itemis AG Terms and Conditions for the Rental of Standard Software

itemis AG

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IMPORTANT! This English version is merely for the purpose of information. The legally binding text is the German text.

1. Application of the terms and conditions

a. These General Terms and Conditions of itemis AG for the Rental of Standard Software (hereinafter referred to as "GTC") shall apply to all contracts and to pre-contractual obligations of itemis AG, Speicherstraße 8, 44147 Dortmund (hereinafter referred to as "itemis AG") in connection with the temporary provision of itemis Standard Software to customers.

b. These terms and conditions apply exclusively to entrepreneurs within the meaning of § 14 of the German Civil Code (BGB), legal persons under public law, or special funds under public law within the meaning of § 310 (1) BGB. Even if this will not be indicated when concluding similar contracts in the future, these terms and conditions in their version available at the time of the customer's declaration on legal.itemis.com/ apply exclusively, unless the contracting parties agree otherwise in writing. Other contractual conditions do not become part of the contract, even if itemis AG does not expressly object to them. This also applies, even if this will not be indicated when concluding similar contracts.

c. Offers or other individual agreements made with the customer in individual cases (including side agreements, amendments, and modifications) supersede these terms and conditions. For the content of such agreements, a written contract or the written confirmation of itemis AG is decisive, subject to counter-evidence.

2. Conclusion of the contract

a. The offers of itemis AG are non-binding unless the offer is expressly designated as binding. A legal obligation only arises through a mutually signed offer or through written order confirmation by itemis AG. itemis AG may require written confirmation of the customer's verbal contractual statements.

b. In the case of a binding offer, an effective acceptance of a contract offer from itemis AG by the customer is only achieved by returning the signed, unchanged offer to itemis AG. Any acceptance of the offer that modifies its terms is considered a new offer from the customer. In this case, itemis AG reserves the right to accept it, and a contract for the provision of Software is only concluded on the modified terms if itemis AG expressly accepts the modified contract offer from the customer by means of a written declaration to the customer.

3. Subject of the Contract and Services

a. Upon conclusion of the contract, the customer is entitled to the temporary provision and delivery of the itemis AG software products (hereinafter referred to as "Software") listed in the offer, together with the corresponding documentation. "Documentation" refers to the functional user documentation that belongs to the Software subject to the contract and which is provided by itemis AG to the customer along with the Software.

b. The quality and functionalities of the Software are conclusively determined by the Documentation and the offer of the itemis AG including its appendices.

c. The information contained within the Documentation is to be understood as performance descriptions and not as guarantees. A guarantee is only considered one if it has been expressly designated as one. Any differing information on websites, social media, presentations, advertising, or other marketing materials, whether printed or electronic, is non-binding.

d. The method in which the Software is delivered is determined in the contract. Unless otherwise specified, the Software and Software Documentation will be made available for download online via the internet. Delivery on physical data storage is not owed.

e. The services provided by itemis AG in connection with the rental of the Software do not include installation or uninstallation at the end of the rental period, customer-specific adaptations, training and other services beyond the rental of the Software, unless the contract specifies otherwise.

f. Unless otherwise agreed, there is only a right to delivery of the Software in object code. The Software is delivered in English. Other languages can be requested and must be specified in the contract.

g. The Software package may include open source software licensed to the customer under the respective open source license terms. The customer is required to comply with these license terms. itemis AG will provide the corresponding open source license texts with the offer or delivery or provide them to the customer via a link. Additionally, the Software package may also include third party software, which may be subject to separate terms and conditions. These separate terms and conditions will be communicated to the customer prior to the use of the third party software.

h. Free-of-charge Software is provided "as is". Warranty claims are excluded, except in cases of willful misconduct or gross negligence on the part of itemis AG that causes the defects. This also applies to any support services.

i. itemis AG will provide support and maintenance services during the contract term of the respective Software to maintain its contractual obligation for the rented Software to meet its contractual condition, in accordance with clause 5 of these GTC. The fee for these services is included in the agreed rental fee.

j. itemis AG has the right to engage subcontractors to provide the services under a contract without requiring permission from the customer.

