



## General Terms and Conditions of PointCab GmbH

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

Our terms for the use of our software can be found in our "Terms of Use". The conditions for support in the "Conditions for Maintenance and Support" in each case for the PointCab software or the PointCab Nebula software.

### § 1 Area of application

1. These general terms and conditions of business (hereinafter also referred to as 'Terms') shall apply to all purchase, rental (subscription), support contracts and free of charge software of PointCab GmbH, with natural or legal entities or partnerships with legal capacity (for example, general partnerships (*OHG*), limited partnerships, limited partnerships with a limited liability company as sole general partner (GmbH & Co. KG) (hereinafter referred to as the 'Customer').
2. You warrant that, when entering into the legal transaction, you are acting in the exercise of a commercial or independent professional activity or as an authorized representative of your corporation. We do not sell software to end consumers. The legal right of objection for end consumers for online purchases is therefore not applicable. Your cancellation rights are regulated in the respective purchase, subscription, rental and support contracts.
3. You further represent and warrant that you accept these terms and conditions in full. Any terms and conditions on your part that conflict with these Terms and Conditions shall not apply unless we have expressly accepted them in written form.

### § 2 Object of the contract

1. The object of the Contract is the licensing of software programs developed or distributed by PointCab GmbH in the respective current version (hereinafter referred to as "Software Solution") either on a permanent basis or for a limited time, the provision of support services by the Licensor, and granting the rights of use described in Section 8 in accordance with the concluded agreements.
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 Contract.



3. We provide the minimum hardware and operating system requirements of our software, an installation guide and application documentation online.

### **§ 3 Contract conclusion**

1. Contracts shall be concluded by means of agreement by telephone, in writing, by email or by oral agreement or through a binding order placed by the Customer via the website <http://shop.pointcab-software.com> and accepted by the Licensor. A contract can be concluded by the acceptance of an order, the sending of an invoice or the electronic sending of the ordered license.
2. The Customer decides on whether to purchase or lease the Software Solutions, if that choice is available for the product. Software leasing offers the Customer a choice between different subscription periods.
3. Upon conclusion of the software purchase agreement (regulating the purchase of the Software Solutions) or the lease contract (regulating the use), an agreement regarding the provision of support for the Software Solutions (support contract) is simultaneously concluded.

### **§ 4 Prices and terms of payment**

1. The prices for the purchase and/or the time-limited usage of the Software Solutions and its support shall be taken from the offer, or otherwise from the current price list. Unless otherwise specified, the prices do not include the statutory amount of any sales tax (VAT) applicable at the time of invoice.
2. The payment dates for the respective remuneration owed by the Customer follow from the offer. Invoiced remuneration shall be paid in full within two weeks after receipt of the invoice, unless the offer contains provisions indicating otherwise. In the event of default, the statutory provisions shall apply.
3. All payments of the Customer shall be effected in euros or USD. Any fees for currency conversion will be at the expense of the Customer.

### **§ 5 Right of retention of the licensor**

1. If payment is not made in due time, the contractual software or the customer's access to it may be deactivated by the licensor until the remuneration has been credited.
2. On purchase of a dongle license, the dongle shall only be shipped after payment of the entire amount of remuneration owed. For the period between the order and payment, the user



shall be enabled to use an online license on request.

#### **§ 6 Reservation of title on purchase / Reservation of granting of rights**

1. The Licensor shall retain ownership of any delivered data media until complete payment of the purchase price. This reservation covers all of the payment claims that have arisen or will arise in the relevant business relationship.
2. Until full payment of the purchase price is affected, the Customer shall only be granted a limited right of use in accordance with § 8 no. 2 sent. 2.

#### **§ 7 Obligations to collaborate on the part of the customer**

1. Your cooperation obligations for the correctness or accuracy of the data and results and for data backup are regulated in the "Terms of Use" of our software.
2. The processing of the order and the transfer of all the information required in the context of the conclusion of the contract shall take place using, among other things, email; the tasks are partly automated. The Customer shall therefore ensure that the email address provided to the Licensor is correct, receipt of the emails is ensured (in terms of technical arrangements) and in particular is not prevented by spam filters.
3. If required, particularly within the context of the support provided by the Licensor, the Customer shall enable the Licensor to access the IT systems of the Customer through remote maintenance free of cost. In this context, the Customer shall follow the corresponding instructions of the Licensor. Details are regulated by the conditions of the support contract.

