

Terms of Use for Software by PointCab GmbH

The following Terms of Use apply in conjunction with the General Terms and Conditions (GTC) of PointCab GmbH, unless explicitly excluded by other written agreements.

§ 1 Definitions

1. In the following, PointCab GmbH is also referred to as "we" or "us," and you, as our customer or contractual partner, are referred to as "you."
2. Unless otherwise specified, the term "Software" includes all software solutions distributed by us or through contractual partners.
 - 2.1 "SaaS Software" (Software-as-a-Service): This specification refers exclusively to web-based software products like PointCab Nebula.
 - 2.2 "Desktop Software": This specification refers exclusively to non-web-based software products that require installation, such as PointCab Origins.

§ 2 Scope of Application

1. These Terms of Use apply to all software created or provided by us.
2. Any terms and conditions of yours that conflict with these terms are invalid unless we have expressly accepted them in writing.
3. Unless explicitly referring to SaaS Software or Desktop Software, the following provisions apply universally.

§ 3 Object of Use

1. Depending on the offer, the subject matter is either the permanent or temporary provision of the software distributed by us and the granting of the usage rights described in § 5.
2. The specific features and functionalities of the software can be found on our website at pointcab-software.com. These details are to be understood as service descriptions and not as guarantees. A guarantee is only provided if it is expressly designated as such and confirmed in writing. Configuration services are not subject to these terms.

3. We provide the minimum hardware and operating system requirements of our software, as well as compatibility requirements and Guidelines for using our SaaS Software, online on our website at pointcab-software.com.
4. Explicitly not subject to the use of our SaaS Software is a cloud with corresponding storage space (hereinafter referred to as "Cloud Services"). Procuring appropriate cloud services is your responsibility.

§ 4 Obligations to Cooperate

1. You are obliged to regularly verify the correctness, accuracy, and completeness of the data and results processed within the scope of software use. This includes procedures for the registration of point clouds, measurements in the point clouds, and pre-processed results, as well as the transfer to third-party software.
2. It is your responsibility to perform regular data backups according to the current state of technology and, when using Desktop Software, to professionally maintain and service the software and hardware environment.
3. You are obliged to meet the minimum requirements, compatibility requirements, and Guidelines for using our SaaS Software provided on our website. Due to technological advancements, the minimum requirements and compatibilities for using our SaaS Software may change. We will inform you of this in a timely manner on our website.
4. You are responsible for ensuring that all authorized users within your company are aware of and comply with the terms of these Terms of Use.

§ 5 Usage Rights

1. In the case of rental or subscription, we grant you a simple, non-transferable right to use the software for the duration of the rental or subscription, subject to the provisions in the General Terms and Conditions.
2. When purchasing Desktop Software, you are granted a simple, transferable, and permanent right to use the software for its proper utilization. No further acquisition of rights is associated with this granting of usage rights. Insofar as our software contains open-source components, the provisions of the open-source provider apply separately. However, we assure you that the open-source components do not impair the proper utilization.
3. This usage right is limited to the respective version purchased, including updates and adjustments made during the contract period.

4. The source code remains our property. There is no corresponding claim for its release or disclosure.
5. The permanent granting of rights upon purchase or the temporally limited usage right upon rental or subscription of Desktop Software entitles you to install and operate the software. Unless otherwise agreed in writing between us and you, the usage rights to the Desktop Software are limited to use by only one user at the same time per license. The use of the provided Desktop Software within a network or any other multi-station computer system is inadmissible if it creates the possibility of simultaneous multiple use of the Desktop Software per license.

These provisions do not apply to SaaS Software.

6. In the case of the permanent granting of usage rights when purchasing Desktop Software, the transfer of the Desktop Software to a third party is permissible by handing over the documentation. You must immediately inform us of the name and address of the third party and obligate the third party in writing to comply with these Terms of Use before the transfer. You must also hand over all copies provided to you, including any backup copies, to the third party or immediately destroy the copies not handed over. In the case of the authorized transfer of the usage right, your usage right ends. You must confirm the fulfillment of the aforementioned obligations to us in writing upon request.
7. In no case do you have the right to rent or sublicense acquired Desktop Software in any other way. In the case of a temporally limited usage right, you are not entitled to transfer the granted usage rights to third parties or to grant third parties rights thereto. The provisions of the General Terms and Conditions continue to apply.
8. You may create a backup copy of the software solely for data backup purposes. You are obliged to prevent unauthorized access by third parties to the software and documentation through suitable precautions and to report any occurrence to us immediately. You are prohibited from obtaining confidential information through reverse engineering of the software. Reverse engineering includes all actions, including observing, decompiling, testing, examining, and reverse engineering, with the aim of obtaining confidential information.
9. Otherwise, the statutory provisions remain unaffected.

