

Terms and Conditions Wibu-Systems LTD

1. General

1.1 These Terms and Conditions govern all the deliveries and services of Wibu-Systems LTD (hereinafter referred to as Wibu-Systems) to businesses. Businesses include natural persons or legal entities or partnerships with a legal capacity, who, by concluding a legal transaction, are acting in the exercise of their trade, business, or profession as well as legal persons under public law and special funds under public law.

1.2 Deviating or supplementary agreements – especially resulting in conflicting business terms and conditions – shall require the express written consent of Wibu-Systems to be effective.

1.3 All orders and contracts of the Client (quotations), together with warranties of the quality and features of the products, shall require the written confirmation of Wibu-Systems. Contracts also come into existence through Wibu-Systems beginning the delivery of goods or services pursuant to an order. Wibu-Systems is entitled to request a written confirmation of an oral contract declaration made by the Client.

1.4 The Client shall be bound to conclude a contract within a period of three weeks from the date of their written intent.

2. Payment

Unless otherwise individually agreed, prices shall be ex-warehouse, Taunton, United Kingdom, plus value-added tax. Insofar as nothing else has been agreed upon, payments shall be made within 30 days of the invoice date, net, with no deductions applicable. In the event of payment default, Wibu-Systems may charge 9% interest above the then applicable base interest rate.

3. Delivery dates

3.1 Delivery dates and periods shall be binding if they have been individually designated in writing as binding by Wibu-Systems. Otherwise all delivery dates and periods shall not be binding.

3.2 If non-compliance with a delivery period is attributable to difficulties which Wibu-Systems is not responsible for, the delivery period shall be extended accordingly. In the event of default on delivery, the Client shall have the right to withdraw from the delivery contract after expiry of a reasonable grace period set for Wibu-Systems. The liability limitations in accordance with Section 9 shall apply to any other compensation claims which the Client may have as a result of delayed deliveries or services. Wibu-Systems may execute partial deliveries or services if the Client has no particular interest in a single delivery and the Client does not incur any additional transportation costs as a result of partial deliveries. The payment periods in Section 2 shall apply accordingly.

4. Transfer of risk

The risk shall pass to the Client upon the dispatch of goods by Wibu-Systems.

5. Reservation of title

5.1 Wibu-Systems shall retain title to the goods pending full and complete settlement of the contractual claims or, in the case of a current business relationship, of all claims from the current relationship. If the Client fulfills their payment obligations to Wibu-Systems and is abiding by the software license terms (Sections 10 and 11), it may resell and/or process goods under reservation of title in the ordinary course of business.

5.2 Any processing by the Client of products supplied by Wibu-Systems shall be made on behalf of Wibu-Systems. Retention of title shall also apply to the full value of goods which are the result of processing, mixing or combining Wibu-Systems goods, whereby Wibu-Systems shall be deemed the manufacturer.

5.3 In the event that the retention of title of third parties still persists when Wibu-Systems goods are processed, mixed or combined with the goods of these third parties, Wibu-Systems shall acquire co-ownership of such processed, mixed or combined goods in proportion to their value. In all other respects, the newly created goods are subject to the same terms as goods supplied under retention of title. Claims which arise against third parties from the resale of goods or products shall herewith be assigned to Wibu-Systems by the Client as a security either in their entirety or to the amount of Wibu-Systems' proportional ownership. Wibu-Systems and the Client are both authorized to collect any claims, subject to revocation by Wibu-Systems. Wibu-Systems agrees not to collect these claims as long as the Client complies with their payment obligations towards Wibu-Systems, is not in default of payment, no application to open insolvency proceedings has been filed, and the Client's financial position is deemed stable. However, if any of these cases exist, Wibu-Systems may demand that the Client discloses all assigned claims and associated debtors to Wibu-Systems, that it provides all the necessary information required for collection, that it hands over related documents, and it notifies their debtors of the assignment.

