Terms & Conditions

25 August 2025

1. Scope

Only these General Terms & Conditions of Business ("GTC" below) shall apply to the legal relationship between Cyfex AG ("CYFEX" below) and the customer ("Customer" below), unless any written agreements have been made.

The Customer's General Terms & Conditions of Business that diverge from the GTC shall only apply in the relationship with CYFEX insofar as they have been expressly accepted by CYFEX in writing.

2. Contract Offers / Conclusion of Contract

Conclusion of a Contract is offered to the Customer by CYFEX in writing. The offer is subject to confirmation and is non-binding. The Contract becomes effective either upon advance payment of the invoice amount or, in all other cases, upon receipt by CYFEX of the Contract documents signed by the Customer.

3. Object of the Contract

Against payment of the agreed fee, the Customer is granted the personal, non-exclusive and non-transferable right to use the standard application program as offered in the offer ("Software" below), together with the associated documentation provided in written or machine-readable format, on an IT system that is suitable for this purpose and installed at the Customer's premises ("Customer System" below), as specified in the provisions defined in section 4 of these GTC. Depending on the license type, use of the Software may be restricted in terms of time or the number of possible applications. The right to terminate the Contract in accordance with section 12 remains reserved. The license granted by CYFEX is a "single-user license", which only runs on the Customer's computer at which the dongle (hardware offering protection against unauthorized use of the Software) provided by CYFEX is attached.

Only the warranty provisions of the relevant manufacturer apply to any hardware supplied by CYFEX.

The following shall be provided by CYFEX on the basis of a special agreement or under a separate service and support contract: services in relation to the development and adaptation of the Software to the particular requirements of the Customer; advisory support in selecting, installing, initial operation and use of the Software; introductory guidance and training of the Customer's staff; delivering additional copies of printed documentation; as well as any other services.

4. Scope of the License

The license granted to the Customer in accordance with the preceding section 3 comprises exclusively the following:

- the full or partial loading, storage, transfer, conversion, running and reproduction of the Software in machine-readable form on the Customer System for the purpose of executing the program instructions to process the Customer's data
- the temporary production of copies required for this purpose
- use of the documentation in the context of using the Software as specified

Except for the permitted number of backup copies, any copies of the Software or program modules made during execution shall be deleted. The Customer is additionally entitled to use the Software temporarily on a backup system if the Customer System fails.

No rights of ownership or other rights to the Software extending beyond the simple license granted in this clause are transferred to the Customer, neither rights to the source code nor the right to edit the Software. Dongles including the entire documentation provided to the Customer by CYFEX shall likewise remain the property of CYFEX. Dongles may not be transferred to third parties or copied.

CYFEX reserves the right to license updates or new releases on different conditions. By using any update or new release, the Customer relinquishes their right to use a previous version of the Software.

A previous version may only exceptionally continue to be used during a reasonable transitional period to support the switch to the update or new release. This concurrent usage may not, however, result in an increase in the number of copies, the licensed quantity, or an extension of the license scope.

5.   Provision of Services

The Customer shall perform all the necessary preparatory work and collaborative actions to enable CYFEX to fulfil its contractual obligations properly. The Customer must inform CYFEX, fully and in good time, about the existing operational and organisational structure, business processes, technical requirements as well as regulations applicable at the place of delivery, insofar as they could be significant for the provision of services on the part of CYFEX. To the extent that CYFEX provides services at the Customer's premises, the Customer must make the required infrastructure (offices, computer system, phone/fax/Internet, parking spaces, etc.) available to CYFEX.

CYFEX may invoice additional expenses that are incurred because of breach of the Customer's obligations to perform preparatory work and collaborative actions and to provide information. Such expenses are charged based on time spent, in accordance with section 6. If these obligations are breached by the Customer, default on the part of CYFEX is precluded. CYFEX is furthermore entitled to re-specify dates for delivery and deadlines, taking the additional time spent into account.

