Supplementary delivery conditions for the Certon software
Status January 2020

1.   Subject matter of the contract

1.1   The software Certon (hereinafter the "Software") of Benninger Zell GmbH (hereinafter the "Provider") includes several software modules, which the Customer can purchase on a license basis.

1.2   The nature and the scope of services of the Software, as well as the released operational environment are defined by the respective operating instructions, if nothing to the contrary has been agreed.

1.3   The Software is delivered in executable form (as object programs), including operating instructions and installation instructions. The operating instructions and the installation instructions can also be provided to the Customer exclusively in electronic form. If the software of the Provider includes interfaces to software not supplied by him, it is up to the Customer to require the necessary information, if necessary and if available, from the Provider.

1.4   The Customer is expressly not entitled to be provided with the source code

1.5   Unless otherwise agreed, the Software is installed and commissioned by the Customer. All further services of the Provider performed upon request of the Customer (in particular operational preparations, installation and demonstration of the successful installation, briefing, training and advice) require a separate order and will be invoiced by expense. External costs will be refunded separately.

2.   Software usage rights and protection against unauthorized use

2.1   Upon complete payment of the agreed price, the Provider grants the Customer the right to use the agreed Software within the scope defined in the contract. If the scope has not been agreed in the contract, this is a simple, non-exclusive permanent usage right. This only entitles the Customer to the use of the Software on a computer by one single user at a time. The computer is univocally assigned by means of the device address and the license is tied to this device after installation and activation.

The usage right only includes the use for internal purposes of the customer. Any extended use shall always be contractually agreed prior to the start thereof. The remuneration is based on the scope of the usage right.

2.2   The transfer of the Software to another computer than the initial computer (e.g. fallback or subsequent configuration) is possible at any time. To this purpose, the Customer shall request informally a new activation code from the Provider, e.g. per e-mail. Section 2.4 shall remain unaffected.

The transfer of the usage rights to third parties is only allowed if the Customer entirely waives its rights. The Customer undertakes to impose its obligations and usage restrictions on the third party. This applies in particular to the obligations of section 3.5. Upon request of the Provider, the Customer shall confirm the abandonment of its own usage in writing.

2.3   The Customer is allowed to copy the Software only insofar as this is necessary for the contractual usage. Copyright notices in the Software shall be neither modified nor erased.

2.4   The Provider is entitled to take suitable technical measures for protection against non-contractual use. This shall not affect substantially the use of the Software on a fallback or subsequent configuration.

2.5   The ownership of handed-over copies remains reserved until full payment of the due remuneration. If individual usage rights have been granted previously in a particular case, these are only granted on a temporary base, and are freely revocable by the Provider.

2.6   The Provider can revoke the usage right of the Customer if the latter significantly violates usage restrictions or other regulations for the protection against unauthorized usage (see also section 3.5). The Provider shall previously stipulate to the Customer a deadline to remedy the situation. In case of recurrence and in special circumstances, which justify the immediate revocation under due consideration of mutual interests, the Provider can pronounce the revocation without defining such deadline. The Customer shall confirm in writing to the Provider the stop of the use after the revocation. The Provider shall grant again the usage right to the Customer upon statement and assurance in writing by the Customer that no more violations of the usage rights exist and that previous violations and their consequences have been corrected.

3.   Obligations of the Customer

3.1   The Customer shall ensure that qualified personnel are available at the latest at the time of the delivery to assist the Provider, where applicable, and for the use of the Software.

3.2   The Customer shall be responsible for the availability of the operational environment and the installation requirements on its systems. The Customer shall inform the Provider immediately in case of changes of the operational environment. Section 1.2 shall remain unaffected. Unless otherwise agreed, the Customer shall be responsible for the installation and proper backup of its data, for the first time prior to the installation and later on a regular basis (see section 5).

3.3   The Customer shall help the Provider as far as possible in the elimination of defects, in particular send, upon request of the Provider, a data carrier with the relevant Software and provide work equipment.

