visplore

COMMERCIAL TERMS AND CONDITIONS

of

Visplore GmbH
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Visplore GmbH ("**Visplore**") operates an interactive visualisation software for fast, meaningful and visual data processing and realistic presentation of and interaction with past, present and future objects and environments (the "**Visplore Software**"). The Visplore Software allows easy handling of data volumes generated in the course of product and process development cycles and significantly reduces costs and time in the context of development processes.

These Commercial Terms and Conditions ("**CTC**") govern the legal framework for (i) granting ordinary permits to use the Visplore Software and (ii) providing individual services (e.g. preparing organisational concepts, creating individual programmes, delivering standard (library) programmes, etc.) to Visplore' business and/or service customers (the "**Customer**").

§ 1
Scope of application

(1)   Even if not expressly incorporated by reference, these CTC apply to all present and future services Visplore provides to the Customer.

(2)   On the date the contractual relationship pursuant to § 2 (1) is established, the Customer acknowledges these CTC and these shall henceforth apply over the entire term of the business relation. The Customer's commercial terms and conditions or terms and conditions of purchase, if any, do not automatically become part of the contract and shall apply only if Visplore acknowledges these in writing in a particular case by virtue of an individual agreement.

(3)   Visplore employees and other vicarious agents or assistants Visplore relies upon to provide the contractual service are not authorised to reach side agreements the contents of which exceeds the scope of the agreement reached with the Customer or that of these CTC.

§ 2
Conclusion of contract and contract terms

(1)   The contract relationship between the Customer and Visplore is established by virtue of the Customer's written order and Visplore' written and duly signed acceptance notice.

(2)   Products and services Visplore presents or advertises online, in brochures or other advertising materials do not represent binding offers.

(3)   Visplore may reject a Customer order if:

(a)   there is reasonable doubt with regard to the Customer's identity, legal capacity or legal personality;

(b)   there is reasonable suspicion that the Visplore Software or other applications made available by Visplore in the context of processing the order are abusively used;

(c)   other circumstances exist that would render a contractual relationship with the Customer unreasonable from Visplore point of view.

(4)   The Visplore Software as well as any documentation, proposals, test programmes, etc. relating to the contractual services may neither be reproduced nor made available to third parties. If no contract is concluded with the Customer, those contractual items, documentation, proposals, test programmes etc. shall be returned or deleted and may no longer be used.

(5)   The Customer is aware of the Visplore Software's essential functional features; the Customer, itself, shall bear the risk that the Visplore Software may not meet the Customer's desires and/or (operational) requirements, as the case may be. With regard to issues of doubt, the Customer shall seek the advice of Visplore employees, its vicarious agents or third-party experts prior to concluding the contract (binding acceptance notice by Visplore). The technical options and conditions of use of the Visplore Software (e.g. concerning hardware and data carriers) are evident from the service and function specifications ("**Function Specifications**") prepared by Visplore that shall be provided to the Customer upon request.

(6) Any information on technical data or product features Visplore provides in printed matter, catalogues, the web page, advertisements, price lists and other information and promotional materials merely represent a general description and labelling of Visplore' services and may not be relied upon for asserting Customer claims, if any. A guarantee as to a certain condition shall only be deemed to exist if such guarantee has been expressly indicated and agreed.

(7) In case of any disagreement about the content of computer terms and symbols, quality requirements, format requirements or the like, the provisions set forth in the Function Specifications, as amended upon conclusion of the contract, shall prevail.

(8) Subject to timely prior notice, Visplore may change, extend or limit the contents and scope of contractual services at any time in a manner that is reasonable for the Customer. Visplore will particularly take such measures if technical or legal circumstances so require or if this serves to protect the functionality of Visplore Software.

§ 3
Subject-matter of the contract and scope of services

(1) The subject-matter of the services to be provided by Visplore may comprise, but are not limited:

(a) to grant an ordinary right to use the Visplore Software that is neither exclusive nor transferable and confined in fact and time (*ordinary utilisation right*) pursuant to § 6;

(b) to participate in putting into operation the Visplore Software and provide support in the changeover, if any, to a new software system;

(c) to conduct product training and to respond to customer enquiries and error reports, if any;

(d) to carry out customer-specific data analyses

(e) to carry out repair and maintenance work on the Visplore Software.

