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DB MAGNIFIER | Webgasse 29/3 | 1060 Wien

Terms of Use

Content

1   Definitions

(1) Austrian Business Code: Unternehmensgesetzbuch – UGB (dRGBl S 219/1897 in der geltenden Fassung).

(2) Austrian Copyright Act: Urheberrechtsgesetz (BGBl. No. 1936/111 in der geltenden Fassung).

(3) Affiliates: Companies that are part of the group of companies, according to § 189a Z 8 Austrian Business Code of Company or Customer.

(4) Company: DB Magnifier GmbH, Webgasse 29/3, 1060 Vienna as Licensor of the Product.

(5) Customer: Client of DB Magnifier, who purchased a license of the Product. Customer is "Entrepreneur" according to § 1 of the Austrian Business Code.

(6) Party: Customer and Company are both Parties to these Terms of Use.

(7) Product: DB Magnifier DB LICENSE SPOTTER web portal and all helper applications, according to the product description and datasheet.

(8) Quotation: Commercial offer submitted by Company to Customer with details on term and amount of licenses sold.

(9) Release: A version of the Product.

(10) Terms and Conditions: DB Magnifier Terms and Conditions of Purchase available at https://db-magnifier.com/en/gtc/

(11) User: End user of the Product web portal, usually an employee of Customer.

(12) Update: Contains minor changes and bugfixes to a Release.

(13) Upgrade: Contains substantial functional changes to a Release.

2   General

(1) For the valid conclusion of this License Agreement, a written confirmation by the Customer is required, whereby a digital signature is sufficient. This signature can also be set on the Quotation. Acceptance by

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Customer can also be given by activating a digital confirmation field as a "click wrap condition" when first accessing the Product.

(2) Subsidiary to this License Agreement, the General Terms and Conditions (GTC) of Company shall apply. Customer-specific general terms and conditions or conditions of purchase are expressly rejected, irrespective of whether these have already been accepted before or have become the contractual basis in previous business relationships.

(3) This License Agreement is concluded for an initial term specified in the Quotation (12/36 or 60 months).

(4) After expiry of the initial term, the License Agreement shall be automatically extended for another 12 months, if Customer does not state in writing that a further extension is not desired according to (6).

(5) A license term extension shall be performed for the then current list prices as communicated on Company's website. Any discounts, given for the initial runtime will not be applied to an extension, unless Customer accepts another long-term license (36-60 months), considering the then available packages.

(6) The prolongation will be repeated unless Customer states in writing, that a further extension is not desired, considering at least a six (6) weeks notice period before the expiry of the initial or prolonged term.

(7) An early termination of this License Agreement is not possible, except for reasons that are mandatory, according to the law.

(8) Irrespective of this, both contracting parties are entitled to terminate the contract prematurely and at any time if there is Good Cause. In the event of extraordinary termination, the license fee shall be calculated pro rata to the period Product was actually used by Customer.

(9) Good Cause for Company is deemed in particular in the event of gross violations of the License Terms or Customer's obligations stated within this License Agreement.

(10) If the License Agreement is terminated for whatever reason, Customer is obliged to uninstall the Product within ten (10) working days and to delete all data sources and information (including scripts and automated workflows provided by Company) thereof. Proof of this must be provided at the request of Company.

(11) Amendments or supplements to this License Agreement must be made in writing. This also applies to a waiver of this form requirement.

(12) Any invalidity or unenforceability of individual provisions of this License Agreement shall not affect the validity of the other provisions of the License Agreement. In this case, the invalid or unenforceable provision shall be replaced by a valid or enforceable provision which comes as close as possible to the invalid or unenforceable provision in economic terms.

(13) The place of performance for all services arising from the contractual relationship is Vienna, unless otherwise agreed.

(14) The transfer of rights or obligations under this contract by the Customer to third parties requires the consent of Company, with the exception of the assignment of monetary claims.

(15) The Customer acknowledges that the Product and its components may be subject to export restrictions and confirms to comply with all regulations in this respect.

(16) A right of set-off and retention may only be exercised by Customer against Company based on undisputed counterclaims or counterclaims that have been determined by a court of law to be final and absolute.

(17) All fees, charges and taxes resulting from the conclusion of the contract and the use of integration services shall be borne by the Customer.

(18) Important notifications shall be made in writing by e-mail and shall be addressed to the contact person named in the Quotation.

