibited from

using the software or parts thereof; in particular the sale, hire, leasing and loan, and dissemination in a tangible or intangible form are prohibited. We reserve the right to claim compensation in the event of breaches of this obligation by the user.

- (5) All contractual items, documents, plans and proposals from us, which are made accessible to the user prior or subsequent to the conclusion of the contract and in the context of the said contract are deemed to be our intellectual property and therefore our business and trade secrets. They may not be utilised in any manner without our written consent and must be kept confidential in accordance with Section 9.

Section 5 Obligations of the user

- (1) The user is obliged to thoroughly test the software with regard to its usability in the specific situation before commencing productive use.
- (2) The user is obliged to take appropriate measures for the event that the software does not function correctly as a whole or in part (e.g., by data backup, fault diagnosis, regular examination of the results, emergency planning). It is the responsibility of the user to ensure the functionality of the working environment of the program.

Section 6 Material and legal defects

- (1) Our liability to the user with regard to material and legal defects of the software which is provided is solely restricted to the case that we maliciously conceal a material or legal defect of the software. In this case, we shall be obliged to compensate the user for damages resulting from material defects in accordance with Sect. 524 (1) BGB or Sect. 523 (1) BGB for legal defects.
- (2) The user has no claim to our remedy of material defects of the software which is provided free of charge.
- (3) The user must inform us immediately in writing if third party protective rights (e.g., copyright or patent rights) to the software are claimed against them. In this case the user authorises us to negotiate the dispute with the third party ourselves. So long as we make use of this authorisation, the user may not acknowledge the third party claims without our consent. We shall defend against the third party claims at our expense and shall indemnify the user against all costs which are associated with the defence against these claims, insofar as these are not due to violation of obligations by the user (e.g., use of the programs in breach of contract).

Section 7 Liability

- (1) Beyond the liability for material and legal defects according to the aforementioned Section 6, we shall only be held liable according to Section 521 BGB insofar as the user makes claims which are based on gross negligence by us, our representatives or vicarious agents.
- (2) The plea of contributory negligence remains open to us. In particular, the user is obliged to backup data and provide protection against malicious software according to the state of the art.

Section 8 Commencement and termination of user rights

- (1) The rights as per Section 4 are transferred to the user on provision of the software.
- (2) We may revoke the rights according to Section 4 on the basis of serious reasons. A serious reason pertains in particular, if further continuation of the contract is unreasonable for us, especially if the user significantly breaches Section 4.
- (3) If the rights according to Section 4 do not occur, or are terminated, the user must return the software provided and delete or destroy all copies of the software. Alternatively, the user must provide written confirmation to us that they have deleted or destroyed the software as well as any copies of the said.

Section 9 Confidentiality

- (1) Even beyond the end of the contract, both parties commit to keep confidential all items from the other contract party which they receive or which become known to them prior to or during the implementation of the contract (e.g., software, documents, information), which are legally protected or which contain business or trade secrets, or are designated as confidential, unless these are publicly known without breach of the duty of confidentiality. The contract parties shall keep and safeguard these items in such a manner that access by third parties is excluded.
- (2) The user shall only make the contractual items accessible to employees and other third parties who require access in order to perform their professional tasks. The user shall instruct these persons of the need to keep the items confidential.
- (3) For the transaction of business, we shall process the necessary data of the user in compliance with the data protection regulations. We may state the user as a reference user.

Section 10 General conditions, place of fulfilment, place of jurisdiction, applicable law

- (1) The provisions above fully depict the agreement which has been concluded. There are no ancillary agreements. Amendments and supplements must be made in writing. The same applies to modifications of this written form clause.

- (2) If individual provisions are or become void or invalid as a whole or in part, this does not prejudice the effect of the remaining provisions. Instead of the omitted or invalid provisions of this contract, the statutory law (Section 306 (2) of the BGB) applies. If such a legal right is not available in the particular case (regulatory gap) or would cause an unacceptable result, the parties shall negotiate to conclude an effective provision which comes as close as possible to the commercial intent of the omitted or invalid provision. Both parties undertake to express a respective declaration of intent.

- (3) The place of fulfilment for all contractual obligations is Bargteheide.

- (4) The place of jurisdiction for companies, legal persons under public law or special funds under public law is Hamburg. If a legal dispute is within the jurisdiction of the district courts, the district court Hamburg-Mitte is accepted as the competent court.

- (5) The law of the Federal Republic of Germany applies, with the exclusion of all international and supranational legal (contract) regulation, in particular UN sales law.

Version 02.02.2022