(f) to carry out work to rectify a malfunction of the Visplore Software that has been reported in accordance with § 5 (2);

(g) to plan, implement and deploy individual adaptations and extensions of the Visplore software.

(2) The type and scope of Visplore' services are subject to the service specifications that were delivered to the Customer when placing the orderalong with the binding information,

documentation and auxiliary materials included therein. (Product) details and service contents relating to the granting of rights to use the Visplore Software are evident from the Function Specifications.

(3) The Customer shall verify that the service specifications (see § 3 (2)) prepared by Visplore against a fee are accurate and complete and it shall issue a notice of approval.

(4) Changes of the contract volume or the service specifications made after Visplore has issued a (legally) binding acceptance notice pursuant to § 2 (1) require Visplore' prior consent and may result in separately agreed dates and prices.

(5) If the provision of services under the order should turn out to be impossible for legal or factual reasons, Visplore is required to notify the Customer immediately. If the Customer fails to change the service specifications or create the conditions required to enable Visplore to provide services, Visplore may refuse to execute the order. This applies, without limitation, if the provision of services has been rendered impossible due to an omission of the Customer or a subsequent change of the service specifications. In this case, the costs of and expenses so far incurred for Visplore activities as well as costs of demounting, if any, shall be reimbursed by the Customer.

(6) Programme carriers, documentation, function and service specifications can be shipped at the Customer's own cost and expense and risk if requested by the Customer. Any additional training or information requested by the Customer will be charged separately, unless to the extent contained in the offered licencing.

(7) A barrier-free design within the meaning of the Federal Act on the Equalization of Persons with Disabilities (Bundes-Behindertengleichstellungsgesetz - BGStG) is not included in the tender, unless it has been requested separately by the contracting authority. Likewise, the client must check the contents provided by him for their legal admissibility, in particular competition, trademark, copyright and administrative law admissibility. The Contractor shall not be liable for the legal admissibility of content provided by the Customer.

§ 4 Customer's services and obligations

(1) The Customer undertakes to use the Visplore Software according to its intended purpose and the terms of the contract.

(2) Changes to the system requirements that are within the Customer's control shall be notified in due time prior to completion of service

provision. Any delay and additional costs which arise due to any change in the performance of the service shall be borne by the Customer.

(3) The Customer shall timely make available free of charge any documentation, information and equipment within its control that may be necessary for the provision of the services owed by Visplore. Moreover, the Customer shall timely request any cooperation and the provision of documents by third parties which are required for the provision of Visplore' services.

(4) The Customer shall grant Visplore or its employees access to the rooms during ordinary business hours pursuant to § 7 (3) as necessary for performing the contract and shall grant adequate access to internal systems (hard- and software) and to employees of the Customer, if any, if this is necessary to enable Visplore to provide services under the contract.

(5) If the Customer fails to timely participate or provide or request deliverables, Visplore' delivery and service dates shall be postponed accordingly and Visplore shall separately charge additional expenses thus incurred.

(6) The Customer shall immediately report to Visplore in writing any change to its company name or legal form, if any, as well as its address, invoice address and bank details. If no such change is reported, documents shall be deemed received by the Customer if these were sent to the address or paying agent most recently indicated by the Customer.

(7) Provided that a company name exists, the Customer shall grant Visplore the right to include the Customer's company came or logo, if any, or trademark in a list of partners or references and to publicly announce the Customer's business relationship with Visplore.

§ 5 Acceptance and trouble shooting

(1) The Customer shall accept from Visplore the contractual services at the terms that were consensually determined in the service specification pursuant to § 3 (2). The Visplore Software's functions and features are evident from the Function Specifications pursuant to § 2 (5). If standard (library) programmes are ordered, placement of the order is deemed to confirm that the Customer is aware of the scope of the programmes ordered.

