

SUBSCRIPTION TERMS & CONDITIONS

This SUBSCRIPTION TERMS & CONDITIONS ("Agreement") is between you ("You" or "Customer") and Bucher + Suter AG, a Swiss corporation with its principal place of business at Lindenhofstrasse 1, CH-3048 Worblaufen, Switzerland or any other b+s entity defined in the Accepted offer ("b+s"). b+s and You are each a "Party" and together the "Parties" to this Agreement. BY USING THE SOFTWARE, YOU ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTOOD THIS AGREEMENT AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS ("TERMS"). THESE SUBSCRIPTION TERMS & CONDITIONS MUST BE PROVIDED TO YOU BY THE PERSON DISTRIBUTING THE OFFER DOCUMENT FOR THE SOFTWARE. THIS PERSON WILL BE LIABLE TO YOU IN CASE YOU ARE NOT DULY PROVIDED WITH THESE SUBSCRIPTION TERMS & CONDITIONS.

IF YOU DO NOT AGREE TO THESE TERMS, YOU MUST NOT USE THE SOFTWARE. THESE TERMS APPLY IN ADDITION TO ANY OTHER TERMS AND CONDITIONS YOU MAY HAVE ACCEPTED PREVIOUSLY WITH b+s OR ITS SUBSIDIARIES REGARDING THE SUBJECT MATTER. IN CASE OF CONTRADICTIONS BETWEEN THESE TERMS AND THE PREVIOUSLY ACCEPTED TERMS, THESE TERMS PREVAIL.

1. Definitions

"Accepted Offer": an offer document specifying the Subscription, the number of Users, the Support, the Fees and the Term, accepted by Customer in writing. This document may be distributed to the Customer by a partner of b+s or b+s itself and may have a different title or form. The Accepted Offer is an integral part of this Agreement.

"Customer": an end user who uses the Software within the scope of its internal business operations (not a reseller).

"Documentation": the Subscription and Support descriptions made available online to Customer alongside with the Subscription. The Documentation is an integral part of this Agreement.

"Fees" include the fee for Subscription and the fees for Standard Support.

"Subscription": the b+s subscription service of giving a Customer electronic access to a b+s software application ("Software").

"Support": 7x24 Support provided by b+s in connection with the Subscription based on the Accepted Offer.

"Telemetry Data": technical and other, typically marginal data, which measures the use and the performance of the software used by the Subscription. The Telemetry Data may contain, without limitation, information about how often the Customer uses the subscription, which of its functionalities and features are used, which is the version used by Customer, details about the system configuration and surrounding systems, as for example browser etc.

"Term": a subscription period during which Subscription and Support will be provided by b+s to Customer and shall commence upon no later than ninety (90) days after an order is received by b+s.

"Trial": a period of thirty (30) days during which b+s may, in its sole discretion, make the Subscription available to Customer free of charge (up to a maximum of five (5) Users).

"User": an individual for whom Customer has purchased a subscription to use the Subscription.

2. Trial. Upon registration for a Trial, Customer may be asked to accept separate Trial terms and conditions. During the Trial, Support will be provided in the sole discretion of b+s. Unless b+s receives an Accepted Offer from Customer before expiry of the Trial, the Subscription will automatically end at the end of the Trial.

3. Provision of Software. The Software may, in the sole discretion of b+s, be provided through b+s' website or through the website of a third party.

4. Availability of Subscription. b+s will use commercially reasonable efforts to provide the Subscription to Customer or to the third party website providing the Subscription, as applicable, 24 hours a day, 7 days a week, except for (i) reasonable periods of maintenance works; (ii) Force Majeure; and (iii) any other reasons beyond b+s' control. In case the Subscription is provided through the website of a third party Subscription availability must be ensured by such third party and according to its commercial terms and conditions.

5. Customer Obligations. Customer undertakes to: (i) only use the Subscription for its internal business operations in accordance with its intended use; and (ii) not to exceed the number of subscribed Users.

