

## General Terms and Conditions of ~sedna GmbH

**Scope:** Provision of standard software for perpetual use (sale of standard software)  
**As of:** November 2019

### 1 General information

- 1.1 These General Terms and Conditions (hereinafter "**GTC**") shall apply to all contracts between sedna GmbH, Salzufer 13F, 10587 Berlin, Germany, registered in the Commercial Register at the Local Court of Berlin (Charlottenburg) under HRB 78217 (hereinafter: "**~sedna**") and its customers (hereinafter: "**customer**") for the provision of standard software for perpetual use. Unless otherwise agreed, the GTC in the version valid at the time of the customer's order or, in any case, in the version last communicated to the customer in text form, shall also apply as a framework agreement for similar future contracts, without ~sedna having to refer to the GTC again in each individual case.
- 1.2 These GTC and the documents referenced therein shall apply exclusively. Any deviating, conflicting or supplementary general terms and conditions of the customer shall become part of the contract only if and as far as ~sedna has expressly consented to their validity. This consent requirement applies in every case, for example, also if ~sedna provides the services to the customer without reservation and with knowledge of the customer's general terms and conditions.
- 1.3 Offers by ~sedna are always subject to confirmation. Contracts shall come into existence only by means of a written confirmation by ~sedna. If ~sedna does not expressly confirm verbal or telephonic agreements in writing, the invoice issued by ~sedna shall be regarded as confirmation.
- 1.4 Individual agreements made with the customer in individual cases (including collateral agreements, supplements and amendments) shall take precedence over these GTC in each case. A written contract or written confirmation by ~sedna is authoritative as regards the content of such agreements.
- 1.5 References to the validity of statutory provisions are solely for the purpose of clarification. The statutory provisions shall therefore apply even without such clarification, provided these provisions are not actually amended or expressly excluded in these GTC.

### 2 Subject matter of the contract

The subject matter of the contract is the provision of standard software for perpetual use, along with the granting of rights required by the customer for its use in conformity with the contract and in accordance with Item 3. Furthermore, the subject-matter of the contract is – if expressly agreed between ~sedna and the customer – the granting of a non-exclusive, fixed-term right of distribution for the duration of the contract in accordance with Item 5, which entitles the customer, as a sales partner, to provide third parties with the ~sedna standard software for perpetual use in his own name and for his own account and to grant the rights necessary for its use in conformity with the contract.

### 3 Provision of software and granting of rights of use

- 3.1 ~sedna shall provide the customer with a copy of the ready-to-install contractual standard software in object code via download in accordance with the following detailed provisions and shall make the associated user documentation available in digital form as an "Online Manual" (hereinafter "**product**" or "**products**"). The customer has no claim to the provision of the source code. If the product is protected by a license key or dongle, the customer shall receive the license key or dongle exclusively for the use of the product as specified in the contract, in these GTC and the EULA, as well as in the user documentation.

- 3.2 Upon full payment of the purchase price in accordance with Item 4, the customer is entitled to use the contractual ~sedna products for his own purposes in his business operations within the scope of the rights of use granted to him. The use of the products within the scope of the contract is subject to the provisions of the EULA, which can be accessed via the following link and form an integral part of the contract: <https://www.sedna.de/en/gtceula/>
- 3.3 The owed quality of the ~sedna product and the conditions of use of the hardware and software, as well as the system environment (clients, server and network) in which the ~sedna product may be used, are stated conclusively in the contract, in these GTC and the end user license agreement, as well as in the user documentation.
- 3.4 Installation and configuration services, as well as consulting services, are not included in the subject-matter of the contract, but may be agreed separately between the parties.
- 3.5 Any delivery times that are stated are always non-binding, unless expressly agreed otherwise in writing.

