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# ELVAC SOLUTIONS

LICENSE, BUSINESS AND  
SERVICE TERMS AND  
CONDITIONS

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ELVAC SOLUTIONS s.r.o.  
IN: 27396649  
VAT ID: CZ27396649

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# ELVAC SOLUTIONS

## LICENSE, BUSINESS AND SERVICE TERMS AND CONDITIONS

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# 1. INTRODUCTION AND DEFINITIONS



- 1.1 Before You start using the Software, read thoroughly these Terms and Conditions, as well as any other documents referred to herein. By signing the Order Form or commencing to use the Software, You are entering into a Contract with Us. If You do not agree with these Terms and Conditions, You must not use the Software.
- 1.2 Capitalized pronouns „**We**“, „**Us**“ and „**Our**“ refer to the company **ELVAC SOLUTIONS s.r.o.**, with registered office at Hasičská 930/53, Hrabůvka, 700 30 Ostrava, Company Reg. No. 27396649, registered in the Commercial Register administered by the Regional Court in Ostrava, file no. C 29896.
- 1.3 Capitalized pronouns „**You**“ and „**Your**“ refer to you as the Software user.
- 1.4 „**Cloud**“ is an infrastructure, platform or cloud provided as a service for the Software operation by a third person, with whom We have concluded a contract to provide the capacity and operate the Software on such infrastructure, platform or cloud.
- 1.5 „**Documentation**“ shall mean the documentation containing the Software specification and requirements for its use, which is attached to the Contract, or specified in the quotation.
- 1.6 „**Authorised Users**“ shall mean Your employees, consultants, suppliers and representatives whom You have authorised to use the Software based on the rights granted to You under the Contract. An Authorised User shall also mean You.
- 1.7 „**Terms and Conditions** “ shall mean these terms and conditions together with other documents referred to herein.
- 1.8 „**Contract**“ shall mean the contract for the provision of the license and other services, as described in art. 1.1.
- 1.9 „**Software**“ („**SW**“) shall mean the software specified in the Order Form.
- 1.10 „**Station**“ shall mean a personal computer, server or other equipment with a supported operating system.
- 1.11 „**Subscription**“ shall mean services provided in the form of subscription specified in the Order Form.

## 2. LICENSE



- 2.1 License. Upon the payment of the price for the provision of the license or upon the payment of the Subscription price, if the provision of the license is part thereof, and the price for implementation, if it is agreed, We grant You a non-exclusive license to use the Software and Documentation solely for Your internal purposes.
- 2.2 Software version. The Software license You obtain under the Contract is applicable to the Software version which You have installed in Your system or which You use to operate the Software in Cloud. If We install or put into operation another Software version for You, You obtain a license to such version to the extent according to the Contract once such other version is installed or put into operation, while Your license to the previous Software version expires.
- 2.3 Trial. We may agree to provide a trial Software license. In such a case, the Order Form shall contain the information that We are granting You a trial license. The Terms and Conditions shall apply to the use of the Software based on the trial license by analogy, except that We are not responsible for any Software defects or for any damage caused by its use, which You expressly agree to.

## 3. LICENSE LIMITATION



3.1 Limitation. The license is limited to the territory of the Czech Republic, as well as in terms of time and/or to any other extent stipulated in the Order Form, e.g. the number of Stations, Authorised Users, etc. You are not allowed to use the Software or Documentation to an extent not expressly specified in the Contract. In particular, You must not:

- a) to the extent to which such limitation is allowed by legal regulations, which must not be deviated from, make copies or reproduce the Software in any other way, including making backup copies, propagate, lease or lend the Software, display the Software or disclose it to the public,
- b) modify, decompile, decompose or reverse engineer the Software or interfere with it in any other way or try to get its source code in any other way,
- c) use any hardware or software means that group several devices or users to get around the license quantity limitation (no multiplexing),
- d) remove or modify any notification of the rights to the Software or Documentation,
- e) sublicense the license or any part thereof, assign it to a third party and make Your license certificate available to any third party,
- f) circumvent or breach any safeguard used in the Software or use the Software in a way other than as an Authorised User with the use of Your own valid access data and license certificates or try to break the Software safety measures in any other way,
- g) use the Software for the purposes of a competitive analysis of services, development, provision or use of a competitive service or product or for any other purpose, which is competitive in relation to Us or Our Affiliates,
- h) use the Software in connection with systems important in terms of security or other systems, in which the use or failure of the Software could lead to personal injuries or physical or material damage, or
- i) use the Software in a way or for a purpose that breaches third parties' intellectual property rights or legal regulations.

