

# General Terms and Conditions for the Provision and Licensing of Standard Software

## § 1 Subject Matter

1. These General Terms and Conditions (hereinafter referred to as "GTC") apply to the provision and licensing of standard software (hereinafter referred to as "Software") by evocortex GmbH (hereinafter referred to as "evocortex") to corporate customers (hereinafter referred to as "Customers").
  2. If evocortex delivers hardware and other devices to Customer, e.g., cameras or sensors, these devices are usually not intended to be used for production purposes, but merely for testing and evaluation purposes in connection with the Software. The following provisions of these GTC for the provision of Software shall also apply accordingly (in particular, in consideration of the purpose of use of the device, e.g., as a prototype) to the provision of such devices, unless the corresponding individual contract provides otherwise.
  3. In the event the parties agree on the provision of services in addition to the delivery of Software, e.g., development, customization, integration or support services, the General Terms and Conditions of evocortex for the Provision of Services shall apply in addition to these GTC, unless services are merely rendered as ancillary services in connection with the provision of Software.
  4. These GTC in their current version also apply to all future agreements on the provision and licensing of Software entered between evocortex and Customer, including all cases where these GTC are not explicitly referred to.
  5. The features and functionalities of the Software, the type and scope of the acquired licenses and the amount of compensation are subject to the applicable individual contract and/or other contract documents, in particular, to the offer, the product description for the Software, and the evocortex price list. In case of a conflict, customer-specific terms and conditions (in particular, in the evocortex offer) shall take precedence over these GTC. General Terms and Conditions of Customer do not apply, including all cases where evocortex provides Software without objecting to them.
  6. In the absence of other agreements, third-party software (including open source software) and other third-party products (e.g., databases) that are delivered by evocortex to Customer together with its own supplies and/or services are subject to the contract and license terms and conditions of the relevant producers (or the license terms and conditions subject to which open source software is made available to the general public, respectively). In particular, these may include provisions on the grant of rights to use and on warranty and liability that deviate from these GTC. evocortex shall notify Customer of the terms and conditions and license conditions of third-party producers at the time of contract conclusion. In the event of gaps in the terms and conditions for contracts and licenses provided by third parties, these GTC shall apply in a supplementary manner.
  7. Offers submitted by evocortex are subject to change without notice and non-binding, unless they are referred to as binding in a written notice. Customer agrees to be bound by its statements regarding the conclusion of a contract for a period of four (4) weeks.
2. In the event circumstances beyond the control of either party arise, for instance, force majeure, strike, lock-out, failure and/or delay in delivery from third parties despite the conclusion of a congruent hedging transaction, that substantially impair the supply or service or render it impossible for a certain period of time, the affected party has the right to postpone its performance for the period of the impairment and a reasonable period to resume its services. The parties shall promptly notify each other of the occurrence and end of such circumstances.
  3. Software is provided to Customer electronically in the version that is the latest release at the date of delivery. Unless otherwise provided, Customer is not entitled to the provision of Software source code. In the event Software is made available to Customer in the form of object code, the rights to use granted in and to the Software exclusively refer to the use of the Software in object code form. The Software will be delivered to Customer together with an integrated electronic user manual in the German and English languages.
  4. Unless the parties agree otherwise, Customer is responsible for the installation and integration of the Software into its own system environment, for compliance with the system requirements, for the interoperability of the Software and hardware and for the interaction between the supplied Software and other software applications of Customer. The provision of services beyond the delivery and licensing of Software, such as the go-live of the Software, adaptation of the Software to the specific requirements of Customer, development of interfaces for Customer's existing software programs, and other integration tasks, is subject to a separate agreement.