§ 6 Warranty

1. The warranty period for purchased Desktop Software is one year from the start of the usability. In the event of fraudulent concealment of a defect, the statutory limitation periods shall apply.
2. In the case of rental or subscriptions, we guarantee the maintenance of the contractually agreed condition of the rental software during the contract period. We will remedy any material defects in the rental software within a reasonable time.

3. You must check the purchased Desktop Software immediately upon receipt for obvious defects and notify us immediately if such a defect exists; otherwise, a warranty for these defects is excluded. §377 of the German Commercial Code (HGB) applies.
4. No warranty is provided for free software that we make available to you.
5. We ensure the possibility of connecting third-party cloud services specified in the product description of our SaaS Software on our website. Otherwise, only the warranty provisions of the third-party provider apply to third-party Cloud Services used in connection with our software.
6. Material defects must generally be reported to the email address provided on our website or the telephone number provided there.
7. A defect report must include a precise description of the material defect as possible.
8. A material defect does not exist in particular if:
 - (a) A malfunction was caused by improper handling of the software;
 - (b) The cause of a malfunction does not lie in our software but is caused by other reasons not within our sphere (e.g., system crash, incompatibility with third-party software, or similar);
 - (c) The cause is due to changes or incompatibilities of our software with third-party Cloud Services or errors of third-party Cloud Services that are not within our sphere;
 - (d) The cause is based on changes and modifications you have made to the software without being entitled to do so by law, under these Terms of Use, or based on a prior written consent from us.

§ 7 Correction of Defects

1. Reported and reproducible material defects will be remedied by us within a reasonable period. We do not provide a warranty for reported material defects that are neither reproducible nor can be demonstrated by machine-generated outputs.
2. In the event of a material defect, we are initially entitled to subsequent performance. At our discretion, this may consist of two attempts at rectification or replacement delivery.
3. As part of a possible replacement delivery, you may be required to accept the then-current version of the software (updates and possibly upgrades), unless this would lead to unreasonable impairments on your side. As part of rectification, we are entitled to provide a temporary workaround until a corresponding update is delivered by explaining possibilities and procedures to you to circumvent the material defect or its effects. This does not apply if

the workaround is unreasonable for you.

4. Defect remediation can also be carried out via data transmission (remote access).
5. After a defect report from you, we will begin defect remediation immediately, considering the respective situation, particularly the cause, severity, and effects of the defect. The defect report is documented in a ticket system. As soon as recognizable to us, we will inform you about the possible cause and subsequently about the respective status of the defect remediation. If defect remediation is not possible within 2 working days (Monday to Friday, excluding public holidays in Baden-Württemberg) after receipt of the defect report, we will inform you immediately. We do not owe compliance with a specific recovery time.
6. We fulfill our obligation to rectify defects by providing defect-free updates equipped with an automatic installation routine on our website for download and by offering you telephone support and online assistance via remote maintenance with screen transmission to solve occurring problems.
7. If, despite two subsequent performances, no elimination of the defect occurs, if we are unwilling or unable to rectify or replace, if this fails within a reasonable period, or if the subsequent performance fails for other reasons, you are entitled to exercise your statutory rights regarding the affected services. A declaration of withdrawal or termination of the purchase, rental, or subscription contract also affects the maintenance agreed upon for this purpose. However, termination of maintenance does not affect the purchase, rental, or subscription contract. In the case of only minor defects, you have no right of withdrawal or termination.

