Software Purchase

Terms and Conditions

Theobald Software GmbH

1. Scope of Application

1.1 These Terms and Conditions (Perpetual License) shall apply to all deliveries, services and offers of Theobald Software GmbH, Kernerstr 50, 70182 Stuttgart, Germany (hereinafter referred to as **"TS"**) in relation to the grant of perpetual software licenses.

1.2 These Terms and Conditions (Perpetual License) are an integral part of all contracts concluded by TS with its contractual partners (hereinafter referred to as **"Customer"**) in relation to the grant of perpetual software licenses. They shall also apply to all future contracts of such nature, even if they are not separately agreed again.

1.3 Terms and conditions of the Customer or third parties shall not apply, even if TS does not separately object to their application in individual cases. Even if TS refers to any correspondence that contains or refers to the terms and conditions of the Customer or a third party, this shall not constitute an acceptance of those terms and conditions.

1.4 The legal relationship between TS and the Customer in relation to the grant of perpetual software licenses shall be governed solely by (i) an order form executed between the Parties specifying the Software, the Purchase Price and other details (the **"Order Form"**), (ii) these Terms and Conditions (Perpetual License) and, where relevant, (iii) any other documents referred to in the Order Form (hereinafter collectively referred to as the **"Purchase Agreement"**). In general, the Purchase Agreements will be executed based on quotes provided by TS to the Customer and which become binding upon acceptance by the Customer.

1.5 All quotes of TS are subject to change and non-binding, unless they are expressly marked as binding or contain a specific acceptance period. TS may accept orders or commissions from the Customer within (14) days of receipt.

2. Subject of the Purchase Agreement

2.1 The subject of the Purchase Agreement is the grant of perpetual software licenses for the use the software products described in the Order Form together with user documentation (the **"Software"**).

2.2 The Software is provided to the Customer as an "on premise" solution. TS does not perform any hosting service, e.g. as part of a Software-as-a-Service model, to the Customer.

2.3 The Customer shall receive the Software in object code form only. The Customer shall not be entitled to the source code of the Software.

2.4 The Purchase Agreement shall apply, if applicable, in addition to all other software licensing, software maintenance and other service contracts between TS and the Customer.

3. Delivery of the Software

3.1 TS shall provide the Customer with a copy of the Software.

3.2 The Customer may receive the copy, at the Customer's request via TS' customer portal.

3.3 The Software must be carefully examined by the Customer immediately after receipt by the Customer.

4. Rights of Use

4.1 All rights to the provided Software, to work or training results, studies and adaptations as well as other rights to any materials made available to the Customer hereunder are and shall remain the exclusive property of TS.

4.2 TS grants the Customer a non-exclusive, perpetual, non-transferable and non-sublicensable right to use the Software in accordance with the terms of the Purchase Agreement.

4.3 The Software is licensed by way of a (i) Server License, (ii) a Cluster License, (iii) an Enterprise License, or (iv) a Runtime License, (each as defined below) as ordered by the Customer under the Order Form.

4.4 **Server License.** In the case of a Server License, the Customer acquires license authorization(s) equal to the number of server(s) specified in the Order Form. For each Server License, Customer is entitled to use the Software on one server, unless specifically agreed otherwise in the Order Form. The Purchase Price will be calculated and charged depending on the number of server(s) specified in the Order Form.

4.5 **Cluster License.** In the case of a Cluster License, the Customer acquires license authorization(s) equal to the number of SSIS Integration Runtimes specified in the Order Form. For each Cluster License, Customer is entitled to use the Software on one SSIS Integration Runtime, unless specifically agreed otherwise in the Order Form. The Purchase Price will be calculated and charged depending on the number of SSIS Integration Runtimes specified in the Order Form.

4.6 **Enterprise License.** In the case of an Enterprise License, the Customer acquires license authorization(s) for all developers (individuals) within one physical address (company site). For each Enterprise License, Customer is entitled to develop interfaces for the usage within its company (specific legal entity). The Purchase Price will be calculated and charged depending on the number of company sites specified in the Order Form.

4.7 **Runtime License.** In the case of a Runtime License, the Customer acquires license authorization(s) which entitle the Customer to develop an interface to its own solution(s) which enables the Customer to distribute the combined product to its end customers. The Purchase Price will be calculated and charged depending on the number of end customers specified in the Order Form.

4.8 As soon as Customer uses more copies of the Software than specified in the Order Form, Customer shall immediately notify TS Software and purchase the corresponding number of licenses. Any further rights and remedies of TS shall remain unaffected.

4.9 The right of use is limited to the number of copies of the Software agreed in the Order Form.

4.10 The Customer's right of use is limited to the use of the Software as described in the online documentation made available by TS (via the OnlineHelp). The permitted use includes the installation as well as loading, displaying and running of the installed Software.