## § 3 Rights to Use

1. Unless otherwise provided in the individual contract and subject to the condition precedent of full payment of the agreed compensation, evocortex grants Customer the non-exclusive, indefinite and world-wide right to use the supplied Software for the agreed or intended internal business purposes of Customer. Software licenses granted for a definite term are subject to the special provisions in § 9 of these GTC.
  2. Customer may use the Software for the agreed type and number of licensed units (e.g., type and number of devices on which the Software will be implemented). The details of the type and scope of rights to use granted and the agreed purposes of use are set forth in the provisions of the license model and/or the individual contract. The rights to use granted exclusively apply to the use of the Software in object code form. Within the scope of contractual use, Customer has the right to reproduce the Software and to make the necessary backup copies, which shall be clearly marked as such.
  3. Sub-licensing, renting and other forms of provision of the Software to third parties for a definite period of time, the use in SaaS, outsourcing or data center operations and any other use of the Software by or on behalf of third parties, whether with or without compensation, require the prior written consent from evocortex. Affiliated companies of Customer are also deemed to be third parties.
  4. Customer is not allowed to translate, process or rearrange the Software beyond the legally permissible scope – in particular, based on the provisions contained in section 69d of the German Copyright Act (UrhG). The decompiling of Software in order to achieve interoperability of the Software with other programs is only permissible within the scope of the mandatory provisions of section 69e of the German Copyright Act (UrhG), and only in case evocortex fails to provide the necessary information and records within a reasonable period of time despite a written request from Customer.
  5. Specific types of licenses:
1. Delivery dates and periods are approximate and non-binding, unless they are expressly referred to as binding in the evocortex offer. Compliance with the agreed delivery dates and periods requires the timely receipt of any documents, records and information that may be necessary and the timely provision of all contributions and cooperation by Customer (in particular, the necessary testing and production environment shall be made available).

## § 2 Delivery Dates, Scope of Delivery and Customer's Responsibility

- a. Development kit: The rights to use granted to Customer include the use of the Software (as object code) for Customer's own product development and for integration of the Software into Customer's systems, programs and other products of Customer (via the intended interfaces) and the subsequent reproduction of the Software in connection with the distribution of such products by Customer. Customer bears the sole responsibility for the adaptation and integration of the Software, its compatibility and interoperability with Customer's products and for its product development based on the Software ("industrialization").
- b. Evaluation kit: Customer's rights to use are limited to such actions that serve the purpose of determining the state of the Software and its suitability for the operational and/or industrial purposes of Customer with regard to the agreed fields of use. For this purpose, Customer has the right to link the Software with its own systems and products (e.g., a prototype device) and to connect them. Any further use, in particular, the productive use and its preparation and any other commercial or industrial use of the Software as well as the creation of copies (including backup copies) are prohibited.
- 7. Any use of the Software beyond the provisions set forth in this § 3 and/or the license terms and conditions of the individual contract, requires the prior written consent from evocortex. In the event the Software is used without this consent, evocortex may charge Customer for the additional use in accordance with the then-valid price list (including retroactively). evocortex reserves the right to assert further claims to damages. Customer shall notify evocortex of any change concerning its right to use (e.g., change in the purpose of use) in advance.
- 8. Customer shall not provide the Software that it acquired from evocortex for its own permanent use to third parties, unless it finally ceases to use the Software. Any transfer of the Software requires the prior written consent from evocortex. evocortex shall grant its consent provided that Customer submits a declaration from the third party in which it agrees vis-à-vis evocortex in writing to comply with the license terms and conditions that apply to the Software, and in which Customer declares vis-à-vis evocortex that it has provided all original copies of the Software to the third party and deleted any Software copies that it had made itself. In the event the Software is integrated and provided as an embedded component of a device, Customer may only transfer the Software to third parties together with the device into which the Software had been integrated and for which it had been intended.

The details of the scope of rights to use under the specific type of license are governed by the license model and/or the individual contract concluded with evocortex; in particular, the rights to use under a certain license type may be granted for a definite term. The modification or decompiling of the Software requires the express consent from evocortex, otherwise it is only permissible in the cases allowed under the mandatory provisions of German law. Apart from that, the terms of use set forth in this § 3 also apply to the specific types of licenses.

- 6. In the event Customer is not an end-user, but distributes the Software as a reseller (authorized dealer) of evocortex to third parties with the prior consent from evocortex, the following terms and conditions shall apply:
  - a. Reseller is not allowed to represent evocortex in legal transactions; Reseller shall enter into agreements with its end-users in its own name and on its own account.
  - b. Reseller shall not grant its end-users any rights to use beyond or deviating from the license terms and conditions included in the individual contract and these GTC; Reseller is not authorized to grant sub-distribution rights to third parties.
  - c. Reseller is not allowed to integrate the Software into its own products for the purpose of distribution as a Value Added Reseller (VAR), unless within the scope of a development kit acquired by Reseller or subject to an express agreement with evocortex.
  - d. Reseller shall distribute the Software solely using the names, designations and trademarks provided by evocortex and shall refrain from modifying any copyright notices and other notices and information included for the purpose of program identification.
  - e. Reseller shall not give any contractual promises or make binding statements or representations regarding the Software that exceed the agreed quality and characteristics as defined in the individual contract and these GTC.
  - f. In the event any third party should assert claims against evocortex due to a culpable violation of contractual or statutory obligations on the part of Reseller, Reseller shall indemnify and hold evocortex harmless from and against such claims, the related costs (in particular, costs for reasonable legal defense) and any damages.

