

# Software License Terms of Picavi GmbH

## 1. Software

1.1 The Customer acquires from Picavi the contractually specified software and the associated user manual (in printed or electronic form at Picavi's discretion, if not agreed otherwise in the Contract) in the designated language (hereinafter referred to as the "Software"), under the following terms and conditions of use, if and to the extent that the contracting parties do not expressly agree otherwise in the Contract.

Picavi reserves the right to also deliver modules to the Customer that are not specified in the Contract. The delivery of such modules does not imply the right to use them, even if the Customer would be able to use the modules.

If the items delivered by Picavi contain Glass Enterprise Edition smart glasses, (where appropriate in addition to the separately included General Terms and Conditions of Picavi GmbH) the Additional End User Regulations Picavi GmbH Glass Enterprise Edition apply. These regulations can be found at <https://picavi.com/en/general-terms-and-conditions> and <https://picavi.com/ee/en/AdeurEE.pdf> and can be provided in paper form on request.

1.2 The source code of the Software is not part of Picavi's deliveries and services.

1.3 The characteristics of the Software supplied by Picavi are definitively set out in the performance specifications valid at the time of shipping as described in the user manual. Picavi shall provide the Customer with the user manual upon request. Picavi is not required to provide any further level of quality for the Software exceeding the specifications.

1.4 Picavi cannot be held responsible for any public statements made by manufacturers, their employees or agents, or claims made in advertisements, unless such statements are demonstrably proven to have been instigated by Picavi and the Customer's purchase decision has actually been influenced by them.

## 2. Type and number of licenses

2.1 Picavi awards enterprise, site and user licenses. User licenses are mandatory, in addition either site licenses or alternatively enterprise licenses must be purchased separately.

2.1.1 Site licenses shall be issued for each operating facility or facilities named in the Contract. One site license shall be granted per facility. Any use of the Software by the Customer outside of the contractually designated operating facilities is not permitted. Unless otherwise expressly agreed, the right of use for the

Software is granted exclusively for the operating facility where the Customer has its place of business, whereas providing software from an external data centre is accepted and included in the right of use for this software. If the contract does not specify otherwise, the legal definition of operating facility as per § 12 Abgabenordnung (Tax Code: “permanent establishment”) shall apply.

2.1.2 Enterprise licenses shall contain the right of use for different operating facilities of the Customer as well as the operating facilities of affiliated companies in the sense of § 15 AktG (Stock Corporation Act: “affiliated enterprises”). License fees for enterprise licenses and their particular coverage are individually negotiated between the Customer and Picavi.

2.1.3 User licenses shall be granted to the contractually stipulated number of individual users within the operating facility covered by a site license or within several operating facilities covered by an enterprise license. The term “user licenses” is to be understood as “concurrent user licenses” (i. e. the number of user licenses defines, how many users are allowed to work simultaneously with the licensed software).

2.2 The purchase price for the Software is set forth in the Contract for each enterprise, site and/or user license.

2.3 In the event that the actual number of concurrent users exceeds the contractually agreed maximum number of concurrent users, this additional use of the Software is only authorized if the Customer is granted additional rights of use to the Software to the extent required. The Customer is obligated to inform Picavi about the increased number of users without delay. Picavi shall present an offer to the Customer for additional usage rights per the standard conditions.

2.4 A reduction of the purchase price will not be granted in the event of a reduction in the number of enterprise, site and/or user licenses.

### **3. Scope of use**

3.1 Picavi grants the Customer a simple right to use the Software for an unlimited period.

3.2 The Customer is only authorized to use the Software in a manner that exceeds the rights set forth in this Contract upon prior written consent by Picavi. For additional use without authorization (in particular the concurrent use by a larger number of users than agreed) Picavi may invoice an amount payable for such excess use in accordance with the valid price list in effect at the time, unless the Customer is able to prove that Picavi has sustained significantly lower damages. Further non-contractual claims for damages remain unaffected.

