

Customer Agreement Communardo Products GmbH

Preamble

This Customer Agreement (“Agreement”) is a legal agreement between You (either an individual or a single legal entity) whose details are provided to us upon Purchase (defined below) (“Licensee” or “You”) and Communardo Products GmbH, Kleiststraße 10a, 01129 Dresden, Germany (“Licensor” or “We”) to use the Software. This Agreement applies from the date when You receive the Software from a Reseller or Licensor (“Purchase”). You agree to be bound by the terms of this Agreement by installing, copying, downloading or otherwise using the Software. If You do not agree to the terms of this Agreement, You may not install, copy, download or otherwise use the Software. For the Evaluation Period free of charge the provisions in Appendix A shall apply.

By installing and using the Software you assure that You will use the Software only in the pursuit of your commercial, academic or self-employed professional activities.

1. Definitions

Authorized User:	A named person (Named User License Model) who accesses and uses the Software under this Agreement. The number of Authorized Users may not exceed the number of users purchased.
Confidential Information:	All items (e.g. software, documents, information) that are protected by proprietary rights, contain trade or business secrets or are designated as being confidential.
Documentation:	The complete factual and technical description of the Software.
License Fee:	The remuneration for the use of the Software pursuant to sec. 7.1.
Platform:	The online marketplace on which You might have purchased the Software.
Reseller:	The third party operating the Platform and selling the Software via the Platform.
Software:	Our standard software purchased by you. Its main technical features are described at https://www.communardo.com/support/ under Documentation.

2. Obligations of the Licensor (herein “We”)

- 2.1 We will provide You the Software in an executable form (object code). We will deliver the Software by making it available for download or installation. You are not entitled to be provided with the source code.
- 2.2 Along with the delivery of the Software, We shall submit the Documentation in electronic form. Any other documentation shall only be due if expressly agreed upon. You may use the Documentation solely for internal purposes and may reproduce the Documentation solely within the context of its own use in accordance with this Agreement. You may not modify, expand or create derivative works based on the Documentation.
- 2.3 The provisions of this Agreement for the Software apply to the Documentation accordingly.
- 2.4 Every perpetual license contains product support and maintenance for the term of this Agreement (see section 'Maintenance and Support' for details).

3. Rights of Use

- 3.1 The Software is legally protected. We are the sole owner of any copyrights, patent rights, trademark rights and any other ancillary copyrights in and to the Software.
- 3.2 We grant you the worldwide and nonexclusive right of use of the Software for the term of this Agreement – solely on hardware systems owned, leased or controlled by You pursuant to the terms of this Agreement.
- 3.3 The right of use is limited to the number of Authorized Users.
- 3.4 You obtain the right of use after your payment is received by Us.
- 3.5 You are only entitled to decompile the interface information of the Software within the statutory limits under German Copyright Law and only if You (i) have notified Us of your plan in writing and (ii) have unsuccessfully asked for the provision of the necessary interface information granting at least a two week period. All knowledge and information that You obtain on the Software in connection with the decompiling process is subject to the confidentiality obligations pursuant to sec. 11. Prior to involving a third party, You shall provide Us with a written statement from such third party in which the same agrees directly vis-à-vis Us to comply with the rules set forth in this sec. 3 and sec. 11.
- 3.6 All forms of exploitation not explicitly allowed in this Agreement, in particular, the renting, lending and distribution in physical or immaterial form, use of the Software by and on behalf of third parties (e.g., by outsourcing, hosting, software as a service) are not permitted without Our prior written consent.

- 3.7 We point out that the software may contain open source software which is subject to its own licensing rights. If so, We shall provide software licenses for that particular piece in the framework of the corresponding open source licensing regulations ("open source software"), so that You can use software within the meaning of this Agreement. Such open source software is specified in more detail in the corresponding installation package and is licensed in accordance with special open source regulations. If there are any contradictions between the terms of this Agreement and regulations for open source software, the regulations for open source software shall take precedence in respect of such open source software.
- 3.8 Third Party Software:
- (1) The Software uses, requires and depends on various Services and Software licensed to Communardo from third parties, including software licensed under open source licenses ("Third Party Software"). Third-Party Software are not the Software and remain subject to their own applicable terms. A list of Third Party Software used by our apps is available in Appendix B.
- (2) The Software may use services provided by third parties, for example APIs and web services. Communardo disclaims any liability for any failure or limitations of these APIs or services. Atlassian, or any other API provider, may remove the API end points required for the Software to function properly. Communardo disclaims any liability for the consequences of such actions by these third parties.