(19) Austrian law shall apply exclusively, except its national and European conflict of laws rules and the UN Convention on Contracts for the International Sale of Goods (CISG).

(20) Any disputes arising from this contract shall be subject to the exclusive jurisdiction of the competent court in 1010 Vienna.

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3 License Terms

(1) Owner of all rights to use Product is Company. Customer and User may use the Product according to the herein defined license agreement.

(2) Company grants Customer a single, time-limited, non-exclusive and non-transferrable license to use the Product.

(3) The number of users that is included in a license type and volume package refers to the amount of single licenses the Customer may use.

(4) The license commences on the day stated on the Quotation and is limited for the term stated therein.

(5) Customer may
   a. use the Product exclusively for their Company, which is the company that purchased Product licenses, and its Affiliates;
   b. make copies of the Product to the extent that this is absolutely necessary for the use of the Product and that is covered by this license agreement;
   c. only make copies of Product for backup purposes ("backup copies") to the extent that is necessary for the use of the Product; backup copies on tangible data carriers must be marked as such, including a copyright notice of Company.

(6) Customer may not use the Product for
   a. making it available to third parties in whatever form (e.g.by renting or other forms of exploiting);
   b. for the realization of third party business cases, especially with non-affiliated companies:
   c. use cases that are restricted by the manufacturer of the database product or the corresponding license agreement.

(7) If Company provides Customer with improvements or additions to the Product (e.g. Updates or Upgrades, Bugfixes, etc.) which replace certain parts of the previously provided Product, this License Agreement shall apply analogously to the additions. In the case of Updates/Upgrades the part of the license for the replaced Product parts shall be deemed to have expired and the new versions shall replace the old version.

(8) Upgrades are solely provided at the discretion of Company. Customer shall have no right to a respective upgrade without the installed version showing a loss of functionality.

(9) If Customer requires interface information to establish the interoperability of the solution with other computer programs, Customer shall first request Company to disclose the interface information against reasonable reimbursement of costs. Only if Company does not comply with this request within a set period of time, which shall not be less than 4 weeks, the decompilation shall be subject to the conditions of § 40e Austrian Copyright Act. The deadline shall be reasonably extended if Company substantiates that compliance is not possible or reasonable.

(10) Any decompilation of the Product
   a. shall be limited to parts that are necessary to establish interoperability;
   b. may not be used for purposes other than to establish interoperability to an indepently created program;
   c. may not be disclosed to third parties unless this is necessary for the interoperability to an indepently created program;
   d. may not be used for the development, reproduction, or distribution of a computer program, substantially similar in form of expression, or for other violations of copyright.

(11) Customer is obliged to prove the existence of a lawful decompilation.

(12) In the event that certain rights originate out of a cooperation between Customer and Company, Customer (or its employees or its Affiliates or its Affilates' employees) will grant Company a cost-free, worldwide, unlimited, transferrable and irrevocable right of use.

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4   Usage

(1)   Customer may use the Product to:
  a.   Upload statistical reports from Customer's databases as defined in the quotation (number of databases and database vendors are restricted).
  b.   View statistical dashboards about database usage based on uploaded report files that are outlined in the product description and data sheets.
  c.   Download individually configurable Product-generated reports, forward them via email or print them.
  d.   Use these reports for Customer's individual business cases (e.g. License compliance checks with database vendor, license optimization, etc.).

(2)   Content generated by the Product is not intended to and does not constitute legal advice, in particular concerning vendor license agreements and specific vendor license compliance. Interpretation of generated reports is at Customer's own risk.

(3)   Parties agree to a fair-use model of the Product. Fair-use means that Customer is allowed to
  a.   upload a maximum of one (1) database report per licensed database per week;
  b.   download a maximum of ten (10) Product-generated report per licensed user per day.

(4)   Customer must keep user credentials confidential.

5   Implementation

(1)   The Product is provided as an online service via a web platform. Company will submit the website address of the login page containing the features described in the product description and data sheet and the total number of ordered credentials to the web interface to Customer via Email.

(2)   Delivery is complete when Company sends the Email detailing the credentials to the Email Adress specified by Customer.

(3)   If part of the Quotation, Company will install a dedicated server or Product helper programs within the Customer's IT infrastructure using appropriately qualified personnel and perform the integration. The duration of the implementation depends on the degree of complexity of the Customer's IT infrastructure to be managed. The Customer must do everything necessary to ensure that this integration can take place without unnecessary delay (for the obligation to cooperate, see Clauses 5) (9) and (11)).