6. Customer Data. Telemetry Data

i. In case the Subscription is provided through the website of a third party, Customer understands and agrees that Customer's registration information and any other Customer data submitted by Customer to the third party's systems may be used by such third party in accordance with the respective service agreement between Customer and such third party and / or the privacy policy as displayed on the third party's website. Except for Telemetry Data, b+s will not access, share, process, transmit or otherwise use Customer's registration information and any other Customer data except for the purpose of performing its obligations under this Agreement, preventing and solving service or technical problems, or as required by law.

ii. Customer understands and agrees that b+s will collect and analyze Telemetry Data generated by using the Subscription for the purposes of improvement and development of its products and services as well as for subscription, resource and client management and advisory. Telemetry Data generally do not contain personal data. Individual personal data, such as for example User details, will be collected by b+s in a pseudonymized or anonymized way, preventing from identification of the respective individual. The Customer is obliged to duly inform the Users about the Telemetry Data processing, in case this is required by law or by Customer's internal policies. b+s may process the Telemetry Data by using the services and products of third parties, which may be located all over the world. Customer does not have any interest in the Telemetry Data. Customer is not entitled to access the collected Telemetry Data, unless such access is agreed in writing between the parties.

7. Support. Unless specified otherwise in the Accepted Offer, b+s will provide Standard Support to Customer in connection with the Subscription.

8. Fees. The Fees will be invoiced by b+s or the respective partner upfront on an annual basis no later than sixty (60) days after order received by b+s, payable by Customer within thirty (30) days from the invoice date.

9. Warranty.

i. Trial: SUBSCRIPTION AND SUPPORT ARE PROVIDED "AS IS", WITHOUT ANY WARRANTY.

ii. Subscription and Support: b+s warrants that the Subscription and the Support will be provided with reasonable care and that they will materially comply with the Documentation. For any breach of this warranty, the exclusive remedies of Customer are those described in Section 13 (ii) (Term and Termination).

EXCEPT AS SET FORTH IN THIS SECTION 9, THIS WARRANTY IS PROVIDED IN LIEU OF ALL OTHER EXPRESS OR IMPLIED WARRANTIES AND b+s SPECIFICALLY DISCLAIMS TO CUSTOMER AND ANY OTHER THIRD PARTY ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS, EXPRESS OR IMPLIED, BY LAW OR OTHERWISE, WITH RESPECT TO THE SUBSCRIPTION, THE DOCUMENTATION AND THE SUPPORT, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY AND FITNESS FOR A PARTICULAR PURPOSE. SPECIFICALLY, b+s DOES NOT WARRANT THAT THE SUBSCRIPTION, THE DOCUMENTATION AND THE SUPPORT WILL BE ERROR FREE OR PERFORM IN AN UNINTERRUPTED MANNER.

10. Intellectual Property Indemnification

i. Within five years after this agreement enters into force for first time b+s will, in the country where the Customer has its seat, defend or at its sole option settle any threat, claim and/or action brought against Customer for infringement of intellectual property rights due to Customer's use of the Software (except for open source software components), provided that (i) the allegedly infringed intellectual property rights already existed at the time of signing of this Agreement; (ii) Customer promptly notifies b+s in writing of any threat, claim and action; and (iii) Customer gives b+s the exclusive control of the defense and settlement and provides all reasonable assistance in connection therewith. These conditions being fulfilled, b+s will defend the threat, claim and action at its own costs, and will pay damages (within the limits of Section 11) which are attributable to such claim and awarded by a competent court.

ii. In the event the Software becomes, or in b+s's reasonable opinion is likely to become, subject of a claim of infringement of an intellectual property right, b+s shall remedy the situation by (i) procuring for Customer the continuing right to use the Software; (ii) modifying the Software so that it is no longer infringing or (iii) replacing the Software with functionally equivalent software. Should these measures, in the sole judgment of b+s, not be viable options, b+s shall, based on a valid court decision establishing the intellectual property right infringement, refund to Customer the license fees relating to the infringing part of the Software application by taking into consideration a straight-line depreciation of five (5) years.

b+s will bear no liability for any claim of infringement to the extent it is based on (i) actions taken by the Customer, User or any third party; or (ii) directions and instructions given to b+s by Customer with respect to specific modifications and/or customization of the Software. In the event a third party makes a claim against b+s for such reasons or other reasons not attributable to b+s, Customer shall fully indemnify and hold harmless b+s, its employees, officers, directors, partners, shareholder and agents, from and against any and all liability, claims, lawsuits, losses, demands, damages, costs and expenses, including, without limitation, attorney's fees and costs, expert's fees and costs, and court costs, and in each case as such costs are incurred arising from any such third party claim.

THIS SECTION 10 SETS FORTH THE CUSTOMER'S SOLE REMEDY AND b+s's ENTIRE LIABILITY WITH RESPECT TO ANY ALLEGED INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS.