#### **4 Fee and terms of payment**

- 4.1 The respective fee for the provision of the ~sedna products, together with the necessary granting of rights (hereinafter "**purchase price**"), is specified in the contract.
- 4.2 Payments are due when the respective ~sedna product is delivered to the customer or provided for download, and upon registration in the presenter cloud or delivery of the license key or dongle, and must be paid immediately and in full after the invoice is issued. Payments made by the customer shall be credited to the oldest due invoice.
- 4.3 The timeliness of all payments shall be determined by the date on which the payments are credited to ~sedna's account specified in the invoice.
- 4.4 Default interest shall be nine (9) percentage points above the applicable base interest rate in each case.
- 4.5 Unless otherwise agreed in writing in individual cases, all fees shall be "net" fees in Euro plus value-added tax at the statutory rate in each case, if value-added tax is payable.

#### **5 Distribution of software as sales partner**

- 5.1 If ~sedna has qualified the customer as a so-called sales partner of ~sedna (see Item 2), ~sedna shall grant the sales partner the non-exclusive right to circulate the products, i.e., the right to distribute and to market the products. ~sedna shall therefore remain entitled to distribute the products itself or through other sales partners.
- 5.2 Distribution by the sales partner shall take place only by way of provision for perpetual use (sale) by the sales partner. The sales partner is not entitled to rent out the products or make them available for use for a limited period of time.
- 5.3 The sales partner is entitled to grant its end customers perpetual rights of use to the ~sedna products. The sales partner shall conclude software licensing agreements ("license agreements") with its end customers for this purpose. Such license agreements shall ensure that the end customers are not granted any further rights, in particular, further rights of use, apart from those arising from the agreement between ~sedna and the sales partner, these GTC and the end user license agreement. The sales partner must ensure that the end customer expressly agrees to the end user license agreement according to Item 3.2 in relation to ~sedna.

- 5.4 The sales partner shall not be entitled to transfer the distribution right in whole or in part to third parties or to grant distribution rights to third parties, unless ~sedna has expressly agreed to this in advance.
- 5.5 The sales partner shall distribute the products in his own name and for his own account. He shall act as an independent dealer, both in relation to the end customer and towards ~sedna. The sales partner is not authorised to represent ~sedna in legal transactions.

## **6 Warranty**

- 6.1 ~sedna is obliged to provide ~sedna products that are free from any defects which significantly offset or diminish the suitability of the products for use in accordance with the contract. In this respect, ~sedna guarantees the contractually agreed quality of the ~sedna products and also guarantees that there are no third-party rights which conflict with the use of ~sedna products in accordance with the contract. ~sedna shall remedy any material defects and defects of title in due time.
- 6.2 If the customer is an entrepreneur, he must inspect the ~sedna product immediately upon receipt for obvious defects and inform ~sedna of any such defects immediately. Otherwise, a warranty for these defects is excluded. The same shall apply if such a defect becomes apparent later. Section 377 of the German Commercial Code (Handelsgesetzbuch – HGB) shall apply.
- 6.3 Apart from this, the customer is obliged to notify ~sedna of defects in ~sedna products in writing, immediately after these defects are discovered. In the case of material defects, this notification shall include a comprehensible description of the error indications, the time of occurrence of the defects and the detailed circumstances, proved by written records or other documents illustrating the defects as far as possible. The notice of defects should enable the reproduction of the defect. If ~sedna provides the customer with a template to report defects, this must be used for the notice of defects.
- 6.4 ~sedna shall remedy defects at its discretion either by rectification of the defect or by replacing the defective product free of charge. ~sedna can also fulfil its obligation to rectify defects by providing updates with an automatic installation routine and offering the customer telephone support to solve any installation problems that may arise.
- 6.5 The customer's right to reduce the purchase price or to withdraw from the contract at his discretion if the rectification of the defect or replacement delivery fails on two occasions remains unaffected. A right of withdrawal does not exist in the case of insignificant defects.
- 6.6 The customer's rights due to defects are excluded if the customer makes or has made changes to the ~sedna products without ~sedna's consent, unless the customer proves that the changes do not have an unacceptable effect on ~sedna's analysis and elimination of the defects. The customer's rights due to defects shall remain unaffected if the customer is entitled to make changes and these have been carried out professionally and documented in a comprehensible manner.
- 6.7 The warranty does not cover defects caused by deviations from the conditions of use specified for the ~sedna products.
- 6.8 The customer's claims on account of defects shall become time-barred within twelve (12) months, unless a defect is based on a grossly negligent or intentional breach of duty or on fraudulent concealment of a defect. In such cases, the statutory provisions shall apply.
- 6.9 The customer may assert claims for damages within the framework of the agreed limitations of liability (Item 8).

