

0. Preamble

These GTC conclusively govern all current and future contracts, deliveries and other services provided by the HOTTGENROTH Group (hereinafter referred to as 'HOTTGENROTH') to its customers (hereinafter referred to as 'Customer'). They apply exclusively; deviating terms and conditions of the customer shall only become part of the contract if HOTTGENROTH agrees to their validity in writing. Supplementary terms and conditions apply to software maintenance contracts, software usage contracts and seminar participation. These can be found at <https://www.hottgenroth.de/agb.html>.

1. Scope and legal basis

1.1 These General Terms and Conditions are directed exclusively at entrepreneurs within the meaning of Section 14 of the German Civil Code (BGB); HOTTGENROTH only concludes **B2B contracts**. If, in exceptional cases, a contract is concluded with a consumer (§ 13 BGB), these GTC shall continue to apply insofar as they do not conflict with mandatory consumer protection regulations.

1.2 'Customer' always refers to the specifically identified legal or natural person. Subsidiaries or other affiliated companies are not included unless a separate (chargeable) license agreement is concluded.

1.3 Extensions to affiliated companies can be agreed at any time in text form against payment of the applicable fees.

1.4 The information obligations pursuant to Section 312i (1) Nos. 1–3 and Section 312i (1) sentence 2 BGB are waived in commercial transactions.

2. Conclusion of contract, delivery and transfer of risk

2.1 **Conclusion of contract** Offers made by HOTTGENROTH are subject to change. A contract is only concluded upon confirmation in writing (e.g. by email) or upon delivery of the goods/software. HOTTGENROTH reserves the right to cancel or reject an order if there has been a previous payment incident with an earlier order or if binding information provided has proven to be incorrect. Technical changes and minor deviations from the product specifications are deemed to be approved, provided that these are not unreasonable for the customer.

2.2 **Physical goods** are delivered from the distribution warehouse (EXW according to Incoterms® 2020). The risk of accidental loss or deterioration is transferred to the customer upon handover to the first transport service provider.

2.3 **Provision of digital services** Software is provided exclusively in executable form (object code) via download. The point of transfer of performance and risk for all Internet-based services is the router output of the data centre used by HOTTGENROTH to the public Internet. The customer is solely responsible for the Internet connection and all network components on their side. The customer has a period of 30 days from receipt of the confirmation email to download the content to their end device. At the end of the 30 days, the download is no longer possible.

2.4 Data transfer The customer authorises HOTTGENROTH to transfer the necessary data to appropriately commissioned service providers for the purpose and duration of shipping the goods and for carrying out credit checks or trade credit/factoring insurance (Art. 6(1)(b) & (f) GDPR).

2.5 Delivery delays If HOTTGENROTH is in default, the customer may only withdraw from the contract or claim damages after a reasonable grace period of at least two weeks has expired without success, provided that their interest in the service has demonstrably ceased to exist.

2.6 Subcontractors HOTTGENROTH is entitled to use third-party providers commissioned at its own discretion to provide services – such as hosting, email delivery, payment or support services – and remains responsible for their performance as if it were its own.

2.7 Initial setup Unless expressly agreed otherwise, the customer shall carry out the initial configuration of the software (e.g. creation of user accounts, imports, individual settings) independently. HOTTGENROTH is not obliged to customise the standard software for the customer.

3. Prices and terms of payment

3.1 All prices are quoted in Euros (€) plus the applicable statutory value added tax, ex works, excluding installation, training or other ancillary services. For mail order purchases, a flat-rate processing and shipping fee will be charged.

3.2 Invoices will be provided as electronic invoices in accordance with Section 14 of the German Value Added Tax Act (UStG). The invoice amount is payable without deduction within the specified period. After expiry of the deadline, default occurs (Section 286 (3) BGB). Default interest amounts to 8 (eight) percentage points above the base rate (Section 288 (2) BGB). We reserve the right to claim further damages for default.

3.3 SEPA direct debit The advance notice period is reduced to **one day**; the customer waives longer periods in accordance with Section 675g (2) BGB. The customer expressly agrees to the shortened period.

3.4 The customer shall only be entitled to set-off and retention rights if their counterclaims have been legally established or recognized by HOTTGENROTH and are based on the same contractual relationship.

4. Retention of title

4.1 Delivered goods remain the property of HOTTGENROTH until all claims arising from the business relationship have been paid in full (extended retention of title).