4. Rights of use of the customer to the Software

a. The Software and Documentation are legally protected. Copyright, patent rights, trademark rights, and all other intellectual property rights to the Software and any other items provided or made accessible to the customer by itemis AG in the context of contract initiation and execution belong to itemis AG, unless otherwise expressly stated in the offer.

b. By paying the agreed rental fee, the customer receives a non-exclusive, time-limited, non-transferable and non-sub-licensable right to use the Software specified in the offer as well as the corresponding Documentation for the intended purpose during the period of the rental agreement. The scope of the intended use is determined by the agreements in the respective contract.

c. The customer is only permitted to install, load, execute and use the Software and Documentation within the usage limits defined in the contract and may only use and deploy it strictly for their own internal purposes. Any other uses and acts of exploitation, including the use of Software by and for third parties (e.g. through data center activities, application service providing) are not allowed without prior written consent from itemis AG. In particular, the customer is prohibited from selling, lending, renting or otherwise granting sublicences to the Software, as well as publicly reproducing or making the Software accessible. The use of the Software by employees of affiliated companies of the customer is only permitted if expressly stipulated in the contract.

d. If the customer violates any of the above terms, all rights of use granted under the contract will immediately become ineffective and automatically revert back to itemis AG. In such a case, the customer must immediately and completely cease to use the Software and Documentation, delete all copies installed on their systems, including any backup copies made, or return them to itemis AG if requested.

e. Depending on the license type, the provision of license keys by itemis AG to the customer may be necessary in addition to the Software itself. In such cases, the required license key will be generated by itemis AG and subsequently provided to the customer.

f. If the customer uses the Software in a manner that exceeds the acquired rights of use qualitatively (in terms of the permitted type of use) or quantitatively (in terms of the number of purchased licenses) the customer must promptly acquire the necessary rights of use for the permitted use. If the customer fails to do so, itemis AG will enforce its rights accordingly.

g. The customer may only make copies of the delivered Software to the extent necessary for the use of the Software. Necessary copies include in particular the installation of the Software on the mass storage of the hardware used and the loading of the Software into memory. Additionally, the customer may create a copy for backup purposes. However, generally only one single backup copy may be made and retained. If regular backup of the entire data including the computer programs used is essential for data security or for ensuring a quick reactivation of the computer system after a total failure, the customer may create the absolutely required number of backup copies. Backup copies must be clearly marked as such. The customer may not make further copies.

h. The reverse translation of the provided Software code into other forms of code (decompilation) and other methods of reconstructing the various stages of the Software's development (reverse engineering) are only permissible if they are essential for achieving interoperability with the other independently created computer programs, and if the necessary Software code information has not been published or made readily accessable to the customer through other means such as by requesting it from itemis AG. Decompilation is only permitted within the limits of section 69e of the Copyright Act (Urhebergesetz). For all knowledge and information obtained by the customer about the Software through decompilation, clause 11 of these GTC applies.

i. The customer is generally not permitted to make any modifications, derivatives or alterations to the Software. This does not affect the customer's right to remedy defects if and to the extent that itemis AG has previously rejected defect rectification, the replacement has not been provided despite setting a deadline, or the subsequent supplementary performance has failed. However, itemis AG explicitly informs the customer that even minor interventions in the Software can lead to significant unforeseeable disruptions in the Software's operation and possibly in the system environment. Therefore, the customer bears the sole risk associated with any interventions they make in the Software.

j. Before engaging any third party to perform the actions specified in clauses 4.h and 4.i of these GTC the customer must obtain a written commitment from the third party to comply with the provisions set forth in clauses 4 and 11 of these GTC. The customer must also allow itemis AG a reasonable period of time to review and approve the engagement of the third party and provide the name of the third party to itemis AG.

k. The removal of copy protection or similar protective mechanisms within the scope of permitted actions under clauses 4.g to 4.i is only permissible if such protection hinders or prevents the proper use of the program. Copyright notices, serial numbers and other program identification features must not be removed or altered under any circumstances. The same applies to the suppression of on-screen displays of corresponding features. The customer is obliged to inform itemis AG in writing of the removal of any copy protection or similar protective mechanisms from the Software code.

