



## Terms of Use for software of PointCab GmbH

In the following, PointCab GmbH will also be referred to as "we", "us" or "the Licensor" and you as our customer or contractual partner as "you", "customer" or "Licensee".

Everything about purchase, rental and support contracts can be found in our "General Terms and Conditions". Support content is listed separately for PointCab software and PointCab Nebula software, respectively, in the "Terms and Conditions for Maintenance and Support".

### § 1 Area of application

1. These Terms of Use apply to all software produced or provided by us.
2. You represent and warrant that you accept these Terms of Use in full. Any terms and conditions on your part that conflict with these Terms will not be valid unless we have expressly accepted them in writing.

### § 2 Object of use

1. The object is the permanent or time-limited provision of our software solutions and/or software solutions distributed by us (hereinafter referred to as "Software"), and the granting of the rights of use described in § 4 within the framework of the right of use concluded.
2. The Software Solutions are used for the conversion, visualization, processing, storage and distribution of point clouds and/or derived data. The individual features and functions (specifications) are explained on the website of the Licensor at [pointcab-software.com](http://pointcab-software.com). The specifications of the Software Solutions shall be regarded as a performance description and not as guarantees. A guarantee shall only be given if it is expressly designated as such and has been confirmed in writing. Configuration services are not an object of this terms of use.
3. We provide the minimum hardware and operating system requirements of our software, an installation guide and application documentation online.

### § 3 Duty to cooperate

1. The customer shall check the correctness, accuracy, and completeness of the data and results processed in the context of the use of the software. This also includes procedures for the registration of point clouds, measurements in the point clouds and the pre-processed results, as well as the import into third-party software.
2. It is the responsibility of the customer to carry out regular backups in conformance with the state of the art and to maintain software and hardware environments for the Software Solutions properly and in accordance with the terms of use..

#### **§ 4 Rights of use**

1. In the case of a lease contract, the Licensor shall grant the customer a simple and non-transferable right of use (limited to the intended use) subject to the provisions in the General Terms and Conditions.
2. In the case of a purchase agreement, the customer is granted a simple, transferable use (limited to the intended use). No acquisition of rights beyond this is associated with this granting of rights of use. Insofar as the Software Solutions contains open source constituent parts, the terms and conditions of the open source provider shall apply separately. The Licensor, however, shall confirm that the open source constituent parts do not hamper use by the customer in line with the contract.
3. The right of use is restricted to the respective purchased version, including updates and adjustments during the contract period.
4. The source code shall remain the property of us. The customer shall not be entitled to any release or disclosure of source code.
5. The customer has the right to install the Software Solutions on any suitable devices owned or used exclusively by himself. In the event of purchasing the software for a limited or unlimited time the license can be installed on those multiple devices. However, for each purchased license of the Software Solutions, it is allowed to have one instance of the Software Solutions running simultaneously. The deployment of the provided Software Solutions within a network or other multi-station computer system permitted in case the access to that device is restricted to the customers business entity.
6. If a right of use is granted to the customer that is not limited in time, the transfer of the Software Solutions to a third party shall only be permitted under the conditions that the Licensor is notified of the name and address of the third party without undue delay and that the third party is bound in writing prior to the transfer vis-à-vis the Licensor to the terms of use that applied to the customer at the time of the transfer. Moreover, the customer shall transfer all provided copies, including any backup copies, to the third party or shall destroy copies it does not transfer. Upon the valid transfer of the right of use, the customer shall no longer have a right of use.
7. Under no circumstances shall the customer have the right to lease the purchased Software Solutions or sub-license it in any other way. In the case of time-limited rights of use, the customer shall not be entitled to transfer the rights of use it has been granted to third parties or grant third parties any rights of use; the provisions of the General Terms and Conditions shall continue to apply.
8. The customer shall be permitted to create a backup copy of the Software Solutions exclusively for the purpose of data backup. The customer undertakes to take suitable precautions to prevent unauthorized access of third parties to the Software Solutions as well as the documentation.  
The customer is prohibited from obtaining confidential information by way of reverse

engineering the software. Reverse engineering includes all actions, including observing, decompiling, testing, examining, reassembling and, if necessary, reassembling with the aim of obtaining confidential information. Other statutory stipulations shall remain unaffected.