(2) Upon delivery, the Customer shall subject the deliverable (individual programmes, programme adaptations, Visplore Software) to a diligent performance test. In doing so, the Customer shall compare the functional features that were determined in the service specifications and accepted by Visplore to the actual product features. Programme defects or improper use of the Visplore Software, if any, occurring during the performance test shall be notified to Visplore within a reasonable period of time, however, no later than within 5 (*five*) working days after delivery. Hidden defects of the product shall be reported within 3 (*three*) working days as of the date the defect becomes evident. Statutory warranty periods shall apply to consumers.

(3) Complaints shall initially be made electronically by e-mail to *office@visplore.com* and thereafter in writing addressed to Visplore business address, accompanied by a detailed report on (i) the type of defect; (ii) the application where the defect occurred; and (iii) measures, if any, already taken to rectify the defect. If no error report is made within the time limit set forth in § 5 (2), the delivery shall be deemed approved by the Customer.

(4) If the Customer should already use the Visplore Software in real time operation, that software shall be deemed accepted in any case.

(5) In case of a complaint pursuant to § 5 (2), the Customer shall (i) name a contact person; and (ii) describe in detail the error that occurred. If substantial defects exist that make real time operation of the Visplore Software impossible and if these are timely reported in an appropriate manner, the Customer shall be required to declare acceptance again after the defects have been rectified.

(6) For purposes of error analysis and rectification of defects, the Customer shall appropriately cooperate within the meaning of § 4 (providing information material and granting access to the business premises). If Visplore error analysis shows that there is no defect, which Visplore would be required to rectify, Visplore may charge for the error analysis expenses at applicable hourly rates to the Customer.

(7) If, in an unjustified manner, the Customer fails to timely accept contractual services or can be held responsible for a defect, if any, in service provision, Visplore shall be reimbursed for any damage it suffers as a consequence. The same applies if the rectification of a defect is affected or an existing damage is increased due to the Customer having culpably neglected its cooperation duties.

(8) The Customer may not refuse acceptance of contractual services in reliance on insignificant defects, except in case of consumer transactions.

(9) Power failures, malfunctions, maintenance work or other unavoidable events that are outside Visplore' control may interrupt the provision of services. In such case, Visplore will honestly and to its best belief strive to rectify malfunctions and interruptions as fast as technically and economically feasible.

§ 6 Copyright and use

(1) If the Visplore Software is licensed, the Customer shall be granted a non-exclusive, non-transferable permit to use the Visplore Software, that permit to be confined in terms of subject-matter and time to the term of the relevant contractual relationship.

(2) All copyrights to the Visplore Software and the contractually agreed services (programmes, documentations, etc.) currently are and shall unrestrictedly be owned by Visplore' or its licensors' also after the contract has been terminated. All specifications, further developments and adjustments of the Visplore Software or of programmes based thereon that come into existence as a result of the contractual relationship with the Customer shall transfer to Visplore' or its licensors' (intellectual) property when they come into existence. These also include any rights that may arise worldwide from copyright or other provisions governing intellectual property rights.

(3) In the context of using the Visplore Software according to the terms of the contract, the Customer may not edit, change or otherwise shape the software, transfer it to third parties, or retranslate (decompile) it into another display format. Likewise, it may not remove, bypass or change copying or safety mechanisms, programme elements of digital rights management (DRM) security codes or the Visplore Software's marker features (property notices, brands, copyright notice).

(4) The Customer may not use the Visplore Software beyond the contractually agreed purposes or allow third parties that are not part of the Customer's operations to use the Visplore Software or temporarily or permanently transfer it to third parties. Unless otherwise agreed, "third parties" within the meaning of this provision also include the Customer's branch offices or affiliated companies (Section 228 (3) of the Austrian Business Corporations Code), if any.

(5) The Customer shall hold harmless and indemnify and grant full satisfaction to Visplore for non-compliance with the present conditions of use, including, but not limited to infringement of copyright or other intellectual property rights of Visplore or third parties.

§ 7 Compensation, terms of payment

(1) Visplore shall charge order-related product or utilisation fees for providing the services described in § 3 (2), including the granting of rights to use the Visplore Software. In this context, the licensing fee for granting an ordinary right to use the Visplore Software is collected in advance in the form of an annual flat-rate compensation. Visplore determines its prices based on billing costs customary in the industry.

