

Terms and Conditions Software as a Service

1. Scope of application

- 1.1. These general terms and conditions apply to the use of the TWAICE Software (hereinafter collectively "Software"). TWAICE Technologies GmbH ("TWAICE") provides the Software as a Software-as-a-Service solution. The Software may only be used in accordance with these general terms and conditions. These general terms and conditions govern the use of the TWAICE Software by the customer. By the first registration at the Software the customer agrees to these general terms and conditions. These general terms and conditions apply to all upgrades, updates, new releases, changes and updates of the Software ("Updates"), that TWAICE provides to the customer of the Software. Any terms and conditions of the customer that conflict with these general terms and conditions or deviate from statutory provisions do not apply, even if TWAICE has not separately objected to them.
- 1.2. These terms and conditions also apply to other Software products, which TWAICE will provide to the customer in the future, even if they are not separately agreed again.

2. Software licensing

- 2.1. TWAICE will apply the Software to the customer's battery system. The scope of application will be described individually with the customer in the offer. For this purpose, TWAICE may set up the Software on a server accessible via the internet. At the customer's option this can also be a server of the customer, whereby this must be documented in the offer.
- 2.2. After the application phase, TWAICE make the current version of the Software available to the customer for a fee via the internet.

3. Rights of use to the TWAICE Software

- 3.1. The Software is protected by copyright. TWAICE is entitled to all rights thereto. The customer may not remove or change existing markings, proprietary rights notices or copyright notices in the Software or copies handed over to him.
- 3.2. TWAICE grants the customer the simple, non-exclusive and non-transferable right to use the Software exclusively for its own purposes for battery analysis and optimization upon full payment of the remuneration in accordance with section 5.1., the customer has no right to sublicense. The Software may only be used by the customer for internal purposes. The customer is not entitled to make the Software available to third parties for use against payment or free of charge. TWAICE expressly does not permit the customer to sublet the Software.
- 3.3. Unless otherwise agreed in writing, the rights of use shall be granted for a fixed term of 12 months.
- 3.4. After expiry of the fixed term agreed in accordance with section 3.3, the rights of use shall be extended by a further 12 months and may be terminated by either party with three months' notice to the end of the contract term.
- 3.5. Any use of the Software not expressly permitted in these terms and conditions is prohibited. In particular, customer may not (i) copy the Software; (ii) modify, adapt or create derivative works based thereon; (iii) publish, disclose, sell, rent, lease, loan, distribute, make available online, sublicense, transfer or otherwise make the Software available to any third party without TWAICE's prior written consent. Access to the source code of the Software is not included in the rights of use granted. The customer may not decompile, disassemble or reverse engineer the Software.
- 3.6. The provisions in sections 3.1 to 3.2 shall apply mutatis mutandis to modifications or extensions of the Software which TWAICE performs on behalf of the customer as well as to other work results which TWAICE supplies to the customer in connection with the Software.
- 3.7. Individual parts of the Software may be subject to Open Source Licenses. In such cases, TWAICE shall make the object code or the source code available to the customer upon request, provided that the provision of the object code or the source code is provided for in the terms of the relevant open source license. Insofar as this is necessary for the legitimate use of the service, the applicable Open Source License Terms shall be listed at the following URL <https://twaiice.com/open-source-licenses/>. By using the Software, the user acknowledges these Open Source License Terms. In the event of contradictions, they shall take precedence over these general terms and conditions.
- 3.8. Measurement data generated by TWAICE during the term of the contract may also be used by TWAICE anonymously after the end of the term of the contract.

4. Other services of TWAICE

- 4.1. Insofar as the Customer commissions TWAICE with additional services in connection with the Software that go beyond the so-called handover process (e.g. "Customer Support") and/or makes use of TWAICE's analytical services, the content and scope of these services shall be agreed separately between the parties (if applicable, in the offer).
- 4.2. Unless expressly agreed otherwise, such services shall be treated as services and not as work services.

5. User fee and other remuneration

- 5.1. The customer shall pay a one-time application fee per battery system type for the application of the Software by TWAICE and an additional usage fee for granting the rights of use described in these general terms and conditions during the term of the agreement. The amount of the application fee and the usage fee shall be determined by TWAICE's offer. The amount stated in the offer is exclusive of applicable sales tax. The application and usage fee shall be invoiced by TWAICE after acceptance of the offer by the customer.
- 5.2. If the contract is extended after 12 months, the usage fee will be invoiced after the beginning of the next 12 months.
- 5.3. TWAICE shall (unless otherwise agreed) invoice other services pursuant to clause 4 on a time and material basis in accordance with its applicable daily rates and shall invoice them monthly in arrears. Expenses and disbursements shall be invoiced additionally upon presentation of proof. Travel times shall be regarded as working hours.
- 5.4. Unless otherwise agreed, invoices are due for payment within 14 days of receipt by the customer.
- 5.5. TWAICE is permitted to increase the price of the Software usage rights by up to 7% annually.

6. Area of responsibility and duties of the customer

- 6.1. The customer is obliged not to place any illegal content on the storage space made available that violates the laws, official requirements or rights of third parties.
- 6.2. The customer is responsible for the regular backup of the Software and the data processed with it.
- 6.3. The customer is obliged to check his data for viruses or other harmful components before entering them and to use state-of-the-art virus protection programs for this purpose.
- 6.4. The customer is obliged to prevent unauthorized access to the Software by third parties by taking appropriate precautions.
- 6.5. The customer shall inform TWAICE immediately of any defects or other material circumstances discovered by him which are or may be significant for TWAICE with regard to its obligations under these license terms (e.g. security gaps, claims of third parties against the customer).
- 6.6. Customer shall immediately inform TWAICE in writing of any change of name, company, place of residence or business and similar circumstances material to the contract.
- 6.7. The customer accepts the so-called transfer process of the software by TWAICE as described in the offer. The customer is obliged to provide the necessary contact persons and information and to adhere to the time schedule of the handover process.