#### § 4 Confidentiality and Data Protection

- 1. The parties agree to treat any business and trade secrets as well as other business-related information of the other party that are disclosed to them, made available to them or of which they may become aware in any other manner as strictly confidential. They shall use such information only for the purpose specified in the individual contract and shall not disclose them to third parties. In particular, the confidential information of evocortex includes the Software in any of its tangible or intangible forms, including documentation. The parties shall allow only those employees and sub-contractors access to this confidential information that need to know them for performing the individual contract and that have signed a non-disclosure agreement. The confidentiality duty shall survive termination or expiration of the individual contract for a period of three (3) years.
- 2. The duty of confidentiality does not apply to confidential information that was previously known to the receiving party without any duty of confidentiality or that is or will become known to the general public through no fault on the part of the receiving party, or which is rightfully disclosed to the receiving party by a third party without being bound by a duty of confidentiality, or that can be shown to have been independently developed by the receiving party.
- 3. The parties agree to duly store any business items and records made available to them by the other party and to return them at any time upon the other party's request. In particular, they shall ensure that unauthorized third parties cannot gain access to them.
- 4. To the extent evocortex processes personal data of Customer, evocortex shall bind the assigned employees to data secrecy by a written declaration prior to their assignment. evocortex has the right to transfer personal data to subcontractors that are commissioned in accordance with the agreement, if such a transfer is required for performing the corresponding ordered services. evocortex shall bind its subcontractors to data secrecy. In the event that Customer allows evocortex access to its personal data, Customer will ensure that the applicable statutory requirements regarding the transfer to and processing of such data by evocortex (and its subcontractors) are complied with.

5. In the event Customer allows evocortex to use its name as a reference customer, evocortex has the right to include Customer's name in a list of reference customers for promotional purposes and to use Customer's corporate signs, trademarks and logos in printed publications and online, in particular, on the evocortex website for this purpose.

### **§ 5 Compensation and Terms of Payment**

1. Unless provided otherwise in the individual contract or commercial offer provided by evocortex, the amount and due date of the license fee are subject to the evocortex price list valid at the date the individual contract was concluded.
2. Unless otherwise agreed, additional services (ancillary services in connection with the provision of the Software) will be invoiced on a time and materials basis at the agreed daily and/or hourly rates. In the event the individual contract or the evocortex offer do not contain any provisions on the amount of daily and/or hourly rates, the evocortex price list valid on the date of contract conclusion shall apply. The compensation will be invoiced to Customer at monthly interval at the beginning of the month following the service provision together with the activity reports that are customarily used by evocortex.
3. All prices quoted are subject to the statutory value added tax (VAT) valid at this time. Payments shall be made by Customer within thirty (30) calendar days from the invoice date with no deductions.
4. Customer shall not offset any claims, unless its counter-claim is uncontested or has been finally adjudicated. Furthermore, Customer shall not withhold payments, unless its counter-claim is uncontested or has been finally adjudicated and is related to the same contractual relationship.

### **§ 6 Liability for Defects**

1. Customer shall inform evocortex of any Software defects promptly upon delivery or, in the event of hidden defects, promptly upon their discovery, in comprehensible form by email or, if applicable, via the ticket system provided by evocortex. To the extent Customer can be reasonably expected to do so, Customer shall take all necessary measures to determine, delimit, and document defects. This includes the preparation of an error report, system logs, dump files, providing the input/output data affected, interim and test results, and any other information and records that may serve to describe the defect. Section 377 of the German Commercial Code (HGB) remains unaffected.
2. evocortex warrants that the Software has the features and functionality described in the product description and user manual. Impaired functionality due to, e.g., mal-operation of the Software by Customer, Customer's system environment, Customer's own product developments based on the Software or any other circumstances for which Customer is responsible, shall not be deemed a defect. Furthermore, evocortex shall be released from its liability for defects if Customer fails to comply with the system requirements defined by evocortex, modifies the Software or uses it in violation of the contract (e.g., under different operating conditions), unless Customer is able to show that the defect is not related to these circumstances.
3. Customer is aware of the fact that Software provided for testing and demonstration purposes, in particular, within the scope of an evaluation kit, may be a prototype, beta version or the like that was not fully tested for freedom from defects and stability for all purposes of use in a live environment; therefore, evocortex is not liable for defects (unless evocortex intentionally concealed a defect). The same

applies to hardware or other devices on which Software is installed and which evocortex provides as a prototype and/or as part of a development kit.