(2) Licenses for the Visplore Software may be obtained on the basis of the following price schemes:

(a) Fixed-term license:

A license for the Visplore Software is obtained for the period of one year. The costs incurred by Visplore in connection with licensing, including expenses for software support to the extent included in the license as well as potential software updates, are covered by an annual license fee.

(b) Indefinite license

A license for the Visplore Software is obtained for an indefinite term. The costs incurred by Visplore in connection with licensing the Visplore Software shall be covered by a one-time utilisation fee. Software-related additional services (software support and software updates) that Visplore provides to the Customer within the first year of the contract term are included in the utilisation fee. However, additional services provided by Visplore after the first year of the contract term has expired are charged separately.

(3) Based on the daily rates, as amended from time to time and announced by Visplore, Visplore shall charge the following surcharges for services (e.g. error analyses) it provides outside ordinary business hours: surcharge of 50 % outside ordinary business hours and 100 % on Sundays and public holidays. "Ordinary business hours" within the meaning of this provision are: Monday through Friday, *8 a.m. – 5 p.m.*

(4) All prices are denominated in euros exclusive of value added tax. Shipping costs, if any, shall be charged separately and apply only to the present contract.

(5) As a rule, fees are payable after receipt of the invoice on the due date indicated in the invoice or, in the absence of a due date, within seven calendar days after receipt of the invoice by the Customer. The invoiced amount shall be credited to the bank account indicated in the invoice on the due date, at the latest. If the Customer is in default of payment, Visplore may put the provision of the relevant services on hold until the relevant service (utilisation) fee has been paid in full. In case of default of payment,

permission to use the Visplore Software may be revoked. If the Customer is in default with two partial payments, Visplore may accelerate payment of the full amount (*acceleration of maturity date*).

(6) Payment shall be deemed received on the date the amount is available to Visplore or credited to Visplore' bank account indicated in the invoice. In case of delayed payment by the Customer, Visplore shall charge default interest at a rate of 12 % p.a. as of the 15th day after the invoice date, unless costs in excess thereof have been incurred. In case of consumer transactions, the generally applicable default interest rate of 4 % p.a. shall apply. Dunning, enquiry and other costs incurred in the context of recovering a claim shall be borne by the Customer. This shall not restrict Visplore' right to assert any further damages.

(7) The Customer shall pay the fees by bank transfer with a payment slip or by electronic bank transfer (*online banking*) or grant Visplore authorisation to directly debit fees. The Customer shall bear all expenses arising in connection with payment transactions.

(8) The Customer waives its right to set off any counterclaims against Visplore' compensation claims, unless these counterclaims have been acknowledged by Visplore in writing or determined by a court. Moreover, the Customer may not withhold payments on the grounds of incomplete total delivery, guarantee or warranty claims or complaints.

(9) All tax liabilities arising from the contract relationship with Visplore, except income tax, shall be borne solely by the Customer. The Customer shall hold harmless and indemnify Visplore for any wrongful assertion of such tax claims.

(10) Partial invoices are subject to the payment terms fixed for the entire order pursuant to § 7 (1) by analogy.

§ 8 Warranty

(1) Visplore provides its services on the basis of the generally valid industrial standards and practices. Visplore warrants that the Visplore Software will be in operational condition on the provision date, possess the commonly expected qualities and will be consistent with the usual state of the art applicable at that time. However, the Customer is aware that due to programme errors it is impossible to provide an entirely error-free computer service according to the state of the art.

(2) Moreover, Visplore shall be liable within the scope of statutory provisions that the rights to use the Visplore Software granted to the Customer pursuant to § 6 (1) are free of any third-party rights that might prevent the contractual use by the Customer. If third parties assert claims or proprietary rights against the Customer, it shall immediately notify Visplore. The Customer may not acknowledge third-party claims on its own initiative. Visplore shall, at its own discretion, defend or satisfy these claims or replace the relevant service by an equivalent service that complies with the order, if this is acceptable to the Customer.