§ 8 Correction of Legal Defects

1. If third parties assert property rights against you, you must inform us immediately, at least in text form. We will, at our discretion, defend or satisfy the claims. You may not acknowledge the claims of third parties on your own. You will grant us the necessary powers of attorney and declarations to conduct the dispute with the third party in court and/or out of court. If it is not permissible and/or possible for us to conduct the dispute with the third party ourselves, you will conduct the dispute with the third party in coordination with us. You will not conclude the dispute by settlement without our consent. We will indemnify you to a reasonable extent from costs associated with the defense of the claim, including legal fees at statutory rates, and damages caused by the infringement of property rights, insofar as we are at fault.
2. Subsequent performance in the case of legal defects shall, at our discretion, be effected either by:
 - (i) Providing you with a legally unobjectionable usage possibility of the software,

(ii) Changing the infringing software without or only with acceptable effects on its function for you,

(iii) Replacing the infringing software with software whose contractual use does not infringe any property rights, or

(iv) Delivering a new program version whose contractual use does not infringe any third-party rights.

3. If subsequent performance is impossible or only possible under unreasonable conditions for us, we have the right to take back the affected software and terminate the contract for cause or withdraw from it. In this case, we will refund you the paid remuneration minus a reasonable usage fee for each month of use, or if you pay for the use of the software on a recurring basis, refund the unused portion of the recurring fee(s).

§ 9 License Audit

1. We are entitled to regularly verify the validity of the licenses. For this purpose, a connection is established between the software and our license servers. Various data from your used computer, such as license ID, computer ID, or user data, are transmitted.
2. If an audit reveals that you are using the software in a scope that exceeds the acquired usage rights qualitatively (regarding the type of permitted use) or quantitatively (regarding the number of licenses acquired), you will immediately acquire the usage rights necessary for permitted use. If you fail to do so, we will assert our rights.

§ 10 Liability

1. The liability for free software that we provide to you is limited to damages due to fraudulently concealed defects.
2. We are liable according to statutory provisions if you assert claims based on intentional or grossly negligent conduct on our part, as well as in cases of culpable injury to life, body, or health, or in claims under the Product Liability Act. Unlimited liability on our part also exists in the case of fraudulently concealed defects or the assumption of a guarantee.
3. Our liability is limited in the case of slightly negligent breaches of essential contractual obligations ("cardinal obligations") to the damage that is foreseeable and typical for the type of contractual services.
4. However, our maximum liability for slightly negligent breaches is limited to the amount of our liability insurance, namely as follows:

- EUR 3.0 million for personal injury and property damage.
 - EUR 500,000.00 for financial losses.
 - EUR 250,000.00 in case of withdrawal, for own damages due to loss of documents. Also, for costs in case of reputational damage, trust damage, and costs in case of damage or destruction of a website.
5. Otherwise, liability for other slightly negligently caused damages and for lost profits, personnel expenses, loss of use, and loss of sales is excluded.
 6. Liability for the loss of recorded data is excluded insofar as it exceeds the damage that would have occurred with a regular backup procedure according to professional standards by you. If we should be responsible for data backup based on deviating agreements with you, the preceding sentence does not apply.
 7. Further liability on our part for damages or reimbursement of expenses is excluded regardless of the legal nature of the asserted claim.
 8. To the extent that our liability is excluded or limited, this also applies to the liability of our legal representatives and vicarious agents, especially our employees.

§ 11 Data Protection

1. You are solely responsible for compliance with relevant data protection regulations within the scope of using the software that we provide to you in connection with the contractual services. In particular, you are responsible for any consents required under the provisions of the GDPR and/or the Federal Data Protection Act by your users and business partners.
2. If we provide third-party services, the data protection provisions of the respective third parties also apply.

§ 12 Miscellaneous

1. Subsidiary agreements, changes, or additions to these Terms of Use require a written form. This also applies to the amendment or cancellation of this clause.
2. These provisions are governed by German law to the exclusion of the UN Convention on Contracts for the International Sale of Goods.
3. The place of fulfillment is the headquarters of PointCab GmbH. The exclusive place of jurisdiction is Stuttgart, provided each party is a merchant or legal entity under public law or has no general place of jurisdiction in Germany.

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4. Should individual provisions of these Terms of Use be invalid, this does not affect the validity of the remaining provisions. The contractual parties will endeavor to find a valid provision that comes as close as possible to the economic and legal meaning of the invalid provision.
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 6. These Terms of Use have been drawn up in German. In the event of translation of the Terms of Use into the English language, in case of content deviations between the two language versions, the German language version of the Terms of Use shall prevail.
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Wernau, November 18, 2024