5. Support and maintenance services

a. itemis AG provides the following incident management within the scope of the license agreement:

   i. itemis AG will receive proper incident reports from the customer during its regular business hours (weekdays from 9:00am to 5:00pm, Monday to Friday, excluding legal holidays in Germany) and assign each report a reference number. Upon request, itemis AG will confirm receipt of the incident report to the customer, stating the assigned reference number. itemis AG will categorize the incident report into the following categories:

Category	Description
a) Severe Incident (Priority 1)	The incident is based on a Software error that renders the use of the Software impossible or allows it only with severe restrictions. The customer cannot reasonably overcome this problem and therefore cannot perform essential tasks that cannot be postponed.
b) Other Incident (Priority 2)	The incident is based on a Software error that more than insignificantly restricts the customer's use of the Software without constituting a severe incident.
c) Other Report (Priority 3)	Incident reports that do not fall into categories a) and b) are assigned to the "Other Report" category.

   ii. For reports of severe incidents and other incidents, itemis AG will take measures to initially locate the cause of the incident based on the information provided by the customer. itemis AG is authorized to perform these measures remotely by accessing the customer's systems through remote access. If, after initial analysis, the reported incident does not appear to be a Software error, itemis AG will inform the customer accordingly. Otherwise, itemis AG will initiate appropriate measures for further analysis and resolution of the reported incident or in the case of third-party software, forward the incident report along with the analysis results to the distributor or manufacturer of the software, requesting a remedy. itemis AG will provide the customer with available measures to bypass or resolve an incident, such as instructions or corrections for the standard Software. The customer shall promptly implement such measures to bypass or resolve incidents and promptly report and remaining incidents to itemis AG. Upon the request of itemis AG, the customer agrees to update the current version of the Software as a prerequisite for resolving incidents, if not already done.

   iii. Other reports will be documented by itemis AG. If the customer's use of the Software is not or only insignificantly restricted, the customer is entitled to have itemis AG remedy the reported issue, provided that the resolution does not involve disproportionate effort or costs for itemis AG.

   iv. The incident management of itemis AG does not cover services related to the use of standard Software in unsupported environments or to modifications of the Software by the customer or third parties.

b. itemis AG will also provide further developments/new versions of the standard Software, which may include bug fixes and improvements aimed at resolving incidents:

   i. Within the licensing period, itemis AG will provide the customer with new versions of the standard Software as part of the rental agreement. These updates consist of functional enhancements, technical modifications, improvements as well as patches with corrections to the standard Software or other workarounds for possible incidents. These new versions of the Software are collectively referred to as "new program versions". The customer is not required to pay a separate fee. Only one version of the Software can be used in production at a time. New program versions are typically backward compatible with previous versions. Existing data will usually be migrated to the required format for the new program version through automated procedures if necessary.

   ii. The customer's rights of use for new program versions and other corrections to the standard Software correspond to the rights of use of the preceding version of the Software.

   iii. Once itemis AG has provided the customer with a new program version, it will only provide maintenance for the previous version for a reasonable transition period, typically not exceeding three months.

6. Obligations to cooperate of the costumer

a. The customer has verified before entering into the contract that the Software's specifications meet their wishes and requirements. The customer is aware of the essential functional features and conditions of the Software.

b. The customer is obligated to examine all deliverables from itemis AG immediately upon receipt in accordance with commercial regulations (§ 377 of the German Commercial Code - HGB) and to notify any identified defects in writing, providing a detailed description of the defect. The customer thoroughly tests each module for usability in the specific situation before commencing operational use. This also applies to programs received by the customer within the scope of the warranty.

c. The customer takes appropriate precautions in the event that the program does not function properly, either in whole or in part (e.g. by data backup, fault diagnosis, regular result checks). It is their responsibility to ensure the proper operation of the program's working environment.

d. The customer will assist itemis AG in rectifying any defects by providing specific descriptions of the encountered problems, keeping itemis AG informed comprehensively, and allowing itemis AG the necessary time and opportunity for defect rectification.

e. itemis AG is entitled to provide services through remote maintenance or remote diagnosis, provided that it does not disadvantage the customer. The customer must provide the necessary technical capabilities for this purpose. The customer is obligated to secure the Software against unauthorized access by third parties through appropriate measures, including storing all copies of the Software in a protected location.

f. The customer is responsible for providing, at their own expense, the necessary technical requirements for remote maintenance as stated in clause 5e. They are also required to grant itemis AG access to their IT system after prior notification. The customer grants itemis AG remote access to their systems if it is necessary for the rectification of defects and is not prohibited by mandatory legal provisions.

g. The customer bears any disadvantages or additional costs resulting from a breach of their aforementioned obligations.