(3) Visplore does not warrant for errors or other failures of the Visplore Software,

(a) due to errors of the hardware, the operating system or the software of other producers beyond Visplore control;

(b) due to improper use of whatever nature or inappropriate handling by the Customer, which could have been avoided by proper and diligent use;

(c) resulting from (i) changed operating system components, interfaces and parameters, (ii) use of inadequate organisation resources and data carriers, as far as these are required, (iii) atypical operating conditions (including, but not limited to non-compliance with the installation and storage conditions), and (iv) damage in transit;

(d) due to virus infection or other external effects outside Visplore' control, such as fire, accidents, power failure, etc.;

(e) due to transmission errors on data carriers or on the internet.

(4) Any warranty that the software is suitable for a specific purpose sought by the Customer is excluded.

(5) If an order concerns the change or supplementation of already existing programmes, warranty refers to such change or supplementation. This will not revive warranty for the original programme. Programmes that are subsequently changed by the Customer's own programmers or by third parties are excluded from the warranty.

(6) In case the Customer timely and appropriately reported defects pursuant to § 5 (3), if any, in the course of accepting the service and if Visplore has confirmed such defects in the context of an error analysis to be carried out, the Customer may reduce the price or rescind the contract subject to applicable legislation. Rescission of the contract and price reduction shall be excluded, if Visplore repairs defects primarily by follow-up or exchange within a reasonable period of time.

(7) The presumption of defectiveness in accordance with § 924 ABGB is excluded.

(8) Support, error diagnosis, correction of an error and trouble-shooting for which Customer is responsible and any other corrections, modifications and supplements will be carried out by Visplore against compensation of costs. This also applies to the repair of defects if the Customer itself or a third party changes or supplements programmes or otherwise interferes with the software.

§ 9 Software support and maintenance

(1) Visplore provides software support to the Customer and carries out maintenance work exclusively for the Visplore Software. Visplore does not provide support or carry out maintenance work for third-party software or open-source software, unless an explicit agreement beyond these CTC is concluded in that respect.

(2) Software support and maintenance agreements may be concluded for either limited or indefinite periods. Maintenance agreements concluded for an indefinite period may be terminated by either party giving three months' notice after a full year has expired.

(3) Software support includes professional advice provided to the Customer by qualified Visplore employees regarding the use of the contractual software. Support can be provided in an appropriate form, for example by e-mail, telephone, video conference or personal appointment..

(4) In the context of the update service, Visplore provides programme updates to the Customer. These include corrections of errors, resolving problems with the programme, if any, that occur neither during the test run nor in the course of practical use within the warranty period, as well as improvements and extensions of the scope of services.

§ 10 Liability and damages

(1) Visplore shall be liable within the scope of statutory provisions for damage to the Customer caused by officers, employees, vicarious agents or other individuals contractually authorised to provide services to the Customer, only if intent or gross negligence is proven. Any liability for slight negligence is excluded, except in case of damage to life and limb.

(2) Liability for indirect damages – such as loss of profit, costs associated with business interruption, loss of data or third-party claims – is expressly excluded.

(3) Except for personal injury, payment of damages to companies is limited to EUR 5,000.00.

(4) Recourse claims, if any, asserted against Visplore by the Customer or third parties in reliance on product liability within the meaning of the Austrian Product Liability Act shall be excluded, unless the relevant party entitled to assert recourse claims proves that the mistake was within Visplore' control and was caused by at least gross negligence.

(5) Events of force majeure which make it significantly more difficult or impossible to provide the contractual services entitle Visplore to postpone the fulfilment of its obligations as long as that obstacle continues to exist and by a reasonable start-up period. Force majeure shall include strikes, lock-outs, government interference and similar circumstances, to the extent these are unpredictable, serious and have not been caused by Visplore. Visplore disclaims any liability in these cases.

(6) In case of transactions with entrepreneurs, any damage claims the Customer may have against Visplore shall forfeit six months after the damage and the injurer have become known.

(7) As far as Visplore liability is excluded under these CTC, the same shall apply to the liability of officers, employees, vicarious agents or other individuals authorised under an agreement to provide services to the Customer.