9. In all other respects, the statutory provisions shall remain unaffected.

## **§ 5 Warranty**

1. The warranty period (period for the correction of defects) shall run for 1 year from delivery or from the date on which use is enabled. The statutory periods of limitation shall apply if notification of a defect is withheld with fraudulent intent, for injuries to life, body or health, for defects in title, for claims pursuant to the German Product Liability Act (ProdHaftG) as well as for guarantees.
2. The customer shall check the Software Solutions for obvious defects immediately on receipt and shall notify the Licensor without undue delay should defects be present; otherwise, a warranty for these defects shall be excluded. The same shall apply if such a defect becomes apparent later.<sup>1</sup>
3. For additional free of charge software provided by the licensor to the licensee no warranty is applied.
4. For services of third parties that PointCab GmbH offers, their warranty provisions apply exclusively. Any claims on your part can only be asserted with the corresponding third party. We will point out to you if such third party services are used.

### **Material defects**

5. In accordance with the present state of the art, defects of quality in computer programs cannot be completely excluded. The customer shall take note of this. The Software Solutions shall be deemed to have a defect in quality, if:
  - (a) The Software Solutions does not provide the functionalities specified in the product / performance description of the program when deployed in line with this Contract or
  - (b) it is not suitable for the purpose contemplated by this Contract or
  - (c) it is not suitable for normal use and does not have the properties that are customary in the case of software of the same type and those that the customer can expect from this type of software.
6. There is no defect in quality in particular if:
  - (a) A malfunction has been caused by improper treatment of the Software Solutions;

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<sup>1</sup>In the case of purchase, § 377 HGB shall apply.

(b) the cause of a malfunction does not lie in the Software Solutions, but rather has other causes that are not within the sphere of influence of the Licensor (e.g. system crash, incompatibility with third-party software or similar).

### **Legal defects**

7. A defect in title is present if the customer could not be granted the required rights necessary to use the Software Solutions in accordance with the terms of use.

### **Remedy of material defects**

8. a) The Licensor shall remedy any reported and reproducible defects within an appropriate period. There shall be no guarantee for reported defects in quality that are neither reproducible nor can be demonstrated by machine-generated output. In the case of a defect in quality, the Licensor shall initially be entitled to cure. Exclusively at the discretion of the Licensor, this can consist of two attempts of correcting the defect or delivery of replacements.

b) In the context of any replacement delivery and if required, the customer shall adopt the current version of the Software Solutions (updates and, if applicable, upgrades), unless this would lead to problems for the customer that are not reasonably acceptable. In the context of correcting a defect, the Licensor shall be entitled to supply a provisional correction until a corresponding update can be provided by explaining to the customer ways and procedures to work around the defect in quality or its effects. This shall not apply if the workaround is not reasonably acceptable for the customer.

c) Defects can also be remedied by way of remote data transfer (remote access).

d) Following the report of a defect - mandatory by email or phone - by the customer, the Licensor shall start with the correction of the defect without undue delay, taking account of the respective situation, in particular the cause, severity, and effects of the defect. The report of the defect shall be documented in a ticket system. As soon as it is discernible for the Licensor, it shall inform the customer of the possible cause of the defect as well as the respective status of the correction of the defect subsequently. If correction of the defect is not possible within 2 working days (Monday through Friday, excluding holidays in Baden-Württemberg) after receipt of the defect notification ("recovery time"), the Licensor shall notify the customer without undue delay. The measurement of compliance with the recovery time shall only take place within the general service time of the service provider. This is Monday to Friday from 9 AM to 4 PM. The recovery time starts with receipt of a proper defect report. A defect report shall be deemed proper if the customer has adequately complied with its obligations to collaborate, with regard to the description of the defect in quality and its correction.

9. The Licensor may also meet its obligation for correction by providing updates that are free of any defect and include an automatic installation routine on its homepage for download and by offering the customer phone support as well as online support via remote maintenance

with screen sharing for the solution of any problems that may occur.

10. If the defect is not remedied despite two attempts at a cure, if the Licensor is unwilling or unable to correct the defect or deliver a replacement within a reasonable period, or if the cure fails for other reasons, the customer shall be entitled, if a defect is essential -to renders the Software Solution as a whole- and depending on which contractual services are defective, to withdraw from the purchase contract, to terminate the lease contract or support contract or to demand a corresponding reduction in the remuneration paid (*abatement*) and to demand compensation for damages in lieu of performance or reimbursement for futile expenses in accordance with Section 10. The declaration of withdrawal or termination of the purchase or lease contract shall also apply to the support contract concluded in association thereto. Termination of the support contract shall however not affect the purchase or lease contract. The customer shall not be entitled to terminate or withdraw from the contract on account of minor defects.