7. Duration and termination

a. With the expiration of the rental period, all obligations arising from these GTC and the contract will terminate, except for those provisions that are clearly intended to continue to apply after the contract term, such as confidentiality agreements or provisions regarding rights of use.

b. The rental agreement can be terminated for important reason in writing by either party without observing a notice period. If the law allows partial termination in such cases, the entire contract can only be terminated if the important reason requires a termination of the entire agreement. An important reason that entitles itemis AG to terminate the contract in its entirety includes (i) the customer's violation of the rights of use granted by itemis AG by using the Software beyond the extent contractually permitted and failing to remedy this violation within a reasonable period of time after being warned by itemis AG, and (ii) if the customer is more than two (2) months defaulted with the payment of the rental fee.

c. In the event of extraordinary termination or the expiration of the respective rental period, the customer must cease to use the Software and Documentation and remove all copies of the Software installed on their computers based on the contract. If applicable, the customer must promptly return to itemis AG any backup copies made or destroy them. After completing the deletions, the customer will confirm this to itemis AG in writing.

8. Fees

a. The amount of the rental fee payable for the contracted Software is stated in the agreement. Unless expressly stated otherwise, all amounts mentioned in the offer are understood to be net amounts, i.e. excluding applicable value-added tax. itemis AG will separately indicate the applicable tax rate and the amount of value added tax on the invoice.

b. Available payment methods include direct bank transfer, PayPal, or credit card. itemis AG reserves the right to exclude certain payment methods.

9. Material defects and legal defects in title

a. During the rental period, itemis AG guarantees the agreed-upon quality of the Software. The Software provided by itemis AG and any new program versions provided during the rental period meet the agreed-upon quality, are suitable for the contractually assumed or customary ordinary use and have the typical quality for software of this kind; however, they are not free of errors. If no individual agreement on the quality has been made in a specific case, the quality described in the respective performance description is deemed to be agreed upon. Impairments in the functioning of the Software resulting from hardware defects, environmental conditions,

operator errors or similar factors do not constitute a defect. Insignificant deviations from the agreed-upon quality are disregarded.

b. The warranty does not cover defects caused by deviations from the intended conditions for the Software as specified in the performance description. Similarly itemis AG is not responsible for defects caused by the customer's failure to fulfill their obligations as stated in clause 5 of these GTC or by any modifications made to the Software by the customer or authorized third parties, unless the customer can demonstrate, in connection with reporting the defect, that these modifications are not causally related to the malfunction or were properly carried out based on instructions from itemis AG by the customer or third party authorized by the customer.

c. In the case of material defects, itemis AG has the option to initially remedy the situation. The remedy can be achieved by itemis AG's choice of either eliminating the defect, delivering a program that does not exhibit the defect or by providing the customer with options to avoid the effects of the defect. The customer is required to accept an equivalent new version without the defect or to accept a former version without defect, except in cases where it would be unreasonable for the customer to do so. If itemis AG within a reasonable period of time fails to rectify the defect or to bypass the defect so that the customer is enabled to use the Software in accordance with the contract, the customer may either reduce the rental fee or terminate the rental agreement with immediate effect.

d. itemis AG may choose to carry out the rectifications either on-site or at its business premises. itemis AG is also entitled to perform the rectification remotely by accessing the customer's systems.

e. itemis AG ensures that the customer's use of the Software in accordance with the contract does not infringe any third party rights. In the event of any defects in title, itemis AG guarantees that it will, at its discretion, either provide the customer with a legally compliant means of using the Software or equivalent software or refund the customer the remuneration paid for the provision (minus appropriate compensation for use).