(4)   Company shall deliver and implement Product and helper programs as specified in the Quotation within the agreed upon timeframe or at the time mutually agreed between Customer and Company.

(5)   If no delivery date has been agreed four weeks after receipt of the order for reasons for which Company is solely responsible, Customer may withdraw from the contract by setting a reasonable period of grace for the agreement of a delivery date which shall not be less than four weeks. The deadline shall be reasonably extended if Company substantiates that compliance is not possible or not reasonable.

(6)   The Product, dedicated server, or helper programs will be provided by Company using the release of the Product referred to in the Quotation, in lieu thereof, the latest version at the time of conclusion of the contract (as referred to in the data sheets).

(7)   Customer may change to a new release during the implementation phase (upgrade). In the event of a change to a new release of the Product, it may be necessary or appropriate to adapt the implementation (e.g. for security reasons, due to corrected errors or new functions). The expenses associated with the adjustment shall be borne by the Customer.

(8)   Any subsequent changes to functional or non-functional properties that may be required for whatever reason (e.g. as a result of changes to the organisational structure, or the Customer's IT infrastructure, or changes to legal conditions) will only be provided by Company for a separate fee, following a separate Quotation.

(9)   The proper performance of implementation and support by Company preconditions qualitatively impeccable, timely support by qualified personnel of Customer. To the extent that the cooperation and/or

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provision (including, but not limited to, the provision of personnel, work rooms, hardware and software, data of the database systems, as well as relevant access data) of the Customer or third parties is required for the implementation, Customer shall be obliged and responsible to ensure this cooperation in a timely manner and free of charge. Company shall inform Customer in a timely manner of any necessary requirements for cooperation and provision, unless the Customer must be aware of them. If the Customer's IT infrastructure does not meet the technical requirements for the provision and operation of Product and services, any necessary adjustments shall be made by the Customer in a timely manner.

(10) As long as Company is waiting for the Customer's cooperation or information, or is hindered or prevented in its performance by strikes or lock-outs in third-party companies or in its own company, official intervention, in particular officially ordered closures, statutory prohibitions or other circumstances for which Company is not responsible ("force majeure"), delivery and performance deadlines shall be deemed to be postponed for the duration of the hindrance or obstruction, including a reasonable start-up period. Idle times may also occur caused by malfunction of products of third party manufacturers necessary for the operation of Product for reasons which lie beyond the sphere of influence of Company. For the duration of this idle time, there shall be no default of Company. Company shall notify the Customer of the force majeure or the idle times and their expected duration without delay. If the idle time lasts uninterruptedly for more than three months, both parties shall be released from their performance obligations.

(11) Company shall provide the implementation services only within the usual business hours (normal workdays, Monday to Friday, from 09:00 to 17:00 CET).

6 Operation

(1) Company operates the Product with care on a best effort basis.

(2) Uptime guarantees are available depending on the license type and volumes defined in the data sheet.

(3) A failure of availability refers only to the systems operated by Company or on its behalf to provide the Product and means the number of minutes per month in which the online services were not available to the Customer at the point where the services were transferred to the Internet, excluding unavailability due to

a. maintenance work that is planned and announced in advance and is appropriate in terms of duration, including the installation of updates or upgrades, which are carried out outside of normal operating hours Monday to Friday, from 09:00 to 17:00 CET

b. absolutely necessary unscheduled maintenance work for which Company is not responsible and of which Company will inform, if possible;

c. external events for which Company is not responsible, e.g. external IT attacks that cannot be prevented by current, commercially available, appropriate technical and organizational IT security measures, failures due to Customer's unlawful or improper use of the service, failures due to force majeure (see section 8) (8)).

(4) Downtimes of up to five (5) consecutive business days do not enable any warranty claims on Customer's side.

(5) The operation of the client systems, as well as the - if necessary - timely update of the IT system environment and the necessary measures to ensure data security (confidentiality, availability and integrity) while using Product are within the responsibility of Customer. Maintenance services that exceed the legal warranty are not part of this license agreement.

(6) The licensing and installation of third-party software (e.g. internet browser) required for the use of the solution is carried out independently by the Customer. Company may support Customer upon request for a separate fee in procuring such licenses and installing the software provided, that Company is able to offer or procure such support. The operation of Product may be impaired or even become unusable due to incorrect use, or failure to renew third-party licenses. The Customer is solely responsible for fulfilling this technical and legal requirement.