7. Revocation of the rights of use

- 7.1. A serious breach of these general terms and conditions by the customer, which has not been remedied (or cannot be cured) even after written warning by TWAICE with the setting of a deadline, shall entitle TWAICE to revoke the license without notice. In this case, the customer shall immediately cease using the contract Software.
- 7.2. TWAICE is not obliged to repay the license fee received if the license is revoked.

8. Warranty

- 8.1. The Software provided to TWAICE essentially corresponds to the description of the contractual Software in the offer. Warranty claims shall not exist in the event of an insignificant deviation from the agreed quality or in the event of an insignificant impairment of usability. Descriptions of the contract Software shall not be deemed a guarantee without a separate written and express guarantee agreement.

- 8.2. Defects in the Software shall be notified in writing by the customer by means of a comprehensible description of the error symptoms and, if possible, by submitting written error descriptions, screenshots or similar documents. The notice of defect shall enable the error to be reproduced. Legal obligations of the customer to examine and give notice of defects remain unaffected.
- 8.3. If the customer demands supplementary performance due to a defect in the Software, the licensor shall have the right to choose between subsequent improvement and subsequent delivery. Subsequent performance may also be performed by handing over a new program version. If the defect does not or only insignificantly impair the functionality, TWAICE shall be entitled to remedy the defect by delivering a new version or an update as part of its version, update, and upgrade planning, excluding further claims for defects. If the customer has set TWAICE a further reasonable grace period after an initial period which has elapsed without result and this period has also elapsed without result, the customer may withdraw from the contract or reduce the purchase price under the statutory conditions at his discretion and claim damages or reimbursement of expenses within the limits of section 9.
- 8.4. Warranty claims in respect of the Software shall be 12 months. The period shall commence upon delivery or provision of the Software.
- 8.5. TWAICE may refuse subsequent performance until the customer has paid the license fee to TWAICE less the part corresponding to the economic significance of the defect.
- 8.6. A removal of defects by the customer is inadmissible.
- 8.7. TWAICE does not warrant that the Software will run in the customer's system environment or together with any third party applications used by the customer.
- 8.8. The customer shall not be entitled to any rights based on defects if the customer has made any changes or processing to the Software not approved by TWAICE, unless the defect is not attributable to such change or processing.
- 8.9. The statutory provisions shall apply to defects in other services provided in accordance with section 3.2.

9. Claims for defects of title

- 9.1. The Software is free from rights of third parties that conflict with contractual use.
- 9.2. If defects in title exist in the software, TWAICE shall be entitled, at its option, to remedy the defect in title by agreement with the right holder or by modification or replacement of the Software (while retaining the essential functionality of the software owed).

10. Interruption/impairment of accessibility

- 10.1. For technical reasons beyond the control of TWAICE, temporary interruptions or impairments of the availability of the SaaS services may occur. In such cases, TWAICE shall do everything in its power to restore accessibility as quickly as possible.

11. Liability

- 11.1. TWAICE shall be liable without limitation in accordance with the statutory provisions for damages resulting from injury to life, limb or health as well as for intent, gross negligence and - insofar as applicable - in accordance with the Product Liability Act. Otherwise, the licensor's liability shall be limited in accordance with these general terms and conditions.
- 11.2. In cases of simple negligence, TWAICE shall only be liable if essential contractual obligations ("cardinal obligations") are breached and then limited to the objectively foreseeable damage typical of the contract. Otherwise his liability for ordinary negligence shall be excluded. TWAICE shall not be liable in the event of simple negligence on the part of its vicarious agents, unless it is a matter of violation of essential contractual obligations.
- 11.3. TWAICE's liability under clause 11.2 under these general terms and conditions shall be limited in total to an amount equal to 50% of the user fee paid by customer. Except in the cases mentioned in section 11.1, TWAICE's liability for indirect damages, consequential damages and loss of profit shall be excluded.
- 11.4. The limitations of liability set forth in this clause 11 shall apply to all claims for damages and reimbursement of expenses in connection with the supplies and services provided by TWAICE under these general terms and conditions, irrespective of the legal basis.

12. Final provisions

- 12.1. The customer shall keep confidential for an indefinite period of time all information which becomes known to him in connection with these license terms and the services rendered under them and which is designated as confidential or which can be identified by other circumstances as confidential or as business or trade secrets, and shall only use it for the purposes described in these license terms.
- 12.2. Collateral agreements and amendments to these general terms and conditions must be made in writing. This also applies to a waiver of this requirement of written form.
- 12.3. Insofar as the written form is stipulated in this agreement for declarations, a declaration in text form is sufficient.
- 12.4. Offsetting and retention rights of the customer are excluded. This shall not apply if his corresponding counterclaims have been legally established or acknowledged by TWAICE.
- 12.5. Customer may not assign to any third party any of its rights under this agreement in whole or in part without the prior written consent of TWAICE.
- 12.6. German law shall apply to the exclusion of conflict of laws provisions and the UN Convention on Contracts for the international sale of goods. Exclusive place of jurisdiction is Munich.
- 12.7. Should any provision of these general terms and conditions be or become invalid, the legal validity of the remaining provisions shall remain unaffected. In place of the invalid provision, the effective and enforceable provision that comes closest to the legal and economic intention of the parties shall be deemed to have been agreed with retroactive effect. The same shall apply in the event of a contractual gap.