5.4 Pledges or transfers by way of security shall not be permitted. In the event of access by third parties to the goods subject to the retention of title, the Client shall draw attention to the ownership of Wibu-Systems and shall inform Wibu-Systems in writing without undue delay. In the event of conduct in breach of contract by the Client, in particular in the event of nonpayment of the due purchase price or the due lease rent, Wibu-Systems may withdraw from the contract in accordance with the statutory provisions and demand the surrender of the goods. The demand for the surrender of goods does not simultaneously imply withdrawal from the contract; ☐ rather Wibu-Systems may demand the surrender of the goods only, while reserving the right to withdraw from the contract. In the event that the Client does not pay the due purchase price, Wibu-Systems may only assert these rights if Wibu-Systems has previously set the Client a reasonable period for payment to no avail or if setting such a time limit is unnecessary according to the statutory provisions. If the realizable value of the securities exceeds Wibu-Systems' claims by more than 10%, Wibu-Systems shall, at the Client's written request, release securities.

6. Obligation to examine and report defects

The Client shall examine the delivery immediately or latest within 14 working days. Any defects which are ascertained (at any time) shall be reported by the Client to Wibu-Systems by registered mail. This also applies to lease agreements. Defect complaints must include an as detailed description of the alleged defect as possible. In the event of a breach of the duty to examine and report defects, the delivery shall be considered approved as far as the defects are concerned.

7. Warranty

7.1 Wibu-Systems guarantees that its products are free of defects at the time of the transfer of risk. Wibu-Systems guarantees in particular that the software conforms to the specifications set out by Wibu-Systems in the relevant program documentation. Freedom from defects means practical suitability. Defect claims do not exist if there are only insignificant deviations from the agreed or assumed quality and features, or if there is only an insignificant impairment of usability. Product descriptions shall not be considered a warranty of the quality and features of the products. In the event of software leased within the scope of software subscriptions, Wibu-Systems grants the use of the software during the lease period.

7.2 The Client has sufficient opportunity for testing the software in operation before conclusion of the contract.

7.3 If the supplied hardware is defective, Wibu-Systems may, at its discretion, repair the defect or offer replacement hardware, also repeatedly, depending on the type of defect. Defects to the software (or firmware) may, at the discretion of Wibu-Systems, be rectified by supplying improved software, or by indicating how to fix the defect or suggesting a workaround. Several attempts at rectification are allowed depending on the type of defect. The Client shall install new versions of the software on their own.

7.4 The Client shall grant Wibu-Systems a reasonable period of time to remedy the defect. A period of less than two weeks is only appropriate in cases of particular urgency.

7.5 The Client shall assist the rectification of the defect e.g. by providing a written description of the defect, assisting the identification of the defect's cause, or providing testing materials and access to the Client's devices. Wibu-Systems has the right to refuse rectification of the defect if such assistance is not provided or insufficient.

7.6 If the defect cannot eventually be remedied, or if, in an individual case, the Client cannot be reasonably expected to accept the repair, the Client may, at their discretion, withdraw from the contract (withdrawal), or demand a reduction in the purchase price (price reduction), and demand compensation instead of performance – within the limits of Section 9.

7.7 The warranties shall lapse if a defect is the result of the Client or a third party modifying or incorrectly using or repairing the products without the consent of Wibu-Systems, or if the Client or a third party has not installed, operated or maintained the products in accordance with the guidelines of Wibu-Systems, unless the Client provides proof that these conditions did not cause the defect.

7.8 The limitation period shall be in the case of material defects, three years; in the case of claims based on defects of title, two years if the defect of title does not lie in a right of a third party on the basis of which the third party can demand the return of the products or the cessation of their use; in the case of claims for damages or reimbursement of futile expenses not based on material defects or defects of title, two years; the period shall commence at the time at which the Client became aware of the circumstances giving rise to the claim or should have become aware thereof without gross negligence.

7.9 The limitation period shall commence at the latest upon expiry of the maximum periods stipulated by law. In the event of intent, gross negligence, injury to life, body or health, within the scope of legally prescribed strict liability (e.g. under the Product Liability Act), within the scope of a guarantee assumed by Wibu-Systems and in the event of fraudulently concealed defects, Section 7.8 shall not apply.

8. Intellectual property rights and copyrights of third parties, Wibu-Systems reference list

8.1 Wibu-Systems guarantees that the supplied product is free from intellectual property rights and copyrights of a third party that preclude the contractual granting of rights to the Client. In the event of claims being made against a contract partner as a result of the infringement of such rights, the one contract partner will inform the other partner in writing and without undue delay.