#### **§ 8 Rights of use**

1. The granting of rights of use under a purchase agreement is always conditional on the complete payment of the purchase price. In the case of a lease contract, the right of use is granted subject to the preceding condition of lease payment.
2. All rights of use granted by us are binding for you in the "Terms of Use" for our software. The "Rights of Use" regulated therein hereby become part of these Terms and Conditions.
3. The Customer undertakes to pay a reasonable penalty to the Licensor for each instance where the Software Solutions is transferred in violation of contract; the amount of such penalty shall be specified by the Licensor in each individual case; such penalty may be reviewed by the court of competent jurisdiction as to its appropriateness.  
In the event of a continuing breach, each second week or part of a second week shall be deemed a separate violation. The claims to which the Lessor is entitled under this contract and the assertion of claims of performance or damages shall not be affected through the



agreement of the penalty and its assertion. The provisions of §§ 340 para. 1, sent. 2, 341 para. 3, 343 German Civil Code (BGB) shall be excluded. Any paid penalty amounts shall be set off in full against any claim for damages.

## **§ 9 Warranty**

1. All rights and obligations regarding warranty and liability are governed by our "Terms of Use", which you accept by using the software.

## **§ 10 Special terms applicable for a time-limited right of use - subscription or lease**

1. Should the Customer be granted a time-limited right to use the Software Solutions under a lease contract, the Contract shall be entered into for a fixed term. The Contract shall not be subject to ordinary termination during this time period. The right to extraordinary termination of the Contract shall remain unaffected.
2. The Licensor shall provide support during the lease period. The provisions of the support contracts shall apply as a supplement.
3. In the event of a time-limited right of use – subscription or lease – special prices apply for the contractual use, depending on regions and countries. The special prices only apply if the Customer is headquartered in the relevant region or country (right of use with limited territorial validity). The Customer expressly agrees to only use the Software in line with the Contract in the relevant region or country in order to be granted the special prices.
4. The Customer agrees that the Licensor shall be entitled to check the geographical location of the use at any time in the context of a license verification. If a violation is discovered, the Licensor shall be entitled to prevent use of the software for the duration of the violation of the territorial usage restriction. The Licensor shall be entitled to terminate the lease contract without notice in the event of a repeat violation. The Customer is prohibited from using technical measures such as for example VPN tunnels which prevent a verification of the usage location.
5. The lease contract may be terminated by each contracting party with three months' notice to the end of the contract period. Early termination is excluded for leases with a term of less than 6 months. This shall not affect the right to terminate without notice for good cause, in addition to the case of no. 3 sent. 2. If notice of termination of the subscription/lease contract is not given by one of the contracting parties within a period of three months before expiration, the subscription contract shall be extended, respectively, by another fixed period of 12 months according to the valid pricelist of the one-year-subscription term.
6. Any termination shall require text form (email) in order to be valid.



7. Upon the end of the contract period or upon termination, the Customer loses the right to use the Software Solutions. The Customer shall return any data carriers provided to him together with all license keys and documentation. Any stored Software Solutions files or documentation must be deleted without undue delay. At the request of the Licensor, the Customer shall submit a declaration regarding the completed deletion.

## **§ 11 Support and support contract**

On conclusion of a purchase or lease contract, the following support contract takes effect simultaneously:

1. On conclusion of a support contract, the support services to be provided by the Licensor refer to the respective version of the Software Solutions purchased by the Customer, including updates and upgrades provided/released during the term of the contract.
2. a) The Licensor shall provide support exclusively for the Software Solutions by releasing and making updates and upgrades available at irregular intervals, although there is no entitlement on the part of the Customer to receive such updates and upgrades, and in the event of defects in quality. The method used for correcting defects shall be at the reasonable discretion of the Licensor.  
  