3.2 Third parties' SW. The Software contains components licensed by third parties, including open-source components, under their own conditions. A list of the third parties' components together with the conditions can be found in the Documentation.

3.3 Retention of rights. All rights to the Software belong and remain to belong to Us only and all rights to third parties' components belong to the respective third parties. We do not grant any license or any other intellectual property right to the Software or other components that are part thereof, except for those that are expressly stated in the Contract.

- 3.4 Delivery and certificate. We will make the Software available to You for download. Unless otherwise agreed in writing, You will carry out the installation yourselves in accordance with the Documentation. During installation, You will be requested to enter the license certificate. Each license certificate may only be used once. We will send You the license certificate within 5 working days from the date of payment of the price for the license provision.
- 3.5 Inspection. Within 3 working days of sending the license certificate, You can check whether the Software corresponds with the agreed specification. If You believe that the Software does not correspond with the agreed specification, You must send Us a written notification of defects with a detailed description of the non-conformity within the same time limit. If You do not deliver such written notification to Us within the inspection time limit set out in this article, You accept the Software without reservation. Acceptance in accordance with this provision shall also occur if You start using the Software beyond its testing, albeit partially.
- 3.6 Deactivation. In addition to any other cases arising from the Contract or legal regulations, We may prevent You from using the Software if:
- a) We obtain an order from a court or public authority that urges Us to do so,
  - b) We believe that You do not comply with the Contract or use the Software beyond the assigned rights or for a purpose not allowed by the Contract or that You are engaged in fraudulent or illegal activities, or
  - c) You fail to pay the price within the due date.

## 4. IMPLEMENTATION



- 4.1 Implementation. If we agree to carry out the implementation for You, We undertake to execute work consisting in putting the Software into operation and You agree to pay the agreed price of the work. The scope of the implementation and binding deadlines for its completion may be stated in the Order Form. No other deadlines specified in other documents shall be binding unless we agree otherwise in writing.
- 4.2 Conditions. The conditions for commencing implementation and its completion are as follows:
- settlement of the price for the provision of the license and price for the implementation in accordance with the Contract,
  - provision of all organisation conditions, HW and basic SW necessary for the Software operation in accordance with the requirements specified in the Documentation on Your part, including remote access, and
  - providing cooperation as We require to complete the implementation.
- 4.3 Obstacles to performance. If any of the above conditions is not met, it shall be deemed to be an obstacle to performance of the Contract on Your part and We are entitled to suspend the implementation. The duration of the obstacle, during which We are unable to perform the Contract, shall be counted from the first day when such obstacle occurred until the moment when You notify Us that the obstacle has been eliminated. The implementation deadlines shall be extended automatically by the duration of the obstacle and by the time necessary for Us to restore the continuity of performance for You.
- 4.4 Completion. The implementation is completed once We notify You that it has been completed and is ready for testing. Within 3 working days of sending the notification, You can check whether the implementation corresponds with the agreed specification. If You believe that the implementation does not correspond with the agreed specification, You must send Us a written notification of defects with a detailed description of the non-conformity within the same time limit. As soon as You confirm to Us that the implementation has been completed properly, or if You do not report any defects within the above time limit for the inspection, You accept the proper completion of the implementation. Acceptance of the proper completion of the implementation shall also occur if You start using the commissioned Software beyond its testing, albeit partially.
- 4.5 Extra work. If You request any modifications to the implementation that are not specified in the Order Form (e.g. a change in the manner or form of data import and export, integration with third parties' systems, change in the application settings), it is deemed to be a request for extra work. Once We receive such request, We shall suggest the terms (in particular, the deadline, price, requirements for cooperation, etc.) under which We shall carry out the extra work. Negotiations about extra work shall be without prejudice to Your obligation to accept the implementation unless we agree otherwise.

If You request extra work but do not approve the price for its implementation, We may suspend the Implementation work until we agree on the next course of action. If You approve the extra work, You will pay Us the price for its implementation based on the invoice issued prior to the commencement of such extra.