8.2 If the product nevertheless infringes an intellectual property right or a copyright of a third party, Wibu-Systems shall have the right, at its discretion and at its expense, to modify or replace the supplied product so that it no longer infringes any third party rights but still continues to function as contractually agreed, or obtain user rights for the Client by concluding a license agreement. If Wibu-Systems fails to do so within a reasonable period of time, the Client may withdraw from the contract or demand a reduction in the purchase price and demand compensation - within the limits of Section 9.

8.3 In the event of a breach of rights by products from other manufacturers supplied by Wibu-Systems, Wibu-Systems shall, at its discretion, make claims against the manufacturer and upstream suppliers for the account of the Client or assign the claims to the Client. In these cases, claims against Wibu-Systems in accordance with Section 8 only exist if legal enforcement of claims against the manufacturer and upstream suppliers was unsuccessful or is futile, for example, due to insolvency.

8.4 The Client shall consent to Wibu-Systems including it in its reference list or other communications material and publicizing in other ways its business relationship with the Client. This includes using the Client's distinctive trademarks, in particular their word mark, pictorial mark, combined word-picture for this purpose. The Client will comply with Wibu-Systems' request to supply printable digital templates of their distinctive marks. The Client may revoke their consent at any time in writing.

9. Liability

9.1 Subject to applicable statutory regulations, Wibu-Systems shall be liable without limitation for losses arising through willful intent, or in case of liability in accordance with the English Product Liability Act (CPA), or in case of fraudulent concealment of a defect, or in cases where Wibu-Systems has accepted a warranty for the quality and features of the item, or in case of losses arising from injuries caused to life, body or health. In the event of gross negligence, liability shall be limited to the typical damage foreseeable at the time of conclusion of the contract.

9.2 In all other respects, Wibu-Systems shall only be liable for the culpable violation of essential contractual obligations for damage typical of the contract. Essential contractual obligations are obligations that protect the Client's essential contractual legal position as inherent in the nature of the contract; essential contractual obligations are also obligations whose fulfillment enables proper execution of the contract in the first place and whose fulfillment the Client has regularly trusted in and may trust in.

9.3 Additional contractual and tortious claims for damages or reimbursement of expenses shall be excluded.

9.4 Insofar as Wibu-Systems' liability is excluded or limited, this shall also apply to the personal liability of Wibu-Systems' employees, representatives, and vicarious agents.

9.5 Liability for loss of data shall be limited to the typical costs which would have been incurred if a regular data backup, appropriate to the level of risk, had been performed.

10. License terms and conditions

10.1 The Client shall be granted a simple, non-exclusive and non-transferrable right to use the object code of Wibu-Systems software and of third-party software (software developed by a software vendor independent of Wibu-Systems) for internal use. This right of use does not confer any other rights in the software. Wibu-Systems shall reserve all distribution, exhibition, demonstration, performance, and publication rights to the software. The same shall apply to the processing and reproduction rights unless agreed otherwise. Section 11 applies for products acquired by the Client for their contractually agreed transfer to third parties. Section 12 shall apply to products which the Client obtains within the scope of a software subscription.

10.2 Wibu-Systems shall not be obliged to make the source code available to the Client. The Client is permitted to allow his customers to modify the Wibu-Systems software for the customer's own use and to reverse engineer that software to debug these changes, whereas the Client and his customer are prohibited from passing on to third parties any work results obtained from such reverse engineering. The Client and his customer shall also be prohibited from passing on modified versions of the Wibu-Systems software. The Client shall amend his contracts with his customers in accordance with these permissions and restrictions. Warranty claims against Wibu-Systems shall be excluded, unless the Client proves that the defect already existed in the original version of the software.

10.3 Reproduction of software and the accompanying material stored on data storage media, e.g. its reproduction to electromagnetic, optoelectronic, or any other data storage medium, is prohibited. Exceptions to the aforesaid are the one-off installation of the software from the data storage medium to the hard disk, and the downloading or printing of data from the running application for internal use only. The ban on reproduction does not apply to the creation of backup copies for internal use for the sole purpose of safeguarding the contractually intended use of the software. If the originals contain copyright notices, the Client shall ensure that all copies contain them.

10.4 If a Wibu-Systems product contains open source software, Wibu-Systems shall state this explicitly, in which case the Client acquires rights of use directly from the copyright holders of the respective open source components and not from Wibu-Systems. The license terms of the open source components replace the aforesaid license terms and apply exclusively. Wibu-Systems shall make these license terms available to the Client upon the Client's request.