CYFEX shall send the Software and the documentation as well as hardware and other products from CYFEX or third parties to the place of delivery designated by the Customer. The use and risk shall pass to the Customer at the time of dispatch. The Software together with the documentation may be downloaded from the CYFEX website instead of being sent by post. CYFEX shall provide the Customer with the access required to do so.

Dates of delivery and deadlines given by CYFEX are generally guidelines and are non-binding contractually, unless a particular deadline had been expressly arranged in writing. Dates of delivery and deadlines are based on the foreseeable circumstances known at the time of concluding the Contract.

CYFEX is entitled to provide partial services in any case and at its own discretion.

6.   Fee / Invoicing

The license fees, prices for the supply of hardware as well as the fee for any services provided by CYFEX are set out in the offer or in any service and support contract that is concluded separately. CYFEX charges for any services based on time spent (hours). CYFEX's hourly rates in force at the time shall apply.

VAT payable on the fee or the prices and license fees as well as other taxes, charges, customs duties, expenses, costs for travel and transport, packaging, insurance, installation, and initial operation shall be itemized separately on the invoice and shall be borne by the Customer.

Unless otherwise agreed, amounts invoiced by CYFEX are due for payment within 30 days from the date of invoice. Invoices that the Customer does not object to in writing within the payment period are deemed to be acknowledged. The Customer may not offset their claims in respect of CYFEX against claims asserted by CYFEX. Rights of retention shall not be asserted.

CYFEX is entitled to charge default interest of 6% p.a. on all outstanding payments after expiration of the payment period without issuing any reminder. The Customer must furthermore compensate for any more extensive loss or damage, insofar as they were responsible for the default.

7.   Property Rights on the Software / Confidentiality

The Customer recognizes CYFEX's property rights, in particular its copyright on Software and documentation, and shall refrain from any attack on the existence and scope of such rights during the period of their license.

In line with instructions from CYFEX, the Customer shall take every measure to safeguard CYFEX's rights and shall support CYFEX to a reasonable extent in defending the property rights (cf. section 10.1). In particular, the Customer shall not remove or alter CYFEX's copyright notices on Software and documentation and shall apply such notices to all full or partial copies of Software and documentation that arise while using the Software as specified.

The Customer shall take all the necessary organisational and technical measures to safeguard the Software and documentation from undesired disclosure or access, theft, or misuse by unauthorized persons.

The Software and documentation contain information, ideas, concepts, and procedures, particularly concerning the processing of data, that constitute the business and operating secrets of CYFEX. Accordingly, the Customer is obliged to treat the Software and documentation with the same due care and confidentiality as their own business and operating secrets, to use them only as specified in these GTC and not to make them accessible or disclose them to third parties in any manner or form, either in whole or in part. If the customer is a CYFEX retailer, they must ensure that the interests of CYFEX mentioned herein are protected.

By means of the appropriate instructions, agreements and other suitable measures, the Customer shall ensure that all persons who have access to the Software comply with this obligation. The obligation to maintain secrecy shall apply beyond the ending of the Contract if CYFEX has a justified interest therein.

8.   Lost Dongles and Licenses

If dongles are used as Software copy protection, the Software license is sent via the Internet and the Customer transfers the license received to the dongle previously sent to them by post using their computer. After this process the entire value of the ordered goods is located on the dongle. The Customer must keep dongles safely as they would money in cash. Lost dongles are not replaced by CYFEX.

A dongle that has been used by the Customer to request a new license holds already the entire value of the ordered goods even if the Customer has not yet transferred the license sent to them via Internet onto the dongle. If such a dongle is lost, CYFEX cannot provide compensation.

9.   Contractual penalty

In the event of culpable infringement of the provisions relating to Scope of the License (section 4) as well as Property Rights on the Software / Confidentiality (section 7), the Customer shall owe CYFEX a contractual penalty of EUR 30,000 for each instance of infringement. The right to claim further damages remains reserved.

Payment of this contractual penalty does not release the Customer from their contractual obligations. CYFEX is entitled at any time to demand remedy of the unlawful status or the breach of Contract, or to rescind the Contract in accordance with section 12.

