



## General Terms and Conditions of PointCab GmbH

### Section 1 Area of application

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, registered office Talstrasse 8, 73249 Wernau, (hereinafter referred to as the 'Licensor') 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'). The Customer confirms that it acts in performing its commercial enterprise or self-employed profession when concluding the legal transaction. Contradicting general terms and conditions of the Customer shall not apply, unless the Licensor accepts such terms or individual provisions thereof in writing.

### Section 2 Object of the Contract

1. The object of the Contract is the licensing of the computer program with the designation "PointCab" and "LSDSDK" in the respective current version (hereinafter referred to as "Contract Software") 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. The Contract Software also includes special versions such as "PointCab Origins", "PointCab Origins Pro", "PointCab Plug-ins", "PointCabShare" or also "PointCab Apps".

2. The Contract Software is a software for the processing of point clouds. In the process, material information is extracted from point clouds, processed, converted, and/or presented. The results can subsequently be imported into various CAD systems. 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 Contract Software 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. The Contract Software can only be deployed in the hardware and software environment described below. For deployment of the Contract Software, the Customer shall ensure the following system requirements are met:

a) Supported operating systems:

Microsoft Windows 10 - x64 Bit  
MacOS x64 / ARM64 (on request)

b) The Contract Software is available for Windows platforms and with reduced functionality for MacOS.



c) Minimum computer hardware requirements:

Intel-compatible CPU, 1.0 GHz processor (Multicore 2.4 GHz recommended)

8 GB RAM (16 GB recommended)

At least 10 GB available hard disk space

4. The Customer shall be provided with an installation manual and a user documentation as online documentation.

### **Section 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 licence file(s).

2. The Customer decides on whether to purchase or lease the Contract Software. Software leasing offers the Customer a choice between different subscription periods .

3. Upon conclusion of the software purchase agreement (regulating the purchase of the Contract Software) or the lease contract (regulating the use), an agreement regarding the provision of support for the Contract Software (support contract) is simultaneously concluded.

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

1. The prices for the purchase and/or the time-limited usage of the Contract Software and its support shall be taken from the offer, or otherwise from the current price list, which can be found on the website of the Licensor at [pointcab-software.com](http://pointcab-software.com). 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.

### **Section 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.

#### **Section 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 Section 8 no. 2 sent. 2.

#### **Section 7 Obligations to collaborate on the part of the Customer**

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. 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.

4. 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 Contract Software properly and in accordance with the contract.

#### **Section 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. 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 of no. 11. 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 Contract Software 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 the Licensor. The Customer shall not be entitled to any release or disclosure of source code.

5. The Customer has the right to install the Contract Software 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 Contract Software, it is allowed to have one instance of the Contract Software running simultaneously. The deployment of the provided Contract Software 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 Contract Software 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. The Customer undertakes to pay a reasonable penalty to the Licensor for each instance where the Contract Software 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.

8. Under no circumstances shall the Customer have the right to lease the purchased Contract Software 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 Section 11 shall continue to apply.

9. The Customer shall be permitted to create a backup copy of the Contract Software exclusively for the purpose of data backup. The Customer undertakes to take suitable precautions to prevent unauthorized access of third parties to the Contract Software as well as the documentation. Other



statutory stipulations shall remain unaffected.



## Section 9 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. 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 Contract Software shall be deemed to have a defect in quality, if:

(a) The Contract Software 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.

3. There is no defect in quality in particular if:

(a) A malfunction has been caused by improper treatment of the Contract Software;

(b) the cause of a malfunction does not lie in the Contract Software, 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).

4. A defect in title is present if the Customer could not be granted the required rights necessary to use the Contract Software in accordance with the contract.

5. The Customer shall check the Contract Software 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.

6. §377 of the German Commercial Code (HGB) shall apply in the event of a purchase.

7. 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 Contract Software (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 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 9.00 a.m. to 5 p.m. 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 in line with Section 12, No.7, with regard to the description of the defect in quality and its correction.

8. 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.

9. 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 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.

10. 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 Contract Software, (ii) by modifying the Contract Software 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 Contract Software with a Contract Software 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 defence 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 no. 6 c) shall apply accordingly.

11. For additional free of charge software provided by the licensor to the licensee no warranty is applied.

### **Section 10 Liability**

1. 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.

2. 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.

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

4. 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.

5. 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.





6. 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. For additional free of charge software provided by the licensor to the licensee no liability also regarding 3d party users is applied.

### **Section 11 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 Contract Software 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. 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 Contract Software. The Customer shall return any data carriers provided to him together with all license keys and documentation. Any stored Contract Software 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.

## **Section 12 Support**

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 Contract Software 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 Contract Software 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).

3. In the event of major defects in the Contract Software, 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 (Section 12, No. 7).

4. Defects that do not diminish the capability of the Contract Software 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<sup>[HH2]</sup>, 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 Contract Software. 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. Live support services that the Customer has not used by the time the Contract expires or in the case of contract renewal shall lapse. No compensation shall be provided.

9. 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.

10. Free additional software provided by the licensor to the licensee is explicitly not subject to the support contract.

### **Section 13 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.

### **Section 14 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 Contract Software 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 16 Februar 2021

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