#### **Remedy of legal defects**

11. a) Cure of defects in title shall be at the Licensor's discretion, either (i) by providing the customer with a legally proper way to use the Software Solutions, (ii) by modifying the Software Solutions which infringes the industrial property rights without any effects on its function or only with effects on its function which are acceptable for the customer, (iii) by replacing the infringing Software Solutions with a Software Solutions whose contractual use does not infringe on any industrial property right, without any effect on the software's functions or only with the effects which are acceptable for the customer, or (iv) the Licensor may deliver a new program version whose contractual use does not infringe on any third-party rights.

b) The customer shall inform the Licensor without undue delay should any third parties assert industrial property rights against the customer; the minimum form requirement for such modification shall be text form. The Licensor shall, at its option, defend against claims or satisfy them. The customer shall not accept claims of third parties on its own initiative. The Licensor shall indemnify the customer against all reasonable legal costs and losses associated with the defense against claims to the extent that the Licensor is answerable for the defect in title and such costs are not caused by any breach of duty on the part of the customer. The provision of the General Terms and Conditions shall apply accordingly.

#### **§ 6 Liability**

1. We assume no liability for third-party services that we offer, unless we are guilty of gross negligence in offering these services. Such third-party services include data storage and data backup within the scope of cloud services or hosting. Any claims on your part can only be asserted against the relevant third party. We will point out to you when third party services are used.
2. For additional free of charge software provided by the licensor to the licensee no liability also regarding 3d party users is applied.

3. Where the customer claims damages or the reimbursement of expenses due to intent or gross negligence on the part of the Licensor, or where the customer asserts claims for culpable injury to life, body or health or under the Product Liability Law, the Licensor shall be liable in accordance with the law. The Licensor shall also have unrestricted liability if the notification of a defect in quality is fraudulently withheld, if a procurement or production risk is assumed in accordance with § 276 BGB or, if (by way of exception) the Licensor gives a written guarantee with respect to characteristics or durability within the meaning of § 443 BGB.

4. In cases where essential contractual obligations are breached through slight negligence, the liability of the Licensor shall be limited in its amount to the loss amount typically foreseeable. Such liability shall however be capped at the amount of the third-party liability insurance as follows:

EUR 3.0 million for personal injury and damage to property.

EUR 500,000.00 for economic loss.

EUR 250,000.00 in the case of cancellation by the customer.

EUR 250,000.00 for first-party losses in the event of loss of documents.

EUR 250,000.00 for costs of damage to reputation.

EUR 250,000.00 in the case of losses due to reliance on the validity of an invalid contract or declaration. EUR 250,000.00 for costs in the case of damage to or destruction of a website.

The liability limitation shall not apply in the case of actions performed by the Licensor involving wilful intent or gross negligence.

5. In other regards, liability for other damage or lost profits, additional labor costs incurred by the customer, loss of use and/or revenue losses caused by slight negligence shall be excluded.

6. No liability shall be incurred for the loss of recorded data to the extent that it exceeds the loss which would have arisen if a data backup had been duly carried out by the customer in line with professional standards. To the extent that the Licensor is responsible for backing up data pursuant to any agreements, the preceding sentence shall not apply.

7. Any additional liability of the Licensor for damages or the reimbursement of expenses shall be precluded regardless of the legal nature of the claim raised.

8. To the extent that the Licensor's liability is excluded or restricted under the foregoing, this shall also apply for the liability of the legal representing bodies of the Licensor as well as any vicarious agents of the Licensor used by the Licensor in the performance of its contractual obligations, or persons otherwise employed by the Licensor in the context of its business in a directed capacity, in particular employees of the Licensor.

## **§ 7 Data protection**

1. Personal data shall be processed in accordance with the provisions of the data privacy statement published on the website of the Licensor.
2. With the purchase or rental, the customer declares its express consent that the software shall make contact with the license server at irregular intervals in order to check the validity of the licensing. Here, various data of the customer and of the computer used, e.g. license ID and MAC ID of the computer, are transferred. The same shall apply in the case of updates and bug fixing.
3. If services of third parties are provided by us, the data protection provisions of the respective third parties also apply. We will point this out to you if third-party services are used.

## **§ 8 Miscellaneous**

1. Subsidiary arrangements, changes or supplements to this Contract must be made in writing. This shall also apply to changes or annulment of this clause.
2. These stipulations are subject to German law, excluding the “United Nations Convention on Contracts for the International Sale of Goods” dated April 11, 1980 (UN Sales Convention).
3. The place of performance shall be the registered office of PointCab GmbH. The exclusive place of jurisdiction shall be Stuttgart, provided each of the parties is a trader, a legal entity or a legal entity at public law or has no general place of jurisdiction in Germany.
4. If individual provisions of these Terms of Use and conditions of business are invalid, this shall not affect the validity of the remaining provisions. The contracting parties shall make every effort to replace the invalid stipulation with a valid provision that comes closest to the commercial purpose of the invalid provision.

Wernau, dated 10 January 2024

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