4. In the event of a defect in the Software existing on the date on which the risk passes to Customer, evocortex shall perform its warranty obligations by subsequent improvement, at the option of evocortex either by delivery of error-free Software (e.g., in connection with an update) or by rectifying the defect. The defect may initially be rectified by evocortex showing Customer a reasonable workaround that avoids or circumvents the effects of the defect (workaround).
5. In the event subsequent improvement finally fails (no less than two (2) attempts for each defect) or is refused by evocortex, Customer may either rescind the contract or reduce the compensation. In view of the complexity of the Software, more than two (2) attempts at subsequent improvement may be reasonable and Customer may be expected to accept them. In the event of only a slight deviation of the Software from the contractually agreed quality Customer is not entitled to rescind the agreement. evocortex shall be liable for damages and reimbursement of wasted expenditures based on a defect in accordance with the limits set forth in § 8 of these GTC.
6. In the event evocortex performs services in connection with the trouble shooting and/or rectification of defects without being obligated to do so, it may claim separate compensation from Customer on a time and materials basis in accordance with the then-valid evocortex price list. In particular, this shall apply if a defect reported by Customer cannot be reproduced or if it cannot be attributed to evocortex. There is no claim to additional compensation, if Customer was unable to recognize that the defect was not related to the evocortex Software.
7. Claims based on defects asserted by Customer under this § 6 will come under the statute of limitations within one (1) year from the delivery of the Software. This shall not apply in the event of intentional wrongdoing or gross negligence on the part of evocortex, in the event a defect is maliciously concealed, in the event of a defect in title within the meaning of section 438 par. 1 lit. a of the German Civil Code (BGB), or in the events described in § 8, par. 6 of these GTC.
8. In the event of a defect in third party products that were supplied together with the Software, evocortex shall assert, at its option, its warranty claims against the producer and/or an upstream supplier on behalf of Customer or assign them to Customer for his own claim enforcement. In the event of such defects, Customer will only be entitled to assert warranty claims against evocortex under these GTC, if the enforcement of the claims in court against the producer and/or upstream supplier fails or does not promise any success, e.g., due to the insolvency of the producer and/or upstream supplier. While claims are enforced against the producer and/or upstream supplier, the statute of limitations period for Customer's warranty claims against evocortex is suspended. To the extent that evocortex satisfies Customer's claims itself, any claims based on defects against the producer and/or upstream supplier that had been assigned to Customer will revert to evocortex (re-assignment).

### **§ 7 Infringements on Proprietary Rights**

1. evocortex warrants that the Software provided to Customer is free from third-party proprietary rights and will indemnify and hold Customer harmless from and against third-party claims based on an infringement on proprietary rights subject to the following provisions.
2. In the event third parties assert claims against Customer based on the infringement on their proprietary rights by the Software, Customer shall notify evocortex promptly and comprehensively in writ-

ing. evocortex has the right, but is not obligated to handle the dispute with the third party in court and out of court in its sole responsibility. In the event evocortex acts upon this authority, Customer shall assist evocortex in the defense against the claim to a reasonable extent and free of charge. Customer shall not accept any third party claims in its own discretion.

3. In the event defects in title existed at the date of the passing of the risk to Customer, evocortex will procure the lawful right to use the Software and grant it to Customer. Alternatively, evocortex has the right to replace the Software affected with another, equivalent software, provided, however, that Customer can be reasonably expected to accept this. In the event the infringement on third party proprietary rights and/or a legal dispute regarding the corresponding third party rights can be avoided or settled by Customer using the latest Software release provided by evocortex free of charge, Customer is obligated to install and use this Software release within the scope of its duty to minimize damage, unless Customer proves that it cannot be reasonably expected to use the latest Software release.
4. In accordance with the liability limitations in § 8 of these GTC, evocortex shall hold Customer harmless and indemnify Customer from and against any damage caused by an infringement on proprietary rights, to the extent that it is due to a defect in title of the Software that was used by Customer in accordance with the agreement and for which evocortex is responsible and liable. In all other regards, the provisions regarding defects as to quality set forth in § 6 of these GTC shall apply accordingly to any claims asserted by Customer based on defects in title.