3.4   The Customer acknowledges that the Software, including the operating instructions and further documents, is protected by copyright - this applies also to the future versions. In particular source programs are trade secrets of the Provider. The customer shall ensure with no limit in time that source programs remain inaccessible to third parties without the consent of the Provider. The transmission of source programs requires the approval of the Provider, which may not be withheld in bad faith. Source programs shall be provided by the Provider only due to express agreement.

3.5   The Customer shall not carry out any action which could aid unauthorized usage. In particular, it shall not try to decompile the Software without authorization. The Customer shall inform the Provider immediately if it comes to its attention that unauthorized access is impending or has taken place in its area. § 69e of the German Copyright Law shall remain unaffected.

4. Customer claims for defects

4.1 The Provider guarantees that the Software complies with the agreements of section 1.2 if used according to the contract.

The period of limitation for any claims for defects begins with the delivery or - if the Provider installs the Software - at the completion of the installation. An extension of the scope of use (section 2.1 paragraph 2) has no effect on the course of the limitation period.

4.2 In the case of legal defects, the following shall apply additionally and take the precedence over the General Delivery Conditions of the Provider:

The Provider shall only be liable for an infringement of third party rights due to its service insofar the service is used unchanged, according to the contract and in particular in the operational environment that has been contractually agreed or intended by the Provider.

The infringement of third party rights shall only be deemed to be a defect if these rights are valid in the Federal Republic of Germany.

If a third party claims against the Customer that a service provided by the Provider infringes its rights, the Customer shall immediately inform the Provider. The Provider and, if any, its upstream suppliers, shall be entitled, but not obliged to defend the asserted claims to the permissible extent at their expense.

The Customer is not entitled to recognize third party claims before having given the Provider sufficient opportunity to defend the third party rights in another way.

If a service provided by the Provider infringes third party rights, the Provider shall, at its choice and at its expense

a) procure the right for the Customer to use the service, or

b) design the service so that it no longer infringes upon any rights, or

c) take back the service and reimburse the Customer's remuneration (minus an appropriate sum for usage), if the Provider cannot achieve any other redress with reasonable effort.

The Customer's interests shall be appropriately taken into consideration.

4.3 For material defects, the General Delivery Conditions of the Provider shall apply, subject to the following overriding provisions of section 4.4 - 4.6.

4.4 The Customer shall report defects in writing without delay in comprehensible and detailed form, supplying all appropriate information necessary to enable recognition and analysis of the defect. In particular details shall be supplied of the working steps which led to the occurrence of the defect, the manifestation and the effects of the defect. Unless otherwise agreed, the appropriate forms and procedures of the Provider shall be used.

4.5 If the Customer is entitled to claims for defects, it shall have initially only the right to subsequent fulfillment within a reasonable period of time. The subsequent fulfillment includes, at the Provider's choice, either the rectification of the defect or the supply of replacement Software. The Customer's interests shall be appropriately taken into consideration for this choice.

4.6 If the subsequent fulfillment fails or if it cannot be realized for any other reasons, the Customer may, as per applicable legislation, reduce the remuneration, withdraw from the contract and/or, in accordance with the General Delivery Conditions of the Provider, demand compensation for damages and expenses incurred. The Customer shall make use of its right to choose relating to these claims for defects within a reasonable period, as a rule within 14 calendar days from the possibility for the Customer of becoming aware of its right to choose.

5. Liability

In case of loss of data, the Provider shall only be responsible for the cost incurred by the Customer to restore the data provided that data was properly backed up by the Customer. In case of slight negligence, the Provider shall only be liable under this provision if the Customer performed a proper data backup in compliance with the duties of care required for the type of data immediately prior to the action leading to loss of data.

6. Validity of the General Delivery Conditions of Benninger Zell GmbH

In addition, the General Delivery Conditions of Benninger Zell GmbH (in short: GDC of the Provider), status January 2020, shall apply.