4.2 The customer may resell goods subject to retention of title in the ordinary course of business; the customer hereby assigns any claims arising from this to HOTTGENROTH as security (extended retention of title).

4.3 The customer must treat the goods subject to retention of title with care and insure them adequately against theft, fire, and water damage at their own expense.

5. Warranty, rights in respect of defects, and liability

The customer acknowledges that, despite all the care taken by HOTTGENROTH, it is not possible, given the current state of technology, to create software that will always function without errors under all conceivable conditions.

5.1 Rights in respect of defects (warranty)

5.1.1 Duty to inspect and give notice of defects The customer must inspect the services immediately after delivery or provision and notify us in writing of any recognizable defects within **seven (7) calendar days** at the latest (cf. Section 377 of the German Commercial Code (Handelsgesetzbuch, HGB)). Hidden defects must be reported in writing within seven (7) calendar days of discovery. If a complaint is not made in the proper form and within the specified period, warranty claims are excluded.

In the event of a notification of defects, the customer is obliged to provide verifiable documentation (in particular project statuses) on the nature and occurrence of deviations from the service description and to actively cooperate in isolating errors.

5.1.2 Subsequent performance HOTTGENROTH shall primarily provide subsequent performance by repair or replacement at its own discretion. HOTTGENROTH is entitled to **two attempts at rectification** within a reasonable period of at least three (3) weeks. Insofar as this is reasonable for the customer, HOTTGENROTH is entitled to provide the customer with the current version of the contractual software that no longer contains the reported defects or eliminates them in order to remedy the defects. Only if both attempts at rectification have failed may the customer reduce the price or – in the case of significant defects – withdraw from the contract.

5.1.3 Exclusions Claims for insignificant deviations from the agreed quality or insignificant impairment of usability are excluded.

5.1.4 Limitation period Warranty claims expire **twelve (12) months** after delivery of the service. This does not apply in cases of intent, gross negligence, fraudulent concealment of a defect, or in cases covered by § 478 BGB (German Civil Code).

5.2 Liability

5.2.1 Unlimited liability HOTTGENROTH shall be liable without limitation

- in cases of intent or gross negligence,
- for damages resulting from injury to life, limb, or health,
- under the Product Liability Act,
- and to the extent of any expressly assumed warranty or in cases of fraudulent concealment of a defect.

5.2.2 Limited liability in cases of slight negligence In the event of a slightly negligent breach of a material contractual obligation (cardinal obligation), liability shall be limited to the foreseeable damage typical for this type of contract and, in terms of amount, to **the total amount of fees paid by the customer in the twelve (12) months prior to the event causing the damage** (or the hypothetical fees attributable to this period if the contract has been in force for less than 12 months).

5.2.3 Disclaimer of liability Liability is excluded for slight negligence outside of cardinal obligations and for other damages. In the case of delivery of software not created by HOTTGENROTH, in particular databases and manufacturer product data, the warranty of the providing manufacturer applies exclusively. HOTTGENROTH assumes no liability in this case.

5.2.4 Consequential damages Liability for indirect damages, lost profits, lost savings, production/operational interruptions or data loss is excluded.

5.2.5 Free services For free services (e.g. trial access, demo versions), HOTTGENROTH shall only be liable for intent and gross negligence.

5.2.6 Employees and vicarious agents The above limitations of liability also apply in favour of organs, employees and other vicarious agents of HOTTGENROTH.

5.3 Specialist functions, calculation results and responsibility for results

5.3.1 The software provides the customer with computer-aided tools for **energy-related building simulation, HVAC dimensioning and renovation and modernization proposals**. The values, key figures, recommendations or models generated in this process are **exclusively non-binding decision-making aids**.

5.3.2 The customer is solely responsible for **entering all project-, building- or system-specific data**, selecting the calculation parameters and performing **technical plausibility and standard checks** on the output data. The customer undertakes to check the results on their own responsibility before passing them on to end customers, authorities, funding agencies or before implementing any construction work, and to have them verified by experts if necessary.

5.3.3 HOTTGENROTH **does not guarantee** that the results determined using the software fully comply with **all relevant legal, technical or official requirements** (e.g. GEG, DIN, EN or VDI standards, KfW funding guidelines, TrinkwV, fire protection or sound insulation regulations) or that the predicted savings, subsidies or economic efficiency figures can actually be expected.

5.3.4 For **damages, costs or disadvantages** arising from

- a) the customer using **incorrect, incomplete or outdated input data**,
- b) the customer accepts the software **results without checking them or contrary to professional diligence**, or
- c) the software is used outside its **intended purpose** or in deviation from **the system and model assumptions**,

HOTTGENROTH shall **not** be liable, unless clause 5.2 provides for unlimited liability.