### § 8 Liability

1. In the event evocortex provides Software to Customer that is not subject to compensation, e.g., during a test period free of charge, evocortex will only be liable for an intentional and grossly negligent violation of its duties.
2. In the event evocortex provides Customer with Software in the form of a prototype or as a testing or beta version for evaluation purposes, evocortex is not liable for damages that occur due to a non-authorized productive or industrial use of the Software.
3. In all other regards, evocortex shall compensate Customer for material or pecuniary damage or loss or reimburse wasted expenditures, irrespective of their legal cause, only to the following extent:
  - a. in case of intentional wrongdoing and gross negligence, or if a guarantee was issued, for the full amount;
  - b. in all other cases only for a violation of a material contract duty, non-compliance with which would jeopardize the attainment of the contract purpose and on compliance with the same Customer may therefore rely (*Kardinalpflicht*). Liability is insofar limited to the typical and foreseeable damage, limited however, for each incident to the contract volume of the individual contract affected; if the contract volume of the individual contract is less than EUR 250,000.00, the liability amount shall be no less than EUR 250,000.00 (as a maximum upper limit).
4. For the restoration of data evocortex shall only be liable pursuant to and within the limits of § 8, par 3, provided however, that Customer has ensured that data can be reproduced from electronic data stores at any time and at a reasonable cost.
5. The foregoing liability limitations also inure to the benefit of the legal representatives, vicarious agents and employees of evocortex.
6. Liability for damages based on death or bodily harm and liability under the Product Liability Act (ProdHaftG) remain unaffected by the above provisions.

### § 9 Specific Terms and Conditions for the Provision and Licensing of Software for a Definite Term (Rent)

1. In the event the parties agree on the use of the Software for a definite term, e.g., within the scope of an evaluation kit, this agreement constitutes a rental agreement (loan agreement, if no consideration is due) that is subject to the following specific terms and conditions.
2. In the event of major defects of the rented Software, Customer has the right to terminate the agreement for cause in lieu of rescission if subsequent performance and/or improvement failed and if further adherence to the agreement is not acceptable for Customer due to the defect. In all other regards §§ 6 and 7 of these GTC shall apply to liability for defects as to quality and in title accordingly. With regard to defects that already existed in the Software at the time of contract conclusion, evocortex will only be liable for such defects, notwithstanding the statutory provisions of section 536a of the German Civil Code (BGB), if evocortex is responsible for such defects.
3. Unless otherwise agreed, either party may terminate a rental agreement by giving three (3) months' notice to take effect at the end of a calendar year, however, no earlier than upon the expiration of the contractually agreed minimum initial term. Unless the parties expressly agree on a deviating period, the minimum initial term is one (1) year. The right of either party to terminate the contractual relationship prematurely for cause and without notice remains unaffected. In particular, cause that gives evocortex the right to terminate the agreement without notice, shall exist, if insolvency proceedings are instituted against Customer's assets or rejected for a lack of funds or if Customer is in default with a material portion of the due consideration for more than two (2) months. The notice of termination must be in writing to be effective.
4. Upon the termination of the rental agreement, Customer's right to use the Software expires automatically. Customer shall fully and finally delete all software copies from all servers, workplaces, computers and devices and return any data media, documentation and other records that had been provided to it. Upon the corresponding request from evocortex, Customer shall confirm the complete and final deletion of the Software in writing.

### § 10 Final Provisions

1. Customer is not allowed to assign or transfer any contractual rights or duties to third parties – including any affiliated companies of Customer – without the prior written consent from evocortex.
2. Modifications and amendments of the agreement must be in writing to be effective (fax shall suffice, email is not sufficient). Any waiver of this mandatory written form requirement must be in writing.
3. The laws of the Federal Republic of Germany shall apply, the conflict-of-laws rules of International Private Law and the UN CISG are excluded. Place of jurisdiction for any disputes arising out of or in connection with the agreement is the competent court at the registered office of evocortex. evocortex has the right to bring action against Customer before any other national or international court having jurisdiction.
4. The Software and/or its export may be subject to national and international export control regulations, in particular, U.S. and German legislation. Customer agrees not to export the Software to countries or to individuals or legal entities, if this export is forbidden under the applicable export control regulations. In the event of a resale or any other kind of export, Customer bears the sole responsibility for its compliance with export control requirements, if any (e.g., obtaining official permits) and shall bear any cost incurred in connection here-

with. Customer shall indemnify and hold evocortex harmless from and against any cost and damage in connection with culpable violations of export control regulations on the part of Customer.

5. If any provision of these GTC or an individual contract is or should become invalid or if there are any gaps, the remaining provisions shall remain in full force and effect. The invalid or missing provision shall be replaced by such a valid provision that most closely reflects the business intention of the parties at the time the agreement was concluded.