## **7 Third-party property rights**

- 7.1 ~sedna shall defend the customer against all claims derived from an infringement of an industrial property right or copyright and/or other property rights due to the use of the ~sedna product in accordance with the contract. ~sedna shall assume the costs and compensation amounts imposed on the customer by court order, provided that the customer has informed ~sedna of such claims immediately in writing, and all rights concerning defensive measures and settlement negotiations remain reserved for ~sedna.
- 7.2 If claims in accordance with Item 7.1 have been asserted or are expected to be asserted against the customer, ~sedna may modify or exchange the respective ~sedna product at its own expense to an extent considered reasonable by the customer. If this is not possible or if it is not possible to obtain a right of use with reasonable effort, each party to the contract can declare withdrawal from the contract for the relevant ~sedna product, in as far as the ~sedna product infringes the property rights of third parties. In this case, ~sedna shall be liable to the customer in accordance with Item 8 for the loss resulting from the withdrawal.
- 7.3 ~sedna has no obligations if the claims according to Item 7.1 refer to programs or data provided by the customer or are based on the fact that the ~sedna product and the data contained therein was not used in a valid, unchanged original version delivered by ~sedna or was used under conditions other than those given in the specifications.

## **8 Liability**

~sedna shall be liable for losses only in accordance with the following provisions:

- 8.1 For losses which are based on a slightly negligent breach of duty, ~sedna's liability is limited to the foreseeable loss typical for the contract, the occurrence of which the customer had to anticipate at the conclusion of the contract due to the circumstances known to him at that time. Liability for all losses is hereby limited to a total amount which corresponds to 100 percent of the agreed remuneration (excluding taxes) of the relevant ~sedna product.
- 8.2 ~sedna shall be liable without limitation for all losses resulting from an intentional or grossly negligent breach of duty or an injury to life, limb or health.
- 8.3 ~sedna shall be liable for the loss of data and its recovery in accordance with 8.1 and 8.2 only as far as such loss could not have been avoided by appropriate data backup measures on the part of the customer. This liability shall be limited in amount to the expenditure which would have been incurred by the customer for restoration if the data had been backed up properly and regularly in a manner corresponding to the significance of the data. This shall not apply if the data back-up was prevented or became impossible for reasons for which ~sedna is responsible.
- 8.4 Claims for damages in accordance with the above provisions shall include claims for reimbursement of expenses.
- 8.5 Any guarantee bonds that are to be submitted shall require a separate agreement, which shall be attached to the contract as an appendix. The use of terms such as guarantee, assurance or assured quality does not in itself constitute a guarantee within the meaning of the German Civil Code (Bürgerliches Gesetzbuch – BGB), but is rather to be understood exclusively as a description of performance.
- 8.6 Liability under the Product Liability Act remains unaffected.

- 8.7 Liability for lost profits and unrealised savings is excluded. ~sedna is not liable for the customer's lack of economic success.
- 8.8 The above limitations of liability also apply analogously in favour of the employees and authorised representatives of ~sedna.

## **9 Force majeure**

In cases of force majeure, the affected party shall be released from their performance obligations for the duration of the event and to the extent that it affects the party. Force majeure means any event beyond the area of influence of the respective party, due to which the party is prevented from fulfilling its obligations in whole or in part, and includes fire damage, lightning strikes, floods, strikes and lawful lock-outs, as well as operational disruptions or official orders for which the party is not responsible. The affected party shall immediately notify the other party of the occurrence and cessation of the force majeure and shall make every effort to remedy the force majeure and limit its effects as far as possible. In the case of force majeure, the parties shall agree on the further course of action and determine whether the services that are not rendered during this period should still be rendered after the event ceases. Notwithstanding this, either party shall be entitled to withdraw from the contract which concerns the ~sedna product affected by the force majeure if the force majeure lasts more than six (6) weeks after the agreed date of performance.

