

COMMERCIAL TERMS AND CONDITIONS

of

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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 completing the order process in Visplore's

web shop followed by a confirmation e-mail by Visplore regarding the online purchase.

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

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

- (1) The subject-matter of the services to be provided by Visplöre may comprise, but are not limited:
 - (a) to grant an ordinary right to use the Visplöre 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 Visplöre 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 Visplöre Software.
 - (f) to carry out work to rectify a malfunction of the Visplöre Software that has been reported in accordance with § 5 (2);
 - (g) to plan, implement and deploy individual adaptations and extensions of the Visplöre software.
- (2) The type and scope of Visplöre' services are subject to the product description of the purchased products, as displayed during the webshop purchase process.
- (3) Any additional training or information requested by the Customer will be charged separately.

§ 4 Customer's services and obligations

- (1) The Customer undertakes to use the Visplöre Software according to its intended purpose and the terms of the contract.
- (2) The Customer shall immediately report to Visplöre in writing any change to its company name or legal form, if any, as well as its address. 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. The customer shall ensure that the customer's payment information is up-to-date, and in case of changes, the customer shall immediately update the information using the links provided to the customer.

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

§ 5 Copyright and use

- (1) If the Visplöre Software is licensed, the Customer shall be granted a non-exclusive, non-transferable permit to use the Visplöre 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 Visplöre Software and the contractually agreed services (programmes, documentations, etc.) currently are and shall unrestrictedly be owned by Visplöre' or its licensors' also after the contract has been terminated. All specifications, further developments and adjustments of the Visplöre Software or of programmes based thereon that come into existence as a result of the contractual relationship with the Customer shall transfer to Visplöre' 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 Visplöre 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 Visplöre Software's marker features (property notices, brands, copyright notice).
- (4) The Customer may not use the Visplöre Software beyond the contractually agreed purposes or allow third parties that are not part of the Customer's operations to use the Visplöre 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 Visplöre for non-compliance with the present conditions of use, including, but not limited to infringement of copyright or other intellectual property rights of Visplöre or third parties.

§ 6 Compensation, terms of payment

- (1) Visplöre shall charge order-related product or utilisation fees for providing the services described in § 3 (2), including the granting of rights to use the Visplöre Software.
- (2) A license for the Visplöre software is obtained for the period of a fixed, recurring subscription term (e.g. one year) – the “**billing period**”. The first billing period shall commence upon successful completion of the web shop payment form.
- (3) At the end of each billing period, the subscription automatically renews through the same payment method that the user chooses on the subscription date. The renewed subscription will last for the same period of time as the original billing period (for the avoidance of doubt, if the original billing period is one calendar year, each renewal period shall be one calendar year).
- (4) The user may cancel the subscription with effect from the end of the then current billing period. Cancellation can be performed through cancellation links sent out with the order confirmation, or in text form by sending an e-mail to office@visplöre.com, in any case with a notice period of 14 (fourteen) days to the end of the respective billing period. In the event of termination by the customer, the receipt of the notice of termination by Visplöre is decisive for the expiry of the deadline.
- (5) The costs incurred by Visplöre 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 the subscription fee.
- (6) All subscription fees are non-refundable.
- (7) The Customer waives its right to set off any counterclaims against Visplöre' compensation claims, unless these counterclaims have been acknowledged by Visplöre 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.
- (8) All tax liabilities arising from the contract relationship with Visplöre, except income tax, shall be borne solely by the Customer. The Customer shall hold harmless and indemnify

Visplöre for any wrongful assertion of such tax claims.

§ 7 Warranty

- (1) Visplöre provides its services on the basis of the generally valid industrial standards and practices. Visplöre warrants that the Visplöre 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, Visplöre shall be liable within the scope of statutory provisions that the rights to use the Visplöre 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 Visplöre. The Customer may not acknowledge third-party claims on its own initiative. Visplöre 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) Visplöre does not warrant for errors or other failures of the Visplöre Software,
- (a) due to errors of the hardware, the operating system or the software of other producers beyond Visplöre 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 Visplöre' 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) The presumption of defectiveness in accordance with § 924 ABGB is excluded.
- (7) 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.

§ 8 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.

§ 9 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.

§ 10 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.

§ 11 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.

§ 12 No assignment

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

§ 13 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.