- 4.6 Defects. If within the inspection deadline in accordance with art. 4.4 You inform Us about any reservations about the completion of the implementation in accordance with the above provision, You must specify the details of Your reservations in the notification. We shall eliminate any defects confirmed by Us within a reasonable time limit by repairing them or providing an alternative course of action (workaround) during which no such defects show. If in Our opinion a defect is irremovable, We may offer You a discount off the price instead of eliminating the defects. If You refuse to accept the implementation after the defect removal, We may withdraw from the Contract.
- 4.7 Later reservations. Should You have any reservations about the implementation after the defect elimination, we may agree on a change to the assignment or on Your acceptance of the implementation with a reasonable discount off the price of up to 20%. Should the implementation not be accepted within 3 months after the completion of the first tests, any of us may withdraw from the Contract.

## 5. YOUR OBLIGATIONS



- 5.1 General. Throughout the duration of the license, You shall provide and comply with adequate security measures to protect the Software from unauthorised access, use or disclosure. Furthermore, You shall supervise and control access of Authorised Users to the Software and its use so as to make sure that it is used exclusively in accordance with the Contract.
- 5.2 Your responsibility. You are solely responsible for:
- Your equipment and systems and for making sure that they comply with the requirements specified in the Documentation. Should You fail to meet the requirements, the Software may not function properly or may not function at all,
  - using, securing and protecting access data of Authorised Users from unauthorised use, and
  - all access to the Software and its use via Your devices or access data of Authorised Users, including all outcomes obtained as a result of such access or use and all conclusions, decisions and activities based on them.
- 5.3 No headhunting. You undertake that without prior written agreement with Us You will not, neither directly in Your name nor indirectly via a third party, in particular Your Affiliate, throughout the duration of the Contract as well as for a period of 2 years after its termination, entice or incite employees, contractors (in particular, self-employed entrepreneurs, members of elected bodies or any other of Our employees or employees of Our Affiliate (hereinafter together as "Employees") to terminate or scale down their cooperation with Us or Our Affiliate or to start carrying out work (including outside of employment) for You or Your Affiliate. In particular, You undertake that neither You nor Your Affiliate shall send targeted job offers or similar offers to Employees. You further undertake to inform Us if You or Your Affiliate are negotiating with an Employee about commencing employment or similar relationship as soon as such situation occurs. Should You breach the provisions of this article, You shall pay Us a contractual penalty equalling the remuneration that We paid the relevant Employee during the last 6 months before the breach.
- 5.4 Non-competition clause. You further undertake that for the duration of the Contract as well as for a period of 2 years after its termination, You shall not develop, sell or make available to third parties in any other way on the territory of the European Union any software or service that serves the same or similar purpose or that has the same or substantially similar functionalities as the Service or Software, and that You will not help any person with such activity. Should You breach the provisions of this article, You shall pay Us a contractual penalty of CZK 5 mil.

## 6. SERVICE SUPPORT AND MAINTENANCE



- 6.1 Standard scope. If we agree on the provision of support or maintenance and do not stipulate otherwise, We will provide You with standard support and/or maintenance to the extent of this article 6 in return for payment in addition to the price for the provision of the license.
- 6.2 Support. Support shall include responding to Authorised Users' queries concerning regular use and setting of the Software in accordance with the Documentation. We provide support upon request over the phone, by e-mail and via the HelpDesk, which is available Monday to Friday from 8:00 a.m. to 4:00 p.m. Up-to-date contact details for the provision of support can be found in the Quotation Form. If You contact Us via any of the above channels with a request for support and we do not agree otherwise, You agree that We may charge You the price in accordance with article 6.4.
- 6.3 Maintenance. The aim of maintenance is to release updates for the purpose of fixing and preventing any Software defects. We also may, but are not obliged to, release updates for the purposes of improving the Software functionality. We reserve the right to make changes to the Software as part of the updates as We consider necessary or useful to improve its quality, effectiveness or performance or to ensure compliance with applicable legal regulations. We shall make the updates available to You via installation files. Installation or commissioning of a new Software version (upgrade) carried out by Us shall also be deemed to be maintenance. Maintenance shall not include implementation, installation or setting of Your operation system.
- 6.4 Price. For the provision of support and maintenance, You shall pay Us the price in the Time & Material form. That means that You will pay Us for each single man-hour (i.e. 1 working hour of one of Our Employees) or man-day (MD, i.e. 8 working hours of one of Our Employees) of providing service support the price specified in the price list, which is part of the Quotation Form. For these purposes, a different hourly rate may be set in the price list for various roles of Our Employees (e.g. a tester, developer, etc.), who have different rates depending on their field of expertise and experience. The price list may also contain rates for carrying out specific tasks, e.g. for releasing an update.
- 6.5 Measuring time. We shall measure the time spent on providing service support and e-mail You the time sheet of the man-hours worked, including a description of the work the hours relate to. We shall send the time sheet within 14 days of the provision of the service support. If within 5 days of sending the time sheet We receive written objections to its contents, We may modify it and send back to You at Our discretion. You can approve the time sheet by confirming that it is ok or by not sending any objections to its content within the above deadline. After the expiry of the above deadline for the delivery of objections to time sheets, We shall issue an invoice to You.

