

STANDARD TERMS AND CONDITIONS

Definitions

If the following words are utilized in these Standard Terms and Conditions, they shall have these meanings ascribed to them respectively as follows:

“Agreement” means these Standard Terms and Conditions.

“Company” means one of the following as referenced in the Order Agreement:

- Eleqtus, LLC (“Eleqtus USA”) whose registered offices are at 14300 Clay Terrace Blvd, Ste 260, Carmel, IN 46032, USA.
- Eleqtus GmbH (“Eleqtus Germany”) whose registered offices are at Im Hoffeld 20, 63654 Büdingen, Germany (Geschäftsführung: Allen Jones, Jesper Kehlet, Mike Cleary. Hauptsitz Büdingen, Amtsgericht Hessen).
- Eleqtus Solutions, S.L.U. (“Eleqtus Spain”) whose registered offices are at C/ Muntaner, 239 àtico, 08021 Barcelona, Spain.

“Client” means the legal entity (i.e., registered company, or legally constituted public body or financial institution) specified in the Order Agreement.

“Client Agreement” collectively means the Order Agreement, any subsequent Order Agreement, and this Agreement (including any Professional Services Agreement or Software Support Agreement, where applicable).

“Client Group Company(ies)” means any company belonging to the same group of companies to which the Client belongs, where such company controls, is controlled by, or is under common control with the Client (where “control” means having more than fifty percent (50%) voting securities in a company). For the avoidance of doubt joint ventures, partnerships and any other third parties are specifically excluded under this definition.

“Order Agreement” means the document in which this Agreement is referenced, to which it is pursuant, and which specifies the Software, Professional Services and/or related Support or other service being acquired by the Client, as applicable.

“Professional Services” means those services including but not limited to consultancy, implementation and training, supplied under this Client Agreement.

“Software” means the software products, modules and/or devices that are licensed under this Agreement or provided as part of a services engagement pursuant to this Agreement, including, but not limited to, any related application programming interfaces, associated media, printed materials, online or electronic documentation, and any updates and maintenance releases thereto.

“Support” means the provision of remote consultation and advice by qualified technical personnel and the provision of any applicable Software error corrections and releases in accordance with a Software Support Agreement pursuant to this Agreement.

1 General

This Client Agreement shall apply to the Client’s purchase of Software licenses/subscriptions and related Support, and/or Professional Services or other services from the Company. The parties agree that they have not relied upon any other representations, terms or conditions in entering into this Agreement. This Client Agreement states the entire agreement between the parties on this subject and supersedes all prior negotiations, understandings and agreements between the parties concerning the subject matter. The parties expressly consent and agree that any Order Agreement, this Agreement and any other document forming part of the Client Agreement shall be signed electronically where the facility to do so is made available by the Company. The parties further agree that such electronic signatures appearing on any of the aforementioned documents shall for the purposes of validity, enforceability, and admissibility, be treated the same as handwritten signatures. No amendment or modification of any Order Agreement, this Agreement or the Client Agreement shall be made except in writing and signed (including by electronic means) by an authorized signatory of each party.



2 Prices

- 2.1 All prices are exclusive of any applicable taxes or duty. Charges shall be made for any taxes, duties or levies which the Company is required by law to collect, and any withholding tax will be for the Client's account unless and until such time that Company is able to reclaim such tax.
- 2.2 If the Company arranges or undertakes the carriage, freight, insurance and other transport costs beyond its premises, such costs shall be for the Client's account.
- 2.3 Prices are quoted are in Euros for all Eurozone contracts and US Dollars elsewhere unless otherwise agreed and stated within the Client Agreement.

3 Invoicing and Payment

Professional Services, or other services shall be charged at the rate(s) specified in an Order Agreement and will be invoiced as delivered, or as staged within an Order Agreement between the Company and the Client as part of this Client Agreement (unless specified therein as being an annual fee in which case such Professional Services shall be invoiced in advance for a period commencing on the date that the Company signed the relevant Order Agreement and annually thereafter, unless terminated on ninety (90) days written notice prior to any anniversary of commencement for such services). When deliveries are spread over a period of time each consignment will be invoiced as dispatched and treated as a separate account and payable accordingly.