b) If the Licensor offers the Customer new program components, in particular bug fixes, updates, upgrades, new releases, new versions, etc. to avoid or remove defects in quality, the Customer shall adopt these and install them or have them installed on their hardware in accordance with the installation instructions of the Licensor.  
  
c) Support services also include advising the Customer by phone, remote maintenance and/or email with regard to questions that arise in the context of using or installing the software. If applicable, support can be provided by referring to videos, tutorials, and step-by-step instructions on the internet presentation [www.pointcab-software.com](http://www.pointcab-software.com) or at other URLs relating to the problem described by the Customer. On-site support is not part of the support contract. The Customer can reach the Licensor from Monday to Friday from 09:00 a.m. to 5 p.m. (CET / CEST) with the following contact data: +49-7153/ 929 593 0 or via: [support@pointcab-software.com](mailto:support@pointcab-software.com). Further support services and conditions can be found in the maintenance conditions, which are available for download at [www.pointcab-software.com](http://www.pointcab-software.com).
3. In the event of major defects in the Software Solutions, the Licensor shall be obligated to remedy the defect with a subsequent update. The requirement for searching for and removing defects is the Customer's compliance with its obligations to collaborate regulated in the terms of use of the software.
4. Defects that do not diminish the capability of the Software Solutions to run or operate to an appreciable extent shall only be remedied if this is possible with acceptable effort. This is not



the case if re-programming of major parts of the program were to be required.

5. The customer support services do not include:

Work outside of support hours (§ 11.2 c) , measures to remove problems caused by user errors, improper handling, technical interventions on the part of the Customer or third parties, or external influences for which the Licensor is not responsible;

Services such as training courses, installations, configuration of systems or system components, programming, individual customizing requests, consulting as well as data backups and/or restoration of data; defects caused by the operating system or incorrect configuration of the operating system and / or drivers.

6. The Customer has a duty to collaborate to enable and facilitate the required support and maintenance measures. In particular, the Customer must immediately report any error that occurs, explaining it in a generally understandable manner, as well as enabling adequate access per remote maintenance to its hardware and the Software Solutions. On request and where applicable, the Customer shall provide the Licensor with written defect reports in writing as well as other data and logs suitable for analysis of the defect.
7. Services that are not covered by the support contract shall be provided by the Licensor at the request of the Customer and shall require separate payment. Billing takes place on the basis of the hourly rate of the Licensor that applies at the time of service provision.
8. If the Customer gives proper notice of termination of the support contract and the Customer wishes to conclude a new support contract after this termination, this shall only be possible under the condition that the Customer pays the charges for support, updates, and maintenance that would have been due in the period between the end of the first support contract and the start of the second support contract.
9. Free additional software provided by the licensor to the licensee is explicitly not subject to the support contract.
10. If the Customer acquires software from the Licensor in the form of modules, plug-ins or other software components which are based on a software product already acquired from the Licensor (e.g. PointCab Origins), the Licensor shall be entitled to adjust the price of the respective maintenance and support agreement as of the next billing period due.

## **§ 12 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. Explanations regarding data protection when checking the validity of the rights to use our software can be found in our "Terms of Use".

### § 13 Miscellaneous

1. If the parties are in an ongoing business relationship, all the stipulations of these Terms shall also apply to future contracts.
2. Subsidiary arrangements, changes or supplements to this Contract must be made in writing. This shall also apply to changes or annulment of this clause.
3. The Customer shall only be permitted to transfer claims against the Licensor to third parties with the consent in writing of the Licensor.
4. The Customer shall only be entitled to perform a set-off if its counter-claims are uncontested, confirmed by final judgement or accepted by the Licensor. Counter-claims of the Customer from the same contractual relationship shall also be exempted from the prohibition of set-off.
5. 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).
6. 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.
7. The Software Solutions can be subject to (re-)export restrictions or customs and tax-related restrictions. The Customer shall ensure compliance with all regulations in this regard in the event of resale or other forms of export.
8. Both parties shall treat any business and operational matters that become known to them as confidential and treat all information related to compliance with these regulations as strictly confidential, also after expiration of the Contract. The same applies to personal data subject to the regulations of data privacy protection legislation.
9. If individual provisions of these general terms 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 24 September 2022

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