- 6.6 Defective performance of service support. We have agreed that the performance of service support is defective only if it does not comply with the provisions of the Contract. You undertake to object to defects, if any, within the inspection deadline, which is 3 working days from the provision of each individual performance. We shall not be responsible for any defects objected to later, while the rights from defects objected to after the expiry of the deadline / period according to the previous sentence shall expire. We shall eliminate any defects confirmed by Us by repairing them or providing an alternative course of action (workaround) during which no such defects show within the agreed period of time. Unless we agree otherwise, such period of time shall be 10 working days. If in Our opinion a defect is irremovable, We may offer You a discount off the price or withdraw from the Contract instead of its removal.
- 6.7 Limitation. Support and maintenance shall be provided only for the latest two main Software versions (i.e. when the latest Software version is marked as 23.2., support and maintenance shall be provided only for versions 23.2. and 23.1.). At Our discretion, We may stop providing maintenance in relation to specific Software, also prematurely, in particular in view of a release of a new major Software version or end of the Software support. If a new major Software version is released (e.g. a version that brings new substantial functionalities or a version that We promote as a new product), its delivery may be subject to separate license fees and not be included in the price for the provision of maintenance.

## 7. SUBSCRIPTION



- 7.1 Subscription. We may agree to provide the license for the use of the Software and/or provide priority access to support and maintenance, or possibly other services, in the form of Subscription. In such a case, our agreement will include a lump sum price for the provision of the Subscription, a list of services included in the Subscription, the subscription and the invoice period.
- 7.2 Priority access to support and maintenance. Priority access to support and maintenance shall mean that in comparison to Our customers without Subscription, We will offer You priority terms for installation or putting into operation of a new Software version or other maintenance and when providing support, We will deal with Authorised Users' queries as a matter of priority.
- 7.3 Subscription period. The first Subscription period shall commence upon the payment of the Subscription price. Once expired, the Subscription period shall be renewed and extended automatically by the time for which it was agreed in the Contract, including repeatedly. Renewal shall not occur only if any of us no later than within 30 days before the expiry of the current annual Subscription period or within 10 days before the end of the current monthly Subscription period notifies the other party in writing that they wish to end the Subscription period. In such a case, We shall end the Subscription on the last day of the Subscription period which the request to end the Subscription period relates to, in compliance with the deadlines according to the preceding sentence. If the Subscription period is renewed, You shall pay the price for such subsequent Subscription period based on the invoice issued by Us before the commencement of the subsequent Subscription period. Unless we agree otherwise, the price for the subsequent Subscription period shall be based on the current price policy concerning the given Software and on the number of Authorised Users or Stations, or other Software specification.