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7 Customer obligations

(1) Customer shall carefully store the Product and necessary copies and the provided credentials in order to exclude misuse, such as in particular unauthorized duplication, making available and/or use outside of Customer's or its Affiliate's organizations.

(2) Customer shall ensure that the access authorization (login credentials) to the Product and the protection of the data carriers against viewing and use by unauthorized persons is implemented prior to accessing the Product, and that the authorization to use the Product is determined by technical measures and that each device on which the software will be accessed is secured by precautions against unauthorized access.

(3) After successful implementation and prior to its use, Customer shall thoroughly test the Product for freedom from defects and for usability in the configuration in accordance with the state of the art. If no obvious defects are objected to in writing by the Customer after implementation, the acceptance of the implementation shall be deemed after the expiry of 14 days.

8 Warranty and liability

(1) Company provides warranty within the scope of the statutory provisions. The warranty for older releases of the product is limited to 6 months from the date a newer version is available to Customers.

(2) The presumption of defectiveness pursuant to § 924 ABGB is excluded.

(3) Company warrants that deliveries and services have the properties that have been contractually warranted (through product descriptions and data sheets) and that are usually assumed properties of Product at the time of performance. Statements by Company regarding properties of the Product and services shall only be deemed to be a warranty-relevant assurance of properties if they are made in writing at the time the Quotation is submitted. Advertising and marketing materials (especially on the internet) are not relevant for determining the scope of the warranty.

(4) The warranty is limited to defects that have been reported in writing (via email) and are reproducible. Warranty claims shall only exist from the date of receipt of this notification by Company. Initial response times depend on the chosen license- and support model but will be one (1) week in general.

(5) If a defect can be remedied, Customer can only demand repair initially (creation of a defect-free condition). If Company does not remedy the defect within a reasonable period of time, or if the remedy of the defect would involve a disproportionately high effort, Customer shall have the right to a price reduction or, if the defect is not minor, the right to withdraw from the contract. If the performance is divisible, the right of rescission shall only apply to the part of the performance affected by the defect.

(6) Within the scope of the warranty, Customer shall accept a new or modified contractual item if the contractual scope of functions is maintained and the acceptance does not lead to significant deviations to be proven by the purchaser ("work-around").

(7) Reports generated by the Product are based solely on the information that was provided by Customer. Customer must take this into account when interpreting the reports and deducting conclusions. Liability for damages that arise out of a misinterpretation of the reports provided via the Product is therefore expressly excluded.

(8) If it turns out during the rectification of defects that these are due to a cause for which Company is not responsible (e.g. incorrect operation, interaction with the Customer's software, special features of the system environment at the Customer, changes to the software by the Customer or by third parties), the Customer shall pay a fee for the expenditure incurred based on hourly rates.

(9) Furthermore, the Company does not assume any warranty for errors, malfunctions or damages which are due to
   a. improper operation,
   b. changed operating system components,
   c. interfaces and parameters,

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    d.   use of unsuitable organization tools and data carriers, as far as such are prescribed,

    e.   abnormal operating conditions (in particular deviations from the installation and storage conditions),

    f.   as well as transport damages.

(10) Neither party shall be liable for damages, delays or failures to perform that are directly or indirectly attributable to Force Majeure. "Force Majeure" means an event that is external to the operation of the Agreement, caused by external forces of nature or by the actions of third parties, which is unforeseeable based on human insight and experience, cannot be prevented or rendered harmless by economically acceptable means, even with the utmost care that can reasonably be expected under the circumstances, and which could not be accepted by the operator due to its frequency (e.g. war, storms, epidemics, pandemics). If a case of Force Majeure occurs, the affected party shall notify the other party and make commercially reasonable efforts to mitigate the adverse effects of the force majeure on the performance of the Agreement. Force Majeure does not release Customer from the obligation to pay for the services actually received.

(11) With the exception of personal injury, Company shall only be liable to Customer for damage that was caused by Company by gross negligence. This shall also apply mutatis mutandis to damage caused by third parties engaged by Company. Liability for indirect damage - such as loss of profit, costs associated with a business interruption, loss of data or claims by third parties - is expressly excluded.

(12) Customer shall assert all claims for damages not acknowledged in writing by Company in court within six months of knowledge of the damage and the damaging party, otherwise the claim shall be time-barred.

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