3.3 The Customer may use the Software only in connection with its internal business transactions and those of affiliated companies in the sense of § 15 AktG (Stock Corporation Act: “affiliated enterprises”). Prior written consent by Picavi is required in particular for (i) a data centre operating for third parties, who are not licensees or affiliated companies or (ii) the temporary provision of the Software, for example by way of Application Service Providing for companies that are not affiliates, or (iii) the use of the Software for the training of persons who are not employees of the Customer or its affiliates. Commercial rental is generally prohibited.

3.4 Copying the Software is permissible only in so far as this is necessary for contractual use. The Customer may make backup copies of the Software in accordance with the latest technology to the extent necessary. Backup copies on mobile data carriers must be labelled as such and must also display the copyright of the original data carrier.

If the Customer has purchased the Software by way of online download, it is authorized to copy the Software onto a data carrier for distribution as per Section 5. Furthermore, Picavi’s rights to the online copy are limited in same way as if the Customer had received the Software on a data carrier.

3.5 All data processing equipment (e.g. servers, computers, hard drives) on which the Software will be copied in whole or in part either in the short or long term is located on the Customer’s premises and under its direct control. With Picavi’s written consent, the data processing equipment in accordance with sentence 1 may instead be located on the premises of an affiliated company and under its direct control. If the Customer wants to operate the Software or to have it operated for its own purposes on data processing equipment on the premises or under the direct control of a third party (outsourcing), this is only authorized on the basis of a written agreement with Picavi, which is prepared to conclude such agreement with the proviso that its legitimate interests are respected, in particular with regard to the contractual provisions on the use and passing on of the Software by the third party.

The Customer is only entitled to modifications, enhancements and any additional Software adaptations in the sense of § 69 c no. 2 UrhG (Copyright Act) to the extent that the law permits such things as essential. Before an error is corrected either by the Customer itself or by a third party, the Customer authorizes two attempts by Picavi at correction of the error. Any such modifications do not give rise to any additional usage or exploitation rights for the Customer in excess of those granted under this Contract. Picavi may, however, demand – for an adequate fee – the granting of an exclusive or non-exclusive usage right, unlimited with regard to territory and time, with the right to sub-licensing.

3.6 The Customer is authorized to decompile the Software only within the limits set forth in § 69 e UrhG, and this only if, upon the Customer’s written request, Picavi does not make the necessary data and/or information for interoperability with other hardware and software available within a reasonable deadline.

3.7 If Picavi replaces the previously licensed Software (“old Software”) with improvements or maintenance supplements, (e.g. patches, supplement to the user manual), or a new version of the Software (e.g. update, upgrade), all such replacements are subject to the provisions of this Contract.

If Picavi provides the Customer with a new version of the Software, as soon as the Customer uses the new Software productively, the prerogatives of the Customer with regard to the old Software per this contract are extinguished, even without an express request for return by Picavi. Picavi will however grant the Customer a three-month transitional phase during which both versions of the Software may be used concurrently.

3.8 Copying or revising the user manual is not permitted – subject to the provisions of Sections 3.4 and 3.5 (to the extent that the documentation is integrated into the Software).

## **4. Protection of the Software**

4.1 Unless such rights are expressly granted to the Customer under this Contract, Picavi retains full and exclusive rights to the Picavi Software (including all copies made by the Customer), in particular any intellectual property rights including copyrights, the rights to or in inventions, as well as any technical industrial property rights. This also applies to any modifications of the Software by Picavi. Customer property rights with regard to the respective data carriers of such copies shall remain unaffected.

4.2 The Customer shall keep the licensed Software in a secure place in order to prevent misuse. The Customer shall only give third parties access to the Software (whether in its original or modified form) subsequent to Picavi’s prior written consent. Customer employees or such persons working with the Customer and using the Software per its contractually agreed use shall not be deemed third parties. Section 5 shall remain unaffected.

4.3 The Customer is not permitted to modify or remove any Picavi copyright notices, labels and/or control numbers or characters. In the event that the Customer changes or modifies the Software, all notices, labels or signs must appear in the amended version of the Software.