## 8. PRICE AND PAYMENT TERMS



- 8.1 Price. You undertake to pay us the price agreed in the Order Form as follows:
- the price for the provision of the license shall be paid regularly in the form of Subscription or in a lump-sum payment (as agreed in the Order Form) based on an invoice issued by Us within 15 days of the conclusion of the Contract,
  - the price for the Implementation shall be paid in a lump-sum payment based on an invoice issued by Us within 15 days of the conclusion of the Contract,
  - the price for the provision of support and maintenance shall be paid on an ongoing basis based on an invoice issued by Us within 15 days of the date of provision of support and/or maintenance,
  - the price for the Subscription shall be paid in advance for the entire Subscription period based on an invoice issued by Us within 15 days of the conclusion of the Contract under which the Subscription has been ordered by You.
- 8.2 VAT. Unless we agree otherwise, all prices are stated exclusive of VAT, which shall be charged to You in accordance with legal regulations and You undertake to pay it beyond the stated prices.
- 8.3 Other taxes. The prices do not include any other taxes or fees. If You are obliged to make any deduction from the price payment (e.g. to pay the withholding income tax), You must inform Us about it in advance. We have the right to increase the invoiced price in such a way so as to receive the net amount We are entitled to without any deductions made.
- 8.4 Due date. The invoice due dates shall be at least 14 days from the invoice date.
- 8.5 Invoicing. We shall send You the invoices electronically to Your contact person's e-mail address. You shall pay Us the price by credit transfer to the account specified in the invoice, using all the indicated payment identifiers (e.g. variable symbol).
- 8.6 Delay. Should You be:
- In default with the payment of any amount due, We may charge You a contractual penalty of 0.5 % of the amount due for each commenced day of delay. In addition to that, You shall reimburse us for all costs incurred while recovering late payments, including the cost of legal representation, court costs and fees payable to the collection agency. For sending You the first and second request for payment of an overdue amount, We shall charge You a fee in accordance with Our price list and You undertake to pay it.

- b) In default with the payment of the Subscription, which includes the provision of the Software license, the provision of the license shall be suspended upon the default and You must not use the Software for the duration of the default, except for using the Software for the purposes of making a backup of data stored in the Software or via the Software provided We allow You to do so.
- c) In default with the payment of any amount overdue for more than 14 days, We may restrict or prevent Your access to the Software or its functions, deactivate a license certificate provided to You and suspend the provision of the service until the overdue amount has been paid in full. If We prevent access to Software in accordance with this article, We shall have no obligation or liability to You or any other person.
- d) In default with the payment of any amount overdue for more than 30 days, Your Software license shall expire to the full extent, You are obliged to stop using the Software immediately and uninstall it from Your IT systems. If the Software is run in Cloud, We are entitled to end the Software operation and remove it from the Cloud. If any of Your data or third parties' data are stored in Cloud, in Our IT system or in Our data carries, We are entitled to delete them irreversibly. If We decide to notify You of an upcoming date of data deletion, We may charge You a fee for sending such notice in accordance with Our price list and You undertake to pay it.

For the avoidance of doubt, we have agreed that the individual effects of Your default in accordance with points a) to d) may occur simultaneously and do not exclude one another.

16.6 Inflation. Each year, as on 1 February or any other date specified by Us, the agreed prices shall be automatically increased by the inflation rate expressed as an increase in the average annual consumer price index for the previous calendar year, as published by the Czech Statistical Office. The increase shall be rounded up to whole tens of crowns. The first increase may occur upon expiry of 6 months from the conclusion of the Contract at the earliest.

16.7 Disputes. Should there be any dispute between us (e.g. about payment of the hourly rate for service support), You must pay Us the indisputable part of the price, regardless of the state or nature of the dispute. Your payment obligations shall not be affected by any Force Majeure events.

16.8 License audit. We are entitled to remotely check at any time the extent of using the Software and compliance with the quantity limitations. Should We have grave suspicion that You breach obligations arising from the Contract, We may perform an audit of activities carried out by the Software holder. The audit shall be performed in such a way so as to minimise the impact on Your normal business activities. If it is reasonable and possible in the given circumstances, We will inform You about Our intention to perform an audit in advance. You undertake to cooperate with Us as necessary and to comply with instructions given by Us and Our auditors, as well as to ensure cooperation of other persons if required. You shall bear all costs incurred by You in connection with the audit.