## **10 Confidentiality**

- 10.1 The parties are obliged to maintain secrecy regarding trade secrets and other confidential information (information and documents which are marked as confidential or which, under the circumstances, must be regarded as confidential. This especially includes information about operational processes, business relationships and know-how). This obligation shall continue for a period of three (3) years after the use of ~sedna products is terminated.
- 10.2 This obligation does not include confidential information (a) which can be proved to have been already known to the recipient at the time of conclusion of the contract or which subsequently becomes known from third parties without thereby violating a confidentiality agreement, statutory provisions or official orders; (b) which is publicly known at the time of the conclusion of the contract or is made public thereafter, provided that this is not based on a breach of this contract; (c) which must be disclosed pursuant to statutory obligations or by order of a court or authority; the recipient obliged to disclose shall inform the other party in advance, to the extent permitted and possible, and give them the opportunity to oppose such disclosure.
- 10.3 The parties shall grant access to confidential information only to persons who are bound by professional secrecy or who have previously been subject to obligations corresponding to the confidentiality obligations of this contract. Furthermore, the parties shall disclose confidential information only to those employees who have to know this information in order to perform this contract, and shall require such employees to maintain confidentiality.

## **11 Data protection**

- 11.1 The parties shall observe the relevant data protection regulations.
- 11.2 Should ~sedna come into contact with the customer's personal data, a written agreement on commissioned processing in accordance with Art. 28 of Regulation (EU) 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data (General Data Protection Regulation – GDPR) must be concluded prior to this. In this case, ~sedna shall make such an agreement available to the customer. ~sedna shall process personal data only within the meaning of the GDPR and the Federal Data Protection Act (BDSG), and within the

scope of the customer's instructions in every case. The customer shall in all cases remain responsible for any personal data processed by ~sedna within the scope of performing the contract. The customer is solely responsible for the permissibility of the data processing that is carried out as instructed.

## **12 Closing Provisions**

- 12.1 The customer may offset ~sedna's claims against a counterclaim or exercise a right of reduction or retention only if his claim is undisputed or has been recognised by declaratory judgement.
- 12.2 The parties are aware that the ~sedna products (including updates and upgrades of the products) may be subject to export and import restrictions. In particular, they may be subject to licensing obligations, or the use of ~sedna products or associated technologies abroad may be subject to restrictions. The customer shall comply with the applicable export and import control regulations of the Federal Republic of Germany, the European Union, and the United States of America, as well as all other relevant regulations. The fulfilment of the contract by ~sedna is subject to the proviso that there are no obstacles to fulfilment due to national and international regulations of export and import law or any other statutory regulations.
- 12.3 Amendments and supplements to the GTC require the written form. This also applies to any amendment or revocation of this clause. Transmission by telefax or e-mail complies with the written form requirement, in as far as receipt of the telefax or e-mail can be proved.
- 12.4 Claims due to non-contractual service provision, regardless of the legal basis of such claims, shall become time-barred one (1) year after the customer may have gained knowledge thereof, but no later than two (2) years after the damaging event, unless shorter statutory limitation periods apply.
- 12.5 The place of performance is the registered office of ~sedna. The law of the Federal Republic of Germany shall apply to the exclusion of the UN Convention on Contracts for the International Sale of Goods and the rules referring to other legal systems. The exclusive place of jurisdiction is Berlin.
- 12.6 Should individual provisions be or become invalid or unenforceable, this shall not affect the validity of the remaining provisions. The parties shall endeavour to replace the invalid or unenforceable provision with a provision that comes closest to the legal and economic purpose of the contract. This shall apply correspondingly in the event of a contractual gap.