11. Special terms and conditions for Wibu-Systems runtime software and libraries

Notwithstanding Section 10, when using Wibu-Systems hardware, e.g. WibuBoxes or CmSticks, or the software-based protection CmActLicense or CmCloud, the following license terms shall apply:

11.1 The Client may integrate the Wibu-Systems software libraries required for the use of Wibu-Systems protection systems into their computer programs or data as described in the relevant manual in order to protect them from unauthorized use or to monitor their usage.

11.2 The Client may also pass on the integrated Wibu-Systems software libraries to distributors and end users, together with their computer programs and data, and distribute the Wibu-Systems runtime software as part of their protected software. The Client's customers shall have the right to use the Wibu-Systems software libraries and Wibu-Systems runtime software as components of the protected computer programs and data according to the provisions.

11.3 Before passing on the Wibu-Systems software libraries and Wibu-Systems runtime software, the Client is obliged to check that these components function correctly with the protected computer programs and data, and to report any problems to Wibu-Systems without delay.

12. Special terms and provisions for Wibu-Systems software subscriptions

12.1 The provisions of this section shall apply to software which Wibu-Systems rents to the Client within the framework of a software subscription.

12.2 Wibu-Systems shall grant the Client the rights of use necessary for the use of the software only for a period of time limited to the duration of the contract.

12.3 Insofar as Wibu-Systems makes new software versions available to the Client, the rights of use described in Section 12.2 shall only extend to software versions of the software subscription defined in 12.1 which were made available in the calendar year of purchase as well as in the respective previous year. Rights of use already granted to other software versions shall expire.

12.4 The remuneration for the provision of the Software shall be owed in advance for a year and shall be due 30 days from the date of the invoice.

12.5 If the Client is in default of payment of the remuneration in whole or in part and does not make payment even after a reminder from Wibu-Systems, the Client's rights to use the Software shall be suspended until the remuneration has been paid in full.

12.6 Either party to the contract may terminate the contract by giving 3 months' notice to the end of the year. In the absence of termination, the contract shall be extended by one year at a time.

12.7 At the end of the contract, the Client shall return to Wibu-Systems all items provided or assure in writing that they have been deleted, and shall delete or destroy all copies of the software and assure in writing that this has been done.

12.8 Any declaration in connection with a termination and any other declaration with which the exchange of services or the contract is terminated or the termination is prepared shall require the written form in accordance with the law in order to be effective.

12.9 Wibu-Systems shall furthermore adjust the prices to be paid on the basis of this contract at its reasonable discretion to the development of the costs which are decisive for the price calculation. Price increases shall only become effective at the end of a year and only if Wibu-Systems announces them with a notice period of three months. In the event of a price increase, the Client may also terminate before the expiry of the minimum term of this contract.

13. Export regulations and customs clearance

Insofar as the products are exported, the Client shall observe UK export regulations and shall draw the attention of its customers to the fact that UK export regulations apply in the event of export. If, at the Client's request, deliveries are exported with duty unpaid, the Client shall be liable to Wibu-Systems for any subsequent Customs and Excise duties.

14. Software and security update, Support

Wibu-Systems intends to provide new software versions (software updates or firmware updates) to the Client without recognition of a legal obligation and without compensation. If the parties agree on the provision of support services, these shall be governed by the support service description, available at www.wibu.com/services/support-maintenance.html.

15. Final provisions

15.1 The Client may transfer their rights and obligations under this contract only with the prior written consent of Wibu-Systems. The Client shall only be entitled to set off claims against Wibu-Systems or to assert their right to withhold payment, if their counterclaim has been legally acknowledged or ruled final and absolute by a court of law.

15.2 The contractual relationship shall be governed exclusively by English law under exclusion of references to foreign law and the United Nations Convention on Contracts for the International Sale of Goods (CISG).

15.3 The place of performance and legal venue for all disputes arising from this contractual relationship, how it came into existence and its legal effect shall be Taunton, United Kingdom, provided the Client is a merchant, a legal entity under public law, or a special fund under public law. Wibu-Systems may also enforce claims at the competent court for the place of residence or business of the Client.

15.4 Should any provisions of these General Terms and Conditions be or become invalid, the remaining provisions shall not be affected. The parties shall then endeavor to replace the invalid provision by an appropriate alternative which comes closest to fulfilling the intended purpose of the invalid provision.

Issue date: **21 April 2022**