§ 11 Confidentiality and privacy policy

(1) Visplore accepts personal data from clients only to the extent necessary for the administrative execution of the services provided by Visplore. In particular, Visplore does not accept data for analysis purposes that contain personal information. The client agrees to remove personal information from data records independently and at his or her own expense before these records are transferred to Visplore employees. In this respect, Visplore assumes that data records received for analysis purposes are not considered personal data within the meaning of the General Data Protection Regulation.

(2) Visplore software versions that use the cloud-based licensing system LicenseSpring (https://licensespring.com/), perform regular online checks for license verification. LicenseSpring servers are contacted on a regular basis for this purpose. The following information is transmitted to LicenseSpring's servers and stored there: external IP address, operating system version, information about the virtual machine (if any), VISPLORE version, activation time,

occupancy time, and a unique installation ID (= an anonymous random sequence). This is necessary for providing the service and ensuring compliance with the Visplore license terms.

(3) When accessing the online documentation from within the Visplore software (any Visplore version), the Visplore server hosting the documentation collects and stores which particular link or help button was clicked in the Visplore Software to access the documentation. This includes information about the current usage context (e.g. which cockpit, visualization is currently shown, etc.). Note that this information is collected anonymously, without any kind of user identification. The purpose of collection is improving the user experience in future versions.

(4) The Customer shall be solely responsible for any personal (user) data, whether these are sensitive data within the meaning of Section 4 of the Austrian Data Privacy Act 2000, or non-sensitive data that Visplore transmitted, used or processed in the context of providing its services. If Visplore gains access to the Customer's hardware and software (e.g. in the course of remote maintenance or fault repair) this is not for the purpose of commercial processing of personal data.

(5) The Customer is required to obtain the relevant individuals' consent prior to handling or processing (personal) data and shall hold harmless and indemnify Visplore for third-party claims, if any.

(6) Visplore and the Customer will keep confidential and use only for purposes of the relevant contract all trade and business secrets of the other party which may come to their knowledge within the scope of the business relationship. The recipient will not make available such trade and business secrets to a third party, except with the other party's prior written consent.

(7) Upon termination of the business relationship, the Customer is required to return to Visplore or destroy any confidential documentation it received in connection with the performance of the contract.

(8) The obligations set forth in § 11 (4) and (5) shall also apply to the Customer's or Visplore' vicarious agents and employees, if any.

(9) These confidentiality obligations shall be valid for a period of five years after the business relationship has been terminated.

§ 12 Loyalty

Visplore and the Customer undertake to be loyal to each other. For the term of the contract and for 3 months after termination of the contract, they will refrain from soliciting and employing, also through third parties, any employees who were engaged in the realisation of the orders, unless settled by mutual agreement. In case of non-compliance with the obligation to be loyal, the party that is in breach of the contract shall pay flat-rate damages in the amount of the quarter of an annual salary of the solicited employee.

§ 13. No assignment

The transfer of this contract and the assignment of rights and obligations hereunder shall require the other party's written consent.

§ 14 Final provisions

(1) These CTC shall be governed by and construed in accordance with Austrian law, to the exclusion of the UN Sales Convention.

(2) In the event of disputes arising from this contract which cannot be settled by mutual agreement, the parties agree to call in registered mediators with a focus on business mediation to settle the conflict out of court. If no agreement can be reached on the selection of the business mediators or on the content, legal action will be taken at the earliest one month after the failure of the negotiations.

(3) All disputes arising out of or in connection with these CTC shall be referred to the court in Vienna having jurisdiction in commercial matters.

(4) Visplore may amend these CTC at any time and shall notify the Customer in writing of the amendments' content and the proposed entry into force at least one month prior to the proposed entry into force of the amended CTC. The Customer may object to these amendments. Unless it raises its objection prior to the proposed entry into force, the amended CTC shall become effective as of the disclosed date.

(5) Any amendment of and modification to these CTC and to any other agreement shall be valid only if confirmed by Visplore in writing.

(6) Should any term hereof be or become ineffective, invalid or non-enforceable, this shall not affect the effectiveness, validity or enforceability of the remaining terms hereof. The invalid or non-enforceable term shall be replaced by a valid and enforceable term, the economic purpose and economic result of which closest reflects the invalid term and the

parties' original intent. The parties undertake to immediately record in writing and sign such replacing term.