4.4 The Customer shall keep accounts of the data carriers on which the contractually permissible Software copies are stored and where they are stored, and shall provide Picavi with complete information and access upon request.

4.5 If the Customer gives access to data carriers, storage memory or other hardware on which Software (in whole or in part, unchanged or modified) is stored (i) to third parties absent the provisions for transfer

as set forth in Section 15, or (ii) if the Customer relinquishes actual possession thereof, the Customer shall verify that the previously stored Software is completely and permanently deleted.

## **5. Transfer of the software**

5.1 The Customer is only authorized to transfer the Software to third parties in a uniform manner and by completely and finally waiving its own use of the Software. The paid transfer of use to third parties, even if it is only temporary or only in part, is prohibited, regardless of whether the Software is in physical or intangible form. The same applies in the case of a gratuitous transfer.

5.2 Any transfer of the Software requires Picavi's written consent. Picavi shall give such consent if (i) the Customer declares to Picavi in writing that it has transferred all the original copies of the Software to the stated third party and that all self-created copies have been permanently deleted, and (ii) the stated third party declares in writing its agreement to conform to Picavi's herein agreed usage and distribution terms.

## **6. Confidentiality and data protection**

6.1 The Contracting Parties undertake to treat confidentially and use solely for the purposes of the implementation of this Contract, both during and beyond the end of the Contract, all confidential information and trade secrets disclosed to or acquired by them within the framework of the negotiation and performance of the Contract. Picavi's trade secrets ("Trade Secrets") also include the Software and the services provided under this Contract.

6.2 The Customer shall provide access to the Software to employees and selected third parties only to the extent necessary pursuant to their granted rights of use. The Customer shall instruct any such persons to whom it grants access to the Software, for example in order to directly undertake changes to the Software settings, of Picavi's rights to the Software and the obligation of confidentiality. Furthermore, such persons shall be required to sign a written confidentiality agreement regarding the use of any information so obtained, unless they are already obliged on another legal basis to maintain confidentiality to at least the above extent.

6.3 The above obligations shall not apply to trade secrets that (i) at the time of their communication by the contractual partner are already apparent or known to the other party; (ii) after their communication by the contractual partner became obvious through no fault of the other party; (iii) after their communication by the contractual partner to the other party are made accessible by a third party but not in an unlawful manner and without any restriction in respect to confidentiality or exploitation; (iv) are developed by one of the contracting parties on its own, without the use of the business secrets of the contractual partner; (v) must be published in accordance with the law or with regulatory or judicial decision – provid-

ed that the publishing party informs the contractual partner without delay and supports it in the defence of such injunctions or decisions; or (vi) are authorized for use or disclosure by the contractual partner on the basis of mandatory statutory provisions or on the basis of this Contract.

6.4 Picavi shall comply with data protection regulations, in particular if Picavi is granted access to the operations or to the hardware and software of the Customer. Picavi shall ensure that its agents also comply with these provisions; in particular, Picavi undertakes to bind them to data confidentiality before they commence their work. Picavi does not intend to process or use personal data on behalf of the Customer. A transfer of personal data will only occur in exceptional cases as a side-effect of Picavi's contractual services. Picavi will treat personal data in accordance with the provisions of data protection law.

6.5 Picavi shall conclude a separate agreement with the customer related to commissioned data processing.

## **7. Termination of usage rights to the Software**

For all cases regarding the termination of the Customer's authorization to use the Software (e.g. through cancellation, replacement), the Customer shall surrender all deliveries of the Software without delay, deleting all copies, insofar as it is not legally obliged to longer retention thereof. Section 3.7 shall remain unaffected. The Customer shall provide Picavi with an assurance of such return and deletion in writing.

***Last updated: 08 May 2018***

*The German version is the authoritative version, and this English translation is intended for reference purposes only. In the event of discrepancies between the English and German version of the respective terms and conditions, the German version will prevail.*