Payment of all invoices shall be due within 30 days of date of invoice. If payment is delayed for more than 30 days and the Client has not raised a reasonable dispute in writing regarding the amounts invoiced, Client agrees to pay interest from the date payment was first due until payment is received in full. Interest is accrued at the highest rate allowed by local, state or federal law, in the Eurozone specifically determined by the EU Late Payment Directive 2011/7/EU. Per the same directive, Client may also be invoiced a monthly late fee of EUR 200 or USD 250 as compensation for recovery costs.

4 Software Support & Professional Services

Provision of Software Support and Professional Services are available and provided subject to the Company's relevant published Software Support Agreement and Professional Services Agreement (all of which form part of this Client Agreement) and copies of which are available at: <https://eleqtus.com/terms>. Client acknowledges that the Company may amend such agreements from time to time.

5 Limits of Liability

- 5.1 Notwithstanding any other provisions in this Agreement the Company's liability to the Client for death or injury resulting from the Company's negligence or the negligence of its employees, agents or sub-contractors shall not be limited.
- 5.2 Subject to Condition 5.4, the Company's maximum aggregate liability for any damage to the tangible property of Client resulting from the negligence of the Company or its employees, agents or sub-contractors shall not exceed EUR 1,000,000 or USD 1,000,000.
- 5.3 Subject to Condition 5.4 the Company's maximum aggregate liability for any breach of its contractual obligations or any tortious act or omission, except for negligence pursuant to Clause 5.2, shall be limited to the greater of EUR 100,000 or USD 100,000 or the combined total amount paid by Client for Professional Services under the Order Agreement to which such claim relates.
- 5.4 In no event shall the Company have any liability:
 - 5.4.1 for loss of profits, goodwill, business interruption, delay or failure in provision of services, or any type of special, indirect, consequential or incidental loss or damages (including loss or damage suffered by the Client as a result of any action brought by a third party) even if the Company has been advised of the possibility of such damages; and

- 5.4.2 (including breach of warranty) which arises as a result of the misuse of the Software supplied hereunder, or use thereof in combination with any equipment and/or software not approved by the Company or as a result of any defect or error in any equipment and/or software not supplied by the Company; and
- 5.4.3 for any illegal or unauthorized access to or release of any Client data from any device whatsoever connecting to the Software, including, but not limited to, any access or release of such data arising from the accessing of any Client login credentials and/or login to Client account(s) by malware, viruses, or worms, for malicious or criminal activities including, but not limited to, fraudulent payments or fraudulent funds transfer.
- 5.4.4 unless the Client shall have served notice in writing of any facts which may give rise to a claim against the Company hereunder within six years of the date it either became aware of the circumstances giving rise to a claim or the date when it ought reasonably to have become so aware.
- 5.4.5 Except as expressly provided in this Agreement all warranties, conditions, representations, indemnities and guarantees, whether express or implied, arising by law, custom, oral or written statements of the Company or its third-party licensors or otherwise (including, without limitation, any warranties of merchantability, fitness for particular purpose, or of error-free and uninterrupted use) are hereby superseded, excluded and disclaimed to the fullest extent permitted by law.

6 Confidentiality

Each party shall treat as confidential information all information (including any Software and the terms of the Client Agreement) obtained from the other pursuant to the contract between them and shall not divulge such information to any person (except to such party's own employees and then only to those employees who need to know the same) without the other party's prior written consent provided that this shall not extend to information which was rightfully in the possession of such party prior to the commencement of the negotiations leading to the Client Agreement (and not subject to any confidentiality undertakings), which is already public knowledge or becomes so at a future date (otherwise than as a result of a breach) or which is trivial or obvious. Each party shall ensure that its employees are aware of and comply with the provisions of this condition and ensure that it is observed and performed by them.

7 Marketing

Client acknowledges and agrees that Company may mention and use Client's name and corporate logo in sales, marketing, advertising and promotional materials (including, without limitation, sales/marketing pitches and presentations, and client/ customer lists) for the purpose of identifying Client as a customer of Company.