4. Term and Termination

- 4.1 This Agreement commences with Your Purchase of the Software and runs for a fixed term according to your Purchase. During this fixed term it cannot be terminated for convenience and after the fixed term it will automatically expire.
- 4.2 The right of the parties to terminate this Agreement for cause remains unaffected. For Us, cause shall exist, in particular, if (i) You are in default for more than two months with an amount of the License Fee that corresponds *pro rata temporis* to a portion of two months, (ii) You suspend Your payments, itself, or, if permissible, We apply or any other creditor of You applies for the institution of insolvency proceedings or similar statutory proceedings, if such a proceeding is opened or declined for a lack of assets, or (iii) if You significantly violate this Agreement and fail to cease such violation within a reasonable period for rectification granted by Us.
- 4.3 Termination pursuant to sec. 4.2 shall always be threatened with specification of the grounds and the grant of a reasonable period for rectification (normally at least two (2) weeks), and may only be declared within two (2) months after that period has ended. No period for rectification has to be granted if We cannot be reasonably expected to do so.
- 4.4 In the event that We terminate this Agreement for cause, We shall be entitled to retain the License Fee, to which We would have been entitled without termination, as damages, less the expenditures saved by Us due to the termination. This shall not apply if You are not responsible for the cause. Generally, We shall reduce the License Fee by a lump-sum in the amount of 10% to account for saved expenditures. You are entitled to prove that We have saved more than 10%.
- 4.5 Notices of termination shall be in writing to be effective.
- 4.6 Upon the expiry or termination of this Agreement, the Software may lose significant parts or the total range of the functionality. We may require You to delete the Software from Your IT systems.

5. Obligations of the Licensee (herein "You")

- 5.1 The installation of the Software shall be conducted by You. We shall reasonably advise and support You in preparing the installation. It is Your duty to observe Our instructions and/or to clarify the installation conditions with Us in due time and comprehensively, in order to be able to carry out the installation smoothly and speedily. You will also operate the Software Yourself.
- 5.2 If You request support in case of defects You shall send Us detailed error reports and shall assist Us comprehensively and at Your own expense with the error analysis and rectification.
- 5.3 You are obliged to accept, install and launch all new versions of the Software, updates, patches, etc. provided by Us for error or defect rectification.
- 5.4 You shall install without delay, at the latest within 30 calendar days update packages provided by Us to fix security issues or bugs to avoid or mitigate claims addressed by sec. 7.

6. Purchase, Payment Terms

- 6.1 If You have purchased the Software via a Platform, You shall make an upfront payment of the License Fee for the respective contract term to the Reseller in accordance with the Platform's terms of use as detailed on Our webpage on the Platform. If You have purchased the Software directly from Us, You shall make an upfront payment of the License Fee for the respective contract term to Us.

The number of Authorized Users for the Software has to be the same amount or higher than the number of Authorized Users of the host system. We permanently check this and adjust the number of Authorized Users and thus the total remuneration per billing period according to the current price list, if necessary.

- 6.2 We may require additional reasonable compensation for additional expenditure caused by Your conduct in breach of contractual obligations or by the Your failure to cooperate at all, in good time or as agreed, by Your use of the Software contrary to the intended purposes or the terms this Agreement, or by the subsequent amendment or expansion of performance demands by You. This shall not apply where You are not responsible for the additional expenditure.
- 6.3 You may only make a set-off against claims that are not disputed by Us or have been established with final force. Except within the applicability of sec. 354a of the German Commercial Code (HGB), You may assign claims under this Agreement to third parties solely with Our prior written consent. You shall have a right of retention or the defence of non-performance of the agreement solely within the context of this Agreement.

7. Functionality, Maintenance and Support

- 7.1 You will be able to use a Software that works as advertised in the platform and described in detail in the Documentation, available at <https://www.communardo.com/support/>.
- 7.2 We do not warrant that the Software is suitable for a certain purpose of use, unless it is stated explicitly in the Documentation mentioned before.
- 7.3 We will rectify any defects and errors of the Software duly reported by You within a reasonable period of time. We may rectify defects by making available a Software that is free from this defect or by informing You of a way to avoid the effects of the defect.
- 7.4 We are liable for defects of the Software only to the extent that We are responsible for them.
- 7.5 In the event that You make enhancements or add-ons to our software, You act at Your own risk and sole responsibility. We do not assume any warranty obligations for defects in the components of the Software that are affected by modifications or add-ons, unless You are able to prove that the defect is not due to the modification or add-on or if We have approved the modification or add-on in writing. The same applies if modifications, add-ons or other unauthorized interferences by You in the Software outside the existing standard functionality of the Software change or expand the contents or structure of the databases of the Software.
- 7.6 We make available new releases of the Software from time to time at our own choice. It may happen that new releases do not contain all functionalities of previous releases or do not have full downward compatibility to previous versions of the Software. You can decide at Your own choice to use new releases, unless sec. 5.3 or sec. 5.4 apply. In case you use new releases this Agreement applies to such releases as well. Bugs will be fixed by releasing a new version of the Software which contains the fix.
- 7.7 We deliver product support which is defined on Our Support Portal in detail (see <http://www.communardo.com/support/>)