f. The customer shall promptly notify itemis AG in writing if any third party asserts intellectual property rights (e.g. copyright or patent rights) against them. The customer authorizes itemis AG to handle the dispute with the third party on its own. If itemis AG chooses to exercise this authorization, which it is not obligated to do, the customer may not independently acknowledge the claims of the third party without itemis AG's consent. itemis AG will defend against the claims of the third party at its own expense.

g. Claims by the customer due to defects are subject to a limitation period of twelve (12) months, unless (i) itemis AG has fraudulently concealed the defect or caused it intentionally or through gross negligence, or (ii) itemis AG has assumed a guarantee for the lack of the agreed-upon quality, or (iii) the claims of the customer arise from the personal injury or from defects in title. The limitation period begins after notification and activation of the license key.

10. Liability

a. itemis AG shall only be liable for damages or reimbursement of futile expenses, regardless of the legal basis (e.g. contractual and quasi contractual obligations, breach of duty, and tort) to the following extent:

   i. itemis AG shall be liable without limitation in cases of intent or gross negligence, for the violation of life, body or health, according to the provisions of the Product Liability Act, as well as to the extent of a guarantee assumed by itemis AG.

   ii. In cases of slight negligence, itemis AG shall only be liable if it has breached an essential contractual obligation, the fulfillment of which enables at all the proper execution of the contract or the violation of which jeopardizes the achievement of the contract's purpose, and on whose compliance the customer regularly relies. In such cases, the liability of itemis AG is limited to the damages that are foreseeable and typical for the nature of the respective transaction. itemis AG expressly excludes any strict liability of the lessor according to section 536a BGB (German Civil Code) for defect in the contractual Software that already existed at the time of the conclusion of the contract.

   iii. In cases referred to in section 10.a.ii., the liability of itemis AG is limited to a maximum of EUR 200,000.00 per damage event. Furthermore, the liability of itemis AG for all damage events of a customer is limited in total to the amount of the Software rental fee paid by the respective customer in the previous contract year.

   iv. There is no further liability on the part of itemis AG.

b. itemis AG shall not be liable for the loss of data and/or programs to the extent that the damage is attributable to the customer's failure to perform data backups and thereby ensure that lost data can be restored with reasonable effort.

c. The aforementioned limitation of liability also applies to the personal liability of employees, representatives, bodies and agents of itemis AG.

d. itemis AG reserves the right to assert the contributory negligence of the customer.

11. Non-disclosure

a. “Confidential information” refers to all information and documents of the respective other party that are marked as confidential or reasonably considered to be confidential based on the circumstances. This includes trade secrets, information about operational processes, business relationships, know-how as well as for itemis AG the Software and Documentation.

b. The parties are obligated to maintain confidentiality regarding such Confidential Information. This obligation remains in effect for a period of three (3) years after the termination of the contract.

c. The following Confidential Information is excluded from this obligation:

   i. Information that was already known to the recipient at the time of contract conclusion or subsequently became known to them from a third party without violating any confidentiality agreements, legal obligations or regulatory orders.

   ii. Information that is publicly known at the time of contract conclusion or becomes publicly known thereafter, provided that such disclosure is not a result of a breach of this agreement.

   iii. Information which is required to be disclosed due to legal obligations or upon the order of a court or authority. To the extent permitted and possible, the recipient obligated to make the disclosure will notify the other party in advance and provide an opportunity to take action against the disclosure.

d. The parties will only grant access to Confidential Information to advisors who are bound by professional confidentiality or who have previously been obligated to confidentiality obligations consistent with the terms of this agreement. In particular, the parties will only disclose information to those employees who need to know it for the performance of this agreement and will also impose confidentiality obligations on these employees even after their departure to the extent permitted by labor law.