8 Data Protection

- 8.1 The Company process your data based on your agreement and in accordance with the strict policies and procedures that we have contractually agreed to. We do not share your data with advertiser-supported services, nor do we mine it for any purposes like marketing research or advertising.
- 8.2 The Parties further agree to handle all personal data in accordance with all applicable data protection legislation and in particular the General Data Protection Regulation 2016/679 (EU GDPR).

9 Termination

- 9.1 Either party may terminate this Client Agreement in writing if:
 - 9.1.1 the other party commits any material breach of any term of this Client Agreement and (in the case of a breach capable of being remedied) shall have failed, within 30 days after the receipt of a request in writing so to do; or
 - 9.1.2 the other party has an interim or bankruptcy order made against it or enters into or becomes subject to a scheme, composition or voluntary arrangement with its creditors or becomes subject to a winding-up, dissolution, administration or receivership proceedings;
- 9.2 The Company may further without prejudice to its other rights, suspend the performance of Professional Services or further deliveries of Software Subscriptions and/or Cloud Services, and/or terminate the Client

Agreement and any licenses granted to Client forthwith on giving notice in writing to the Client if Client fails to pay any invoice in accordance with the foregoing payment terms.

- 9.3 Following termination for any reason whatsoever, any monies owing from the Client to the Company shall immediately become due and payable.

10 Assignment

The Client shall not be entitled to assign, sub-license or otherwise transfer the rights and obligations granted hereunder, or under the Client Agreement, whether in whole or in part unless otherwise agreed in writing by a duly authorized representative of the Company. The Company shall be entitled to sub-contract any Professional Services work relating to any Order Agreement without the consent of the Client provided that such work is performed in accordance with the terms of this Agreement.

11 Force Majeure

With the exception of payment of outstanding invoices, neither Party shall be responsible for any delay or failure in performance resulting from acts beyond the control of such party. Such acts shall include but not be limited to: an act of God; an act of war; civil unrest; terrorism; riot; epidemic/pandemic; fire; explosion or accidental damage; extreme weather conditions (including but not limited to: flood, storm, or other disaster); an act of government; industrial action or lockouts; and failure of the world wide web. In the event of such a Force Majeure event, the time for performance or cure shall be extended for a period equal to the greater of the duration of the Force Majeure or three (3) months. The party claiming to be prevented, hindered or delayed in the performance of any of its obligations under the Client Agreement by reason of a Force Majeure event shall use all reasonable commercial endeavors to mitigate against the effects and consequences of the Force Majeure event. The affected party shall resume performance of its obligations under the Client Agreement immediately upon the end of the Force Majeure event. Where no performance or cure is possible after the three (3) month period has elapsed, and in the reasonable view of the parties will not be forthcoming or possible within a further one (1) month from that date, the party not affected by the Force Majeure event may decide to terminate the Client Agreement on service of written notice upon the party so prevented, hindered or delayed, in which case no party shall have any liability or obligation to the other under the Client Agreement other than the payment of monies due.

12 Notices

Any notice or other communication to be given under this Client Agreement must be in writing and may be given by personal delivery or certified mail, return receipt request, postage prepaid, addressed to the Company at its registered address. Notices shall be deemed to have been given on the day received if by personal delivery or on the day sent if by certified mail.

13 Invalidity

The invalidity, illegibility or unenforceability of any provision shall not affect any other part of this Agreement.

14 Third Party Rights

A person who is not a party to this Client Agreement shall have no rights to enforce any term of this Client Agreement including Client Group Companies.

15 Law and Jurisdiction

Depending on the Company that the Order Agreement is made with, this Client Agreement shall be governed by either of the following:

- Eleqtus USA: This Agreement shall be governed by, subject to, construed and enforced in accordance with the laws of the State of Indiana, United States of America, without giving effect to principles of conflicts of laws thereunder. Any disputes arising between the Parties in connection with the validity, interpretation, performance or termination hereof, shall be finally settled by the United States District Court for the Southern District of Indiana.



- Eleqtus Germany or Eleqtus Spain: This Agreement shall be governed by, subject to, construed and enforced in accordance with the laws of Germany. All disputes arising out of or in connection with this Client Agreement 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 place of arbitration shall be Frankfurt, Germany. The language of arbitration shall be the English language.