## 9. SOFTWARE OPERATION IN CLOUD



- 9.1 Application. If we agree that the Software shall be operated in Cloud, such Software operation shall be governed by this chapter of the Terms and Conditions in particular.
- 9.2 Cloud provider. If the Software is operated in Cloud, the Cloud provider shall be selected by Us. While running the Software in Cloud, We may change the Cloud provider at any time – in such a case, You undertake to allow Us to migrate the Software to the Cloud operated by the new provider and to cooperate with Us as necessary. We undertake to perform the migration in such a way so as to disrupt Your activities as little as possible. You expressly waive any entitlement to reimbursement of any direct or indirect damage caused by the Software migration to a new Cloud (including entitlement to reimbursement of lost profit), except for cases when such waiver of the entitlement to reimbursement of damage is excluded by law.
- 9.3 Liability for the Cloud. If the Cloud provider is a third party, We shall not be liable for any failures, shutdowns or other defects or deficiencies of the Cloud resulting in non-functionality or limited functionality of the Software. Our liability is limited to that We shall provide reasonable cooperation to You to exercise the right to compensation for damage incurred in relation to the third party – the Cloud provider. You and the Cloud provider have the sole responsibility for Your data and their backup to the extent set out in the provider's terms and conditions.
- 9.4 Payments for the Cloud. You acknowledge that the price for the Subscription includes the Cloud provider's fees for providing the capacity and operating the Software in the Cloud. If the Cloud provider increases the price for the provision of the Cloud to Us, We may increase the price for the Subscription accordingly, with effect from the date stated in the notification of the price increase, but not earlier than 30 days from the date when the notification of the price increase is delivered to You. For the avoidance of doubt, we have agreed that We may increase the prices by inflation in accordance with art. 8.7 simultaneously with an increase in the price for the Subscription in accordance with this article.
- 9.5 Interruption of Services. We shall inform You about scheduled shutdowns without undue delay as soon as the Cloud provider notifies Us thereof.
- 9.6 Legality of Your data. You are responsible for making sure that You store data in the Cloud and that You process the data via the Cloud in compliance with legal regulations and terms and conditions and such storing or processing of data does not breach Your or third parties' rights or legitimate interests.
- 9.7 License to Your data. By using the Software in Cloud, You provide Us and the Cloud provider with a non-exclusive, free, transferable, sublicensable, worldwide right and license to host, store and back up all Your data stored in the Cloud.
- 9.8 Data backup. If We create a backup of Your data in the Cloud, We may store it for up to 180 days of the date of the end of the Software operation in the Cloud. If We have a backup at Our disposal, We shall provide it to You under mutually agreed conditions only if You do not have any overdue debts to Us.

## 10. NON-DISCLOSURE



- 10.1 Confidential information. When performing the Contract, any of us (the disclosing party) may make its confidential information available to the other party (the receiving party). Confidential information shall mean non-public information of business, financial, technical, operation or production nature, including trade secrets, as well as other non-public information that the receiving party should consider confidential in view of its content or manner of disclosure. This particularly means information about business plans, know-how, prices, access data and passwords for the Service. Confidential information shall not mean information that is or becomes publicly known or available other than by conduct or omission of the receiving party or that was in the receiving party's possession before the date of conclusion of the Contract.
- 10.2 Non-disclosure. The receiving party undertakes to maintain the confidentiality of the disclosing party's confidential information. The receiving party may use confidential information of the disclosing party only in accordance with the Contract for the purposes of its performance. Unless it is necessary for the performance of the Contract, the receiving party may not publish, disclose to others and use the disclosing party's confidential information in any other way.
- 10.3 Allowed disclosure. The receiving party may provide confidential information of the disclosing party to its employees or co-workers only if it obliges them to confidentiality at least to the same extent as required from the receiving party by the Contract, and only to the extent necessary to meet its obligations in accordance with the Contract. The receiving party shall be responsible for a breach of confidentiality by persons to whom it provided confidential information as if it has breached the confidentiality obligation itself.
- 10.4 Exceptions. The confidentiality obligation does not apply to cases when the obligation to make the disclosing party's confidential information available or public arises from a legal regulation or decision of public authority.
- 10.5 Duration. The confidentiality obligation shall last throughout the duration of the trade secret, and in relation to other confidential information throughout the term of the Contract as well as for 5 years after its termination unless the disclosing party discloses specific confidential information earlier. Upon the disclosing party's request, the receiving party shall return or destroy the disclosing party's confidential information which the receiving party is not obliged to store in accordance with legal regulations.



## 11. LEGAL OBLIGATION

11.1 Breach of rights. If in Our opinion the Software breaches or may breach intellectual property rights of third parties, We may at Our discretion and at Our expense:

- a) obtain the right for You to use the Software in accordance with the Contract,
- b) modify the Software in such a way so that it does not breach the rights while providing similar functionality, or
- c) withdraw from the Contract with immediate effect and request that You stop using the Software.