4.11 The documentation made available by TS (via the OnlineHelp) also specifies the hardware and Software environment which the Software is released. If the Customer uses another hardware and/or software environment, TS shall not assume any warranty or liability for the continued functionality of the Software to that extent that any defects are attributable to the use of such other hardware and/or software environment.

4.12 The Customer may use the Software on any hardware available to him, provided that it complies with the above specifications and the number of license authorization(s) specified in the Order Form. Unless specifically agreed otherwise, each copy of the Software runs only on one server or desktop, as applicable, any may not be used on any other device.

4.13 The Customer is not entitled to transfer the copy of the Software provided to him or the backup copy, if any, to third parties. In particular, the Customer is not permitted to sell, lend, lease or otherwise sublicense the Software or to reproduce or make the Software publicly available.

4.14 If the Customer violates any of the above provisions, all rights of use granted within the scope of the Purchase Agreement shall become immediately invalid and automatically revert to TS. In this case, the Customer shall immediately and completely discontinue the use of the Software, delete all versions or copies of the Software installed on his systems and delete the backup copy, if any, or hand it over to TS.

4.15 The Customer may not use the Software to provide computer center services for third parties.

4.16 The Software may only be copied to the extent necessary for its intended use within the scope of the right of use granted to the Customer; backup copies must be marked with TS' copyright notice.

4.17 The Customer may not connect, extend or change the Software with other software than those for which the corresponding interfaces are provided without the consent of TS. Decompilation of the Software is permitted to the extent expressly authorized under the mandatory provisions of the German Copyright Act and only if TS does not provide the information and/or documents necessary to establish interoperability of the Software with other programs free of charge within a reasonable period following a written request by the Customer.

4.18 Any extension of the Customer's right of use beyond the scope determined above- in particular use by third parties- requires a separate written agreement with TS.

4.19 The Customer is obliged to take suitable measures to protect the Software from access by unauthorized third parties, in particular to keep all copies of the Software in a protected place.

4.20 Copyright notices, serial numbers and other features serving the identification of the program may not be removed or changed under any circumstances. The same applies to a suppression of the screen display of corresponding features.

5. Purchase Price, Invoicing and Payment

5.1 For the provision of the Software under the Purchase Agreement, the Customer shall pay to TS the remuneration agreed in the Order Form (the **"Purchase Price"**).

5.2 The Purchase Price must be paid in advance. The invoice will be issued upon execution of the Purchase Agreement.

5.3 All agreed prices are net price plus the statutory value added tax.

5.4 Invoices issued by TS are due for payment within thirty (30) days of receipt of the invoice without deduction.

5.5 If the Customer defaults on a payment in whole or in part, all claims that TS has against the Customer from the business relationship with the Customer shall become due.

5.6 A set-off of claims of the Customer against claims of TS is – with the exception of undisputed or legally awarded claims – not permitted.

6. Warranty

6.1 TS' warranty obligations shall be governed by Sec. 437 et. seqq. of the German Civil Code (BGB).

6.2 Any damage claims of the Customer due to defects of the Software shall be subject to Sec. 7 below.

7. Maintenance

7.1 Under the Purchase Agreement, the Customer is not entitled to any maintenance services.

7.2 The provision of maintenance services by TS to the Customer requires the execution of a corresponding maintenance agreement.

8. Limitation of Liability

8.1 In case of wilful misconduct and gross negligence, TS shall be liable according to the statutory provisions of applicable law.

8.2 In case of simple negligence, TS shall only be liable for breach of material contractual obligations (material contractual obligations are obligations the breach of which endangers the purpose of the agreement and the fulfilment of which the Customer may reasonably rely on); in this case TS's liability shall be limited to the typical damages that were reasonably foreseeable. Therefore, indirect and consequential damages resulting from defects of the delivered goods and/or work are only eligible for compensation if such damages are typical and reasonably foreseeable and when the goods and/or work are used in conformity with its intended purpose.

8.3 The limitations of liability under this Section do not apply to

    a) damages resulting from injury to life, body or health;

    b) liability pursuant to the German Product Liability Act (*Produkthaftungsgesetz*);

    c) to the extent TS has fraudulently concealed a defect; and/or

    d) to the extent TS has assumed a guarantee for the condition of delivered goods and/or work (*Beschaffenheitsgarantie*).

8.4 The limitations of liability under this Section shall – subject to the provisions of the preceding paragraph – apply to (i) any liability claims for whatever legal reason but in particular due to impossibility, default, defective or incorrect delivery, breach of contract, breach of obligations in contractual negotiations and tort, as far as such claims are subject to fault, and (ii) any breach of duty by vicarious agents or any other person for whose conduct TS can be held liable according to the statutory provisions of applicable law.

8.5 In case the standard of liability is limited according to statutory provisions of applicable law (such as any limitation to the duty of care observed in own affairs), the above provisions shall not be deemed to create a higher standard of liability.