10. Warranty and Liability

10.1.   Warranty of Title

CYFEX expressly declares that it has rights of disposal over the Software and the associated documentation and that it is entitled to grant the Customer the license mentioned in section 4.

The Customer shall inform CYFEX without delay if third parties assert any claims to the Customer, directed against CYFEX, under any legal title. The Customer may not acknowledge any such claims by itself.

CYFEX shall defend the Customer against any third-party claim raised in relation to use of the Software as specified, on account of infringement of property rights, provided the Customer

   (i)   notifies CYFEX within 30 days in writing,

   (ii)   surrenders to CYFEX the exclusive conduct of any lawsuit and all negotiations for judicial or out-of-court settlement of the legal dispute, and

   (iii)   supports CYFEX to an appropriate and reasonable extent.

If these conditions are met, CYFEX shall conduct the lawsuit at its own expense.

If CYFEX takes the view that the valid unaltered version of the Software could infringe the property rights of third parties, CYFEX will, on its own choice, either make changes at its own expense to remedy the infringement of property rights, or commence negotiations to acquire the relevant rights from the third party that has better entitlement to such rights. If such measures are unsuccessful after applying appropriate and reasonable effort and/or the infringement of property rights is established by means of a legally effective judgment, CYFEX shall compensate the Customer for the loss of the right of use as described in section 12 and accept any costs and compensation payments imposed on the Customer by a court of law.

10.2.   Warranty of Quality

CYFEX confirms that the Software corresponds to the most recent valid standard version, tested in practice prior to release and that it has been checked for the presence of so-called "computer viruses" using the procedures applied by CYFEX, before being delivered to the Customer. The Customer acknowledges that, in the current state of the technology, it is not possible to create the Software such that it works faultlessly and without interruptions in all applications and combinations as well as in use with all data processing units, nor that it can be used under all operating conditions. The Customer is responsible for purchasing and maintaining a suitable IT system, selecting, installing, and using the Software and for the results produced through its use. CYFEX does not provide any warranty in this respect.

The Customer must test the Software without delay unless a particular acceptance procedure has been agreed. Proper functioning exists if the licensed modules of the Software comply essentially with the functional and performance characteristics laid down in the documentation and are executable. Descriptions in documentation provided by CYFEX are nevertheless not assurances of properties or other types of guarantees.

The Customer must lodge and document warranty claims after delivery or download of the Software in writing to CYFEX. CYFEX will remedy any Software defects covered by the warranty in the valid, unmodified version of the Software free of charge. CYFEX's services include, at its discretion, the provision of a correction code or a corrected version of the Software, or the development of an alternative solution to circumvent or suppress the error (workaround). If the Customer suspects the presence of "computer viruses", CYFEX shall support the Customer in dealing with the matter and will supply them with a virus-free copy of the Software free of charge. The Customer shall support CYFEX in fixing faults to an appropriate and reasonable extent.

If CYFEX fails in fixing Software faults that are reported and adequately documented and if, as a result, the fitness of the Software for use as specified is invalidated or substantially reduced, the Customer may withdraw from the Contract at the end of a period of grace of at least 30 days stipulated in writing, see section 12.

The cumulative requirements for any warranty claim are that a defect occurs in a version of the Software supplied by CYFEX, that the Customer reports the defect within 5 working days after it being detected, with adequate documentation, and that the defect can be replicated.

Any warranty ceases to apply if the Software was altered or edited by the Customer without the prior written consent of CYFEX or if the Customer has used the Software in a way inconsistent with the contractual agreements.

10.3.   Further Claims

The Customer's detailed rights regarding CYFEX's services can be found in the "Scope of Service and Support" document, which is valid at the time the Contract is concluded.