11.2 Compensation. You undertake to compensate and hold Us harmless in relation to all damage, including sanctions, penalties and cost of legal representation that may arise in connection with an entitlement or claim of a third party in connection with:

- a) Your data or its processing,
- b) facts that, if true, would constitute a breach of any of Your representation or obligation under the Contract,
- c) Your conduct or omission in connection with the Contract, or
- d) in connection with the use of Software by an Authorised User which exceeds the purpose, scope or manner of use allowed by the Contract or any manner contrary to Our instructions.

11.3 Waiver of guarantees. The Software is provided “as is”. Unless we expressly agree otherwise, We do not provide You with any guarantee that the Software is suitable for a particular purpose, will be compatible or will function with any software, system or other services, or that it will be secure, accurate or without errors. Beyond the framework specified in the Documentation, We do not provide You with any guarantee that the Software will be available or functional without interruption. All materials of third parties, including open-source, are provided “as is” and any representations or guarantees concerning third party’s materials are made solely between You and the provider of third party’s materials. You consent to the stated limitation of liability.

11.4 Limitation of liability. To the maximum extent permitted by legal regulations, We do not bear liability for lost profit, impossibility to use the Software or interrupted provision of the Software, loss, damage or recovery of Your data or breach of their security. Our obligation to reimburse You for damage arising from or connected with the Contract is in aggregate limited by the sum corresponding to 100% of the price which You have paid to Us based on the Contract in the period of 12 months preceding the event that gave rise to the entitlement for reimbursement of such damage.

11.5 Exclusivity. This section 11 provides for all Our responsibility arising from the Contract. You expressly waive any rights not provided for herein and agree with the above limitation of liability. Payment of any contractual penalty shall be without prejudice to the entitled party’s right to compensation for damage caused by a breach of obligations.



## 12. TERMINATION OF THE CONTRACT

12.1 Termination of the Contract. In addition to any other rights to terminate the Contract specified herein:

- a) any of us may withdraw from the Contract with immediate effect if the other party materially breaches the Contract and is unable to remedy such breach or is able to remedy it but fails to do so within 30 days after receipt of written notice of such breach from the other party. A material breach of the Contract shall mean, in particular, a breach of the license terms, obligation of confidentiality or refusal to undergo the audit in accordance with art. 8.9,
- b) any of us may withdraw from the Contract with immediate effect if the other party goes or might go bankrupt within the meaning of legal regulations effective as on the date of the notice of withdrawal, files an insolvency petition against itself (debtor's proposal), or enters into liquidation, and
- c) We may withdraw from the Contract with immediate effect if You fail to settle any amount within its due date and such delay lasts more than 30 days, or if You breach art. 3.1 hereof.

12.2 Notice Period. In the case of withdrawal from the Contract for reasons other than those set out in art. 12.1 hereof, where such withdrawal is allowed by legal regulations or the Contract, the notice period shall not end before the expiry of the currently valid Subscription period.

12.3 Procedure for the Contract termination. Unless we agree otherwise, upon termination of the Contract:

- a) after expiry of another 3 months, We may destroy and permanently delete all Your data and confidential information, while for the avoidance of doubt, such obligation shall not apply to Final Data,
- b) You are obliged to immediately stop using the Software and within 15 days or at Our written request permanently delete all materials provided by Us and Our confidential information from all Your systems and confirm to Us in writing that You have met this obligation. This shall not apply in the case of a notice of withdrawal in accordance with point 10.1(c), which shall be without prejudice to the duration of Your license,
- c) all prices that would be payable if the Contract remained valid until the end of the Subscription period shall become payable with immediate effect and You are obliged to settle the prices together with all previously payable but not yet settled prices upon the receipt of Our invoice. Unless otherwise stipulated in the Contract, the termination of the Contract shall be without prejudice to Your obligation to pay the agreed price,
- d) by notice with immediate effect or notice without a notice period, the currently valid Subscription period shall be shortened and end on the date of the Contract termination, while maintaining the same Subscription price also for such reduced Subscription period,
- e) You are not entitled to be refunded the price paid for the Subscription. You shall not become entitled to the refund of the price paid for the Subscription even if the Subscription period is reduced or terminated prematurely.

12.4 Surviving provisions. Termination of the Contract for any reason shall be without prejudice to the rights and obligations that, given their nature, shall survive its termination.