8.6 The Customer is obliged to back up data at intervals appropriate to the application. In the event of a loss of data for which TS is responsible, TS is only liable for the expenditure normally required for recovery.

9. Specific Obligations of the Customer

9.1 The Software made available by TS to the Customer under the Purchase Agreement facilitates the integration of SAP systems with non-SAP systems of the Customer. The Customer acknowledges and agrees that solely the Customer shall be responsible for procuring the relevant licenses from SAP and any other third party provider at its own costs and for complying with the applicable license terms of such third party providers. The Customer undertakes to use the Software only in compliance with the license terms of such third party providers.

9.2 The Customer shall indemnify and defend TS and each of its past, present and future directors, officers, employees and agents, in each case, in their respective capacities as such, from and against any and all third party suit, claim, action or demand to the extent relating to, arising out of or resulting from, directly or indirectly, any violation of its obligations and/or undertakings under this provision.

10. Confidentiality

10.1 **"Confidential Information"** means any information, documents, items, materials, substances or electronic files disclosed by one Party to the other Party in written, electronic, oral or any other form, which is marked confidential by the disclosing Party or is by its nature to be treated as confidential.

10.2 The Parties undertake to treat the Confidential Information of the other Party as confidential and to use them exclusively for the purposes of the performance of the Purchase Agreement.

10.3 The disclosure of the Confidential Information of the disclosing Party by the respective recipient to third parties is only permitted to the extent that this is necessary for the performance of the Purchase Agreement provided that the third party has committed itself to confidentiality vis-à-vis the Party making the Confidential Information available to the third party or is bound to confidentiality for professional reasons. Legal disclosure obligations remain unaffected. The respective Party making the Confidential Information available to the third party shall be responsible for ensuring that the obligations of the Purchase Agreement are also observed by such third parties. The Party making the Confidential Information available to the third party shall be liable for breaches of the confidentiality obligations under the Purchase Agreement by such third parties as if they were its own breach.

10.4 Each Party undertakes to protect the Confidential Information of the respective other Party by taking appropriate security measures.

10.5 The foregoing obligations shall not apply to information of which the receiving Party can prove that it (i) was or is available to the public in a lawful manner and in a manner not in breach of the provisions of the Purchase Agreement, (ii) was previously known to the receiving Party and was available to it without restriction, (iii) was disclosed to the receiving Party by a third party authorized to do so, or (iv) was developed by the receiving Party independently and without use of the Confidential Information disclosed by the disclosing Party.

10.6 The respective receiving Party undertakes to completely and permanently destroy all documents and records containing Confidential Information of the respective other Party or, in the case of electronic data, to permanently delete such data immediately after termination of the Purchase Agreement. This shall not affect any statutory storage and archiving obligations.

10.7 After execution of the Purchase Agreement, all rights and obligations of each Party with respect to the Confidential Information of the respective other Party shall continue to apply for a period of ten (10) years.

11. Data Protection

10.1 The parties shall observe the relevant data protection regulations, in particular the GDPR and the Federal Data Protection Act.

10.2 The parties oblige their employees to observe data secrecy in accordance with the GDPR and the German Federal Data Protection Act.

10.3 Insofar as TS processes personal data on behalf of the Customer, this shall be done on the basis of a data processing agreement to be concluded separately

12. Final Provisions

10.4 Each Party shall bear its own costs incurred in connection with the execution and performance of the Purchase Agreement, unless expressly agreed otherwise in the Purchase Agreement.

10.5 The Purchase Agreement fully reflects the agreement between the Parties regarding the subject matter; no oral or other side agreements exist. Unless expressly agreed otherwise in the Purchase Agreement, all previous agreements between the Parties regarding the subject matter shall be fully replaced by the Purchase Agreement with effect from the effective date of the Purchase Agreement.

10.6 Amendments or additions to the Purchase Agreement shall require written form to be effective, unless a stricter form is required under mandatory law. The same applies to the waiver of this written form requirement. Unless expressly agreed otherwise in the Purchase Agreement, e-mails do not comply with this written form requirement. The written form requirement under the Purchase Agreement shall be deemed to have been met when the copy of a declaration is being transmitted by telecommunications (e.g. as an attachment to an e-mail) and that copy contains the signature of the person making that declaration, unless a stricter form is required under mandatory law.

10.7 Neither Party is entitled to transfer the Purchase Agreement to a third Party without the prior written consent of the other Party.

10.8 The Purchase Agreement shall be governed by the laws of the Federal Republic of Germany, excluding the conflict of laws rules of private international law. The applicability of the UN Convention on Contracts for the International Sale of Goods (CISG) is excluded.

10.9 Exclusive place of jurisdiction for all disputes arising out of or in connection with the Purchase Agreement shall be the registered seat of TS, unless otherwise required by mandatory law.

10.10 The Customer agrees to be named as a reference customer by Theobald Software.

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