11. Limitation of Liability. IN NO EVENT WILL b+s BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, SPECIAL OR EXEMPLARY DAMAGES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, LOSS OF BUSINESS OPPORTUNITY, LOSS OF DATA, LOSS OF USE, AND LOSS OF PRODUCTION ARISING FROM OR IN ANY WAY CONNECTED TO THE SUBSCRIPTION, THE DOCUMENTATION AND THE SUPPORT, EVEN IF SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT b+s HAS BEEN ADVISED OF THE POSSIBILITY THEREOF. THE TOTAL LIABILITY OF b+s FOR ANY AND ALL CLAIMS RELATING TO OR ARISING UNDER THIS AGREEMENT WILL BE LIMITED TO THE SUM OF PAYMENTS MADE BY CUSTOMER TO b+s UNDER THIS AGREEMENT. THIS LIMITATION OF LIABILITY WILL APPLY TO ALL LEGAL THEORIES, INCLUDING BREACH OF CONTRACT, TORT AND STRICT LIABILITY, WHETHER FOR NEGLIGENCE OR OTHERWISE.

12. Force Majeure. b+s shall not be responsible for any failure or delay in the performance of this Agreement due to any cause beyond its reasonable control, such as acts of God, war, strikes, natural disasters or governmental orders.

13. Term and Termination. A renewal of the Term shall be agreed no less than thirty (30) days prior to expiration to guarantee continuous usage of Subscription. b+s shall be entitled to unilaterally modify the Fees or any other terms of the Agreement (including the terms of the Accepted Offer as its integral part) by providing no less than sixty (60) days written notice (including in electronic form or by e-mail) prior to the expiration of the Term. Such notice will be provided to the unit within Customer's organization supporting the Software. An actual version of this Terms & Conditions is made available under <https://www.bucher-suter.com/stc>.

This Agreement may only be terminated by either Party in writing for cause. Cause includes:

- (i) The commencement of dissolution, liquidation, insolvency, bankruptcy or other similar proceedings with respect to the other Party, unless such proceedings are dismissed within sixty days (60) from filing; or
- (ii) A breach of a material provision of this Agreement, which breach is not remedied within twenty (20) days following receipt of written notification of the other Party, including, but not limited to, failure of Customer to timely pay in full any Fees.

Upon termination by b+s, Customer shall pay to b+s or the respective partner any unpaid Fees covering the remainder of the Term. Upon termination by Customer, Customer shall pay to b+s or the respective partner any Fees due up to the effective date of termination.

14. Severability. In the event that any of the provisions of this Agreement shall be or become invalid or unenforceable, the validity of the remaining provisions will not be affected. An invalid or unenforceable provision shall be replaced by a provision that corresponds to the intention of the invalid or unenforceable provisions as closely as possible.

15. Non-Assignment. Customer shall not assign this Agreement or any of its rights or obligations hereunder without the express prior written consent of b+s. b+s may freely assign this Agreement or any of its rights or obligations hereunder to any

party. Any attempted assignment in breach of this clause shall be null and void. When duly assigned, this Agreement shall be binding on each Party's successors and assigns.

16. Entire Agreement; Amendments. Subject to the preamble, this Agreement (including the Documentation and the Accepted Offer which are integral part of the Agreement) constitutes the entire agreement between b+s and the Customer with respect to the Subscription. Subject to Section 13, any amendments must be in writing and signed by authorized representatives of both parties in order to be binding. The written form requirement according to this Agreement may also be satisfied by using agreed electronically signatures such as DocuSign.

17. Applicable Law. This Agreement shall be governed by, and construed in accordance with, the laws of b+s domicile, without giving effect to the conflict of law principles thereof or the United Nations Convention on Contracts for the International Sale of Goods (CISG) of April 11, 1980. In case an US b+s entity is the licensor and party to this Agreement, this Agreement will be governed and construed in accordance with the laws of the state of New York. In case of any doubt in respect to the relevant b+s entity or the applicable law, b+s in Switzerland shall be deemed licensor and Swiss law will be the applicable law.

18. Jurisdiction.

a. Any dispute arising out of or in connection with this Agreement shall exclusively be submitted to the ordinary courts at b+s' domicile. The Parties expressly waive any objection or defense based on the lack of jurisdiction or venue (including without limitation a plea for *forum non conveniens*). Notwithstanding the foregoing, b+s may seek injunctive relief in any court of competent jurisdiction.

b. Mandatory Arbitration. If an US b+s entity is the licensor and party to this agreement following provision applies instead of a. above: All disputes arising out of this Agreement (and all amendments and attachments hereto) shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules. The arbitration proceeding shall be conducted in London, Great Britain or such other location as may be agreed in writing by the Parties.