## 13. PARTNERSHIP PROGRAMME

13.1 Partnership programme. The product partnership programme (hereinafter referred to as the “Partnership Programme”) is intended for holders of valid product Subscription (if We offer it) who meet the conditions set out in the attached Partnership Programme (hereinafter referred to as the “Programme Rules”), which is part of the Quotation Form. Membership in the Partnership Programme allows the partner to receive benefits and services at the partnership level achieved in accordance with the conditions set out in the order and Programme Rules.

13.2 Terms and conditions. You may apply for membership in the Partnership Programme upon fulfilment of the following conditions:

- a) the product Subscription lasts more than 1 year,
- b) written consent to making a reference in the product marketing materials,
- c) product promotion on own web portal or promotion in the form of a video presentation, giving an interview or other forms of marketing in Our web presentations.

13.3 Membership. We shall inform You about establishment of membership by e-mail, as specified in the order. Membership shall be established once a confirmation is sent by e-mail. We reserve the right to refuse an application for membership without giving a reason. Once the membership has been established, You undertake to meet the criteria of the Partnership Programme for the relevant partner level, as specified in the Programme Rules and in the order. We shall check compliance with the criteria on an ongoing basis. If We find out that You do not meet the membership conditions for the given level, We may decrease Your membership level at Our discretion or We may give You a reasonable time limit for rectification.

13.4 Membership duration. Membership shall last for 1 year after its establishment. Upon expiry, membership shall be extended automatically for another 1 year, including repeatedly. Membership shall not be renewed if We find out that You have not met the criteria for membership in the programme. Membership shall be terminated by Our unilateral decision, including without giving a reason. We shall inform You about termination of membership. Upon expiry of membership in the Partnership Programme, all the benefits are no longer valid and cannot be obtained.

13.5 Change. We reserve the right to change the Partnership Programme to a reasonable extent as well as to terminate the Partnership Programme. We shall inform You about such change on the website. Should You not agree with a change in the Partnership Programme, You are entitled to reject such changes and terminate Your membership in the Partnership Programme.

## 14. FINAL PROVISIONS



- 14.1 Notifications. We shall communicate mainly electronically, via the contact persons' e-mail addresses. If any communication or negotiation needs to be made in writing, an e-mail with electronic signature shall be sufficient.
- 14.2 Entire agreement. The Contract represents our entire agreement in relation to its subject matter and supersedes all prior agreements regarding the subject matter of the Contract. The Terms and Conditions form an integral part of the Contract. Should there be any discrepancy between any documents constituting the Contract, the following order of priority shall be observed: firstly, the Order Form and its annexes, secondly, the body of these Terms and Conditions, and thirdly any other documents referred to herein.
- 14.3 No assignment. None of us is entitled to assign the Contract or any entitlement, right or claim arising therefrom without prior written consent of the other party. However, We may assign the Contract as a whole to Our Affiliate, including without Your prior written consent.
- 14.4 Force Majeure. Should any obligation not be met on account of Force Majeure, it shall not be deemed to be a material breach of the Contract. Force Majeure events shall be without prejudice to the parties' payment obligations. A Force Majeure event shall include all unforeseeable circumstances that We cannot reasonably control, in particular natural disasters, embargoes, strikes (including scheduled ones), war, epidemic, cyberattacks (e.g. DDoS), import or export restrictions, quotas or other restrictions or bans, fall of the government, power, telecommunication or traffic failures. If a Force Majeure event lasts for more than 30 days, We may terminate the Contract.
- 14.5 Amendment. The Contract can be amended by written amendments agreed by both of us, either by signing an amendment in printed form or electronically with electronic signatures of both parties.
- 14.6 Severability. Invalidity, ineffectiveness, nullity or unenforceability of any part of the Contract shall be without prejudice to its remaining parts. We mutually undertake to replace any invalid, ineffective, null or unenforceable part of the Contract with one that is valid, effective, enforceable and not null, with the same business and legal intent, within 14 days of the date a party receives the request from the other party.
- 14.7 Governing right and jurisdiction. The Contract and any legal relations arising therefrom or in connection therewith shall be governed exclusively by the laws of the Czech Republic, excluding choice of law. Any disputes arising from the Contract shall be decided exclusively by the courts of the Czech Republic having jurisdiction based on Our registered office.



ADVANCED PLANNING AND SCHEDULING SOLUTIONS



# ELVAC SOLUTIONS

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## LICENSE, BUSINESS AND SERVICE TERMS AND CONDITIONS

2024



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