12. Data protection/data security

a. The contracting parties will process and use personal data of the respective other contracting party in compliance with the provisions of data protection laws and only for the contractually agreed purposes. They will secure these data against unauthorized access and only disclose them to third parties with the consent of the other contracting party or the individuals concerned.

b. If it is necessary for the performance of the contract that the customer grants itemis AG access to personal data, itemis AG will take appropriate and state-of-the-art organizational and technical measures to ensure the availability, integrity, authenticity and confidentiality of the data within the information systems, components and processes used for the service provision. The personnel involved will be informed about data protection obligations and will be obligated to comply with the provisions of data protection laws.

c. If itemis AG processes customer data on behalf of the customer, the parties will conclude a separate data processing agreement in accordance with Article 28 of the GDPR, with the customer as the data controller and itemis AG as the data processor.

d. For the proper fulfillment of the contract, itemis AG needs to collect and store certain customer data. The respective information can be found in the document "Privacy Policy for Product Licenses" (available at info.itemis.com/hubfs/datenschutz/itemis_Product_Licenses_DE.pdf).

13. Security vulnerabilities

a. The customer will notify itemis AG without undue delay of any suspected or identified security vulnerabilities in the Software. Irrespective of the reporting channels under clause 5, such notifications shall be sent directly to the central Security Team of itemis AG at security@itemis.com. The notification should include the affected Software and version, a description of the security vulnerability and the information required to reproduce it.

b. The customer will treat information about reported security vulnerabilities that have not yet been remedied as confidential and will not publish it or disclose it to third parties without the prior consent of itemis AG in text form until itemis AG has remedied the security vulnerability or provided suitable workarounds.

c. itemis AG will examine reported security vulnerabilities and, where necessary, remedy them within the scope of the support and maintenance services under clause 5 or show ways to avoid their effects. The rights of the customer under clause 9 remain unaffected.

14. Audit

a. The use of a license server provided by itemis AG at the customer’s site and access to the license server’s log files enable itemis AG to verify whether the customer is using the Software within the quality and quantity of the licenses received.

b. If a license server is not used, the customer shall, upon request by itemis AG, enable itemis AG to verify proper use of the Software, particularly to determine whether the customer is using the program within the quality and quantity limits of the licenses acquired. For this purpose, the customer shall provide information to itemis AG, grant access to the relevant documents and records, and allow an examination of the hardware and software environment by itemis AG or an acceptable auditing firm appointed by itemis AG. The examination may be conducted by itemis AG or confidentiality-bound third parties at the customer's premises during regular business hours. itemis AG will take care to minimize disruption to the customer's business operations during the on-site activity. If the verification reveals a license excess of more than five percent (5%) or any other non-compliant use, the customer shall bear the costs of the verification. Otherwise, itemis AG shall bear the costs.

c. If an excess usage is identified, it shall be subject to retrospective payment according to the valid price list of itemis AG at that time.

15. Final Clauses

a. The customer may only transfer claims arising from this contract to third parties with the written consent of itemis AG.

b. The customer may only set off or withhold payments due to defects to the extent that they have valid payment claims due to material defects or defects of title of the performance. For other defect claims, the customer may only withhold payments in a proportionate amount considering the defect. The customer has no right of retention if their defect claim has become time-barred. Furthermore, the customer may only set off or exercise a right of retention with undisputed, legally established, or ready-for-decision claims.

c. Amendments and additions to these GTC require written form. This also applies to the modification or cancellation of this clause. The written form is only preserved by the transmission of the signed original.

d. This contract is subject to German law, excluding the United Nations Convention on Contracts for the International Sale of Goods dated April 11, 1980 (UN Sales Convention).

e. The place of performance is the registered office of itemis AG. The exclusive place of jurisdiction is also the registered office of itemis AG.

f. If individual provisions of these GTC are invalid, this shall not affect the validity of the remaining provisions. The contracting parties shall replace the invalid provision with a valid provision that best serves the legal and economic purpose of the agreement.

g. Unless otherwise specifically regulated elsewhere, itemis AG is entitled to amend or supplement these GTC as follows. Such changes may be made to reflect changes in services or business operations, for legal, regulatory, or security reasons, or to prevent abuse or harm. itemis AG will notify the customer of the changes or additions in text form at least six (6) weeks before they come into effect. If the customer does not agree with the changes or additions to the GTC, they may object to the changes within one week prior to the intended effective date of the changes or additions. The objection must be in text form. If the customer does not object, the changes or additions to the GTC will be deemed approved by the customer. In the notification of the changes or additions to the GTC itemis AG will particularly draw the customer's attention to the significance of their behavior.