BITControl

End User Licence Agreement
AQUA DESIGNER

§ 1 Subject Matter of the Agreement
1) With this contract the transfer of the software AQUA DESIGNER from the developer BITControl GmbH, Auf dem Sauerfeld 20, 54636 Nattenheim, represented by the managing director Mr. Dipl.-Ing. Norbert Meyer (hereinafter referred to as BITControl), as software for the design of wastewater treatment plants with the modules and users identified in the order, is agreed as software purchase.
2) The performance characteristics of the software and the modules result from the manual (version, see order). The customer has tested the software as a demo version with an unlimited range of functions and has come to the conclusion that the range of functions of the software meets his requirements.
3) The software is installed and operated by the customer in his IT infrastructure.
4) As a customer, you confirm with this conclusion of contract that you are acting on behalf of your company or public-law institution. A conclusion of contract with consumers in the sense of § 13 BGB is excluded.

§ 2 Scope of Services BITControl
1) BITControl transfers to the client the right to use the software provided within the framework of this contract (as shown in § 1) and the associated documentation for the own use of the client within the framework of a simple, temporally unlimited licence for the use of the software by the agreed number of employees (users) of his organisation. The client may not make the software and documentation accessible to third parties by way of rent, loan or other joint use without the written consent of BITControl. The processing, modification, translation or decompilation of the software is solely reserved to BITControl.
2) After payment of the agreed licence price, the client receives an activation code or a licence file, which enables him to use the software according to this contract.
The activation code for single licences is hardware-coded. If the customer replaces his hardware or parts of it, he needs a new activation code. This can be requested from BITControl at any time. The network licence (AQUA DESIGNER NET) requires a share folder on a server in the network. After receiving the UNC path of the share folder, the customer receives the licence file and the AQUA DESIGNER installation package.
3) BITControl will provide corrections for errors of the Software (hereinafter referred to as Updates) that become known to it free of charge via its website.
AQUA DESIGNER will check at each start if an Update is available. Customer will then have the opportunity to download and install the Update. The requirement for this is an existing Internet connection. This update service will be maintained until the release of the next but one software version (upgrade in the sense of paragraph 4).
4) New versions of the software in the sense of a function extension or a real version jump, for example from 9.1 to 9.2 (upgrades), can be purchased by the customer for a fee.

§ 3 Cooperation Obligations of the Client
1) The client shall observe the software and hardware requirements communicated by BITControl and shall ensure a daily data backup in his own interest.
2) The client shall protect the activation code or the licence file from unauthorised access and shall not hand it over to third parties.
3) The customer shall have all results calculated by means of the software checked by a specialist trained in the field before these results are used for a plant design.

§ 4 Payment
1) The payment for the software results from the order and is invoiced by BITControl with the conclusion of this contract.
2) All invoices of the BITControl GmbH are payable within 14 days after the invoice date.

§ 5 Warranty, Liability
1) BITControl guarantees that the software is usable in the sense of the program description. The warranty period is 12 months.
2) The customer must inform BITControl of any defects immediately after their discovery in text form (e.g. by email) and describe the defect in such detail that BITControl can understand it.

3) Defects shall be remedied by BITControl through supplementary performance. Only if the supplementary performance has failed for the second time, the client can reduce the contract. In case of serious defects (=essential functions of the software cannot be used) the client is then also entitled to withdraw from the contract. Self-remedy and the right to claim damages are excluded in any case.

4) If the cause of a defect reported by the client is due to circumstances for which BITControl is not responsible (such as incorrect operation, intervention by third parties as service providers of the client or with the intention of damaging the IT systems of the client), BITControl is entitled to invoice the service expended for the removal of the defect / error according to the current hourly rate for programmers.

5) The removal of the defect shall in principle be carried out remotely. If the client demands that warranty work is to be carried out at a location determined by him, additional working time incurred for this as well as travel expenses shall be charged at the agreed or usual hourly rates or flat rates of BITControl.

6) Claims for damages from or in connection with this contract against BITControl are excluded, unless there is intent or gross negligence, assured characteristics or guarantees are missing or an essential contractual obligation has been violated. An essential contractual obligation is one whose violation endangers the purpose of the contract (cardinal obligation). Here BITControl is also liable for simple negligence. The liability for personal injury as well as according to the product liability law remains unaffected.

7) If BITControl is liable according to these rules for simple negligence, the liability for indirect or consequential damages, for example loss of profit, is limited to the typical foreseeable damage.

§ 6 Miscellaneous

1) Additional agreements must be made in writing.

2) In the case of legal disputes arising from this contract, the registered office of BITControl shall be the place of jurisdiction, if a) the purchaser is a merchant or b) the purchaser has no general place of jurisdiction in the territory of the Federal Republic of Germany or c) the purchaser is a legal person of public law.
BITControl is also entitled to sue at any other legally provided place of jurisdiction.

3) The law of the Federal Republic of Germany shall apply to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

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