Claims by the Customer other than those expressly specified in these GTC, on whatever legal grounds, in particular all claims for compensation or reduction that are not expressly specified, are precluded to the extent that this is legally permissible. Under no circumstances does the Customer have any claim to compensation for losses that did not arise in the Software itself, such as lost production, data loss, loss of orders, lost profits or quality defects in the end-products manufactured by the Customer.

Similarly, the Customer shall not be entitled to compensation for damages resulting from delays, inadequate advice, or the breach of any ancillary obligations.

CYFEX does not assume any warranty or liability whatsoever for hardware supplied by CYFEX. The guarantee terms of the respective manufacturer shall apply exclusively.

11.   Data Protection

The Customer is aware that the conclusion and performance of the Contract may result in the processing of personal data about them, their employees, sub-contractors etc. by CYFEX. They agree that CYFEX may use such data for the purpose of processing and maintaining the business relationship and may also disclose it to third parties in Switzerland or abroad for this purpose. In such cases CYFEX shall take appropriate organisational, technical, and contractual precautions to ensure Data Protection.

12.   Duration and Ending of the Contract / Obligations to return Items

As described in section 3, depending on the license type, use of the Software may be restricted in terms of time and the number of possible applications.

CYFEX may terminate the Contract with the Customer at any time in writing, with two months' notice to month-end, and withdraw the rights granted therein from the Customer. In addition, CYFEX has the right to terminate the Contract without notice in the event of a serious breach by

the Customer, in particular if the Customer is more than 60 days in arrears with payment of fees despite receiving a written reminder, or continually contravenes the provisions relating to the Scope of the License (section 4) and the protection of the Software and trade secrets (section 7), despite receiving a written warning setting a deadline of at least 30 days to restore the contractual status quo. Furthermore, CYFEX has the right to termination without notice if

(i)   CYFEX cannot remedy an infringement of property rights in any other way, after exhausting all other options (section 10.1);

(ii)   if the Customer becomes insolvent and/or bankruptcy, composition or similar proceedings are opened on their assets;

(iii)   if economic or legal control over the Customer passes to a competitor of CYFEX.

Termination without notice for other major causes remains reserved. If CYFEX terminates the Contract for a reason beyond the Customer's control, the Customer is entitled to a refund of the license fees that they had paid. This entitlement to a refund shall be reduced by 20% for each full year of the contractual term (i.e. after 5 years from the start of the Contract, the license fees will no longer be refunded). The refund claim for license fees that allow time-limited or application-limited use is granted on a pro rata basis.

On ending of the Contract, the Customer's right to use the Software and documentation as defined in section 4 shall lapse. Accordingly, the Customer is obliged to return the Software and all copies or parts thereof as well as all altered components of the Software or those linked with other programs or data systems, together with the documentation, to CYFEX no later than 30 days after expiration of the license, without being requested to do so, or to confirm the destruction of the above items in writing. Copy protection devices (dongles) must be returned to Cyfex within the same period. If the Customer does not comply with this obligation, CYFEX is entitled to invoice the Customer annually recurring license fees of 80% of the license fees paid by it up to the ending of the Contract, until further notice. The right of retention as defined in Art. 895 ZGB [Swiss Civil Code] is excluded.

13. Final Provisions

Claims to which the Customer is entitled in respect of CYFEX may only be assigned to third parties with the express consent of CYFEX.

Amendments and additions to these GTC as well as all ancillary agreements must be in writing to be valid. Statements made in text form that are transferred or recorded using electronic media are deemed to be equivalent to the written form. Amendments to these GTC must be notified to the Customer in writing and shall become effective - in a departure from the above requirement for the written form - on receipt of the relevant notification, unless the Customer opposes them expressly and in writing within a time limit of 10 days. If the Customer raises an objection to the amendment of the GTC, CYFEX shall be entitled to terminate the Contract with two months' notice to month-end.

These GTC are subject to Swiss substantive law, to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG) of 11 April 1980.

The ordinary judge at the location of CYFEX's registered office shall have exclusive competence to decide on all disputes arising from or in connection with these GTC, subject to CYFEX's right to sue the Customer at their domicile or registered office.