5.3.5 In all other respects, the **limitation of liability in accordance with Section 5.2.2** (limitation to the foreseeable damage typical for this type of contract and to the fees paid in the twelve months prior to the damaging event) shall apply to property damage, financial loss and consequential damage caused by the software functions.

6. Software licence terms

6.1 Licence grant The customer receives a non-exclusive, non-transferable named user licence for internal use.

6.2 Named user Only the customer/employee of the customer registered by name in the rights management system may install and use the software. Account or licence sharing is prohibited. The customer may make changes to the allocation themselves in the online licence management system provided at the earliest one (1) month after the last allocation.

6.3 Overuse The customer must report any overuse immediately. HOTTGENROTH is entitled to charge for the excess licences retroactively at the current list price and to impose a contractual penalty of one net annual licence price per case of overuse, payable 14 days after discovery.

6.4 Right of inspection HOTTGENROTH may carry out inspections or request self-disclosures in order to verify licence compliance. The customer agrees that HOTTGENROTH is entitled to request or retrieve user IDs, device IDs, serial numbers and related information electronically or by other means in order to verify that our services are being installed, used and accessed in accordance with the contract. For this purpose, an internet connection is mandatory each time the customer logs in.

6.5 Reverse engineering The customer is prohibited from decompiling or modifying the software, unless this is permitted under Section 69e of the German Copyright Act (Urheberrechtsgesetz, UrhG).

6.6 Outsourcing If the customer commissions an IT service provider, the latter may only use the software for the customer and in accordance with these GTC.

6.7 Upgrade If the customer purchases an upgrade to a higher-value product variant of the software already purchased from us in accordance with the product portfolio, this shall be done on the basis of a licence exchange. By re-licensing and using the software upgrade, your right to use and transfer the originally purchased basic software version shall lapse, even without expressly requesting its return.

7. Support, customer obligations and indemnification

7.1 Support services HOTTGENROTH provides free ticket support for technical questions about the software. Support is available on working days during our business hours, except on public holidays and on 24/31 December and 1 November of each year. The initial response time is usually no more than 36 hours. Enquiries outside these hours are considered to have been received on the next working day. Training, marketing or legal and content consulting services are not included.

7.2 Duties and obligations of the customer The customer undertakes to

- use the software/service exclusively within the scope of the contractual provisions and applicable laws and not to infringe any third-party rights (copyright, trademark, competition or data protection law),
- regularly make backup copies of the data stored in the software,
- comply with the current system requirements.
- protect the software and user access data from access by unauthorised third parties by taking appropriate measures.

7.3 Indemnification If the customer violates the above obligations and third parties or authorities assert claims against HOTTGENROTH as a result, the customer shall indemnify HOTTGENROTH against all claims, provide HOTTGENROTH with appropriate support in its legal defence and bear the necessary costs, provided that HOTTGENROTH informs the customer immediately and enables the customer to conduct the proceedings.

8. Data protection

8.1 HOTTGENROTH processes the customer's personal data in compliance with the GDPR. Details can be found in the **privacy policy** and the mandatory contract for order processing (Art. 28 GDPR).

8.2 Data transfers to shipping, credit rating or insurance service providers are carried out in accordance with Section 2.4.

8.3 **Customer data and statistical use** Data entered or generated by the customer remains the property of the customer. HOTTGENROTH may use this data in anonymised or aggregated form for error analysis, product development and benchmarking

9. Changes to the General Terms and Conditions and prices

9.1 HOTTGENROTH is entitled to adjust these General Terms and Conditions and prices if objective reasons (e.g. changes in legislation, market changes) require this.

9.2 Changes will be communicated to the customer by email at least six (6) weeks before they come into effect. If the customer does not object in writing within four (4) weeks, the changes shall be deemed accepted (tacit consent). HOTTGENROTH shall expressly inform the customer of the objection period in the notification.

10. Final provisions

10.1 German law applies, excluding the UN Convention on Contracts for the International Sale of Goods.

10.2 The place of jurisdiction for all disputes is Cologne.

10.3 Should any provision of these General Terms and Conditions be or become invalid in whole or in part, the validity of the remaining provisions shall remain unaffected (Section 306 of the German Civil Code (BGB)). The invalid provision shall be replaced by a valid provision that comes closest to the economic purpose.