8. Liability and Limitation Period

- 8.1 We shall pay damages and compensation for futile expenses, no matter on what legal ground, solely as follows:
- 8.2 Liability shall be unlimited in case of intent.
- 8.3 In case of gross negligence, the liability shall be in the amount of the typical damage foreseeable at the time of conclusion of this Agreement.
- 8.4 In case of a negligent breach of a material obligation the fulfilment of which enables proper performance of this Agreement in the first place, on fulfilment of which You generally rely and are entitled to rely and a breach of which jeopardizes achievement of the purpose of the contract (*material obligation*), the liability shall be in the amount of the typical damage foreseeable at the time this Agreement was concluded; however, not exceeding EUR 1,000,000.00.
- 8.5 In all other cases of negligent breaches of obligations by Us, no liability shall arise.
- 8.6 In case of injury to life, limb or health and where claims under the German Product Liability Act are concerned, the statutory provisions shall apply.
- 8.7 Irrespective of the amount, the limitations of liability also apply to damage attributable to serious failure by our management to provide proper organizational channels.
- 8.8 We shall be at liberty to raise the defense of contributory negligence. In particular, You are responsible for backing up your data regularly. In case of data loss which is Our fault We shall therefore be liable solely for the costs of duplicating the data from the back-up copies to be created by You and for the recovery of data which would have also been lost if the data had been backed up properly.
- 8.9 Claims due to defects of quality and/or title shall regularly become statute-barred within 12 months after delivery. In cases of sec. 8.2, 8.3 or 8.6, the limitation period for claims due to this defect is three years.

9. Confidentiality and Data Protection

- 9.1 The parties agree to treat in confidence, also beyond the end of this Agreement, all Confidential Information, of which they obtain knowledge, or which are provided to them prior to or during performance of the contract by the other party, unless such Confidential Information becomes publicly known without a breach of the confidentiality obligation. The parties shall keep and safeguard Confidential Information in a manner that excludes access by third parties. You shall only enable access to Confidential Information for those employees and authorized persons who require such access in order to perform their work responsibilities. Such persons shall be instructed about the confidentiality obligation.
- 9.2 Where, in the course of providing our contractual obligations under this Agreement, We process personal data for which You are the responsible party or where access to such personal data is possible, the parties shall in advance enter into an agreement on processing of personal data that complies with the relevant statutory requirements.
- 9.3 We may use your contact data (name, email address) for sending You emails with information regarding the Software during an active license or evaluation term and a period of 6 month after its end.
You can deny this right at the time of the conclusion of this Agreement as well as at any time afterwards by submitting a request via email to products@communardo.com, requesting the type of information you do not want to receive any more.
- 9.4 We may name You as a referential customer as of conclusion of this Agreement. You can deny this right at the time of the conclusion of this Agreement as well as at any time afterwards by submitting a request via email to products@communardo.com, requesting the references to be deleted. Upon receipt of such request, We will remove any reference to You within 30 days and make no further reference to You.
- 9.5 The information you provide will be used by Us to provide support services, to promote our services and to fulfill legal obligations (e.g. accounting). Information about you will not be shared with third parties. We will hold the personal data you provided to us for 3 years after the expiration of an active license, for 1 year after the expiration of an evaluation license. You have a right to access your personal information, to object to the processing of your personal information, to rectify, to erase, to restrict, to port your personal information and to apply to a data protection authority. Any requests or objections regarding data protection issues you may direct to our data protection officer, whom you may contact for instance under datenschutz@communardo.de.

10. Choice of Law and Venue, Final Provisions

- 10.1 The law of the Federal Republic of Germany applies excluding its conflict of laws rules. The standard UN Convention on Contracts for the International Sale of Goods (CISG) is excluded.
- 10.2 The sole place of jurisdiction for all disputes arising from this agreement is Dresden/Germany.

Appendix A – Evaluation Period

You may test the Software free of charge for a period of 30 days (“Evaluation Period”) by downloading the Software from the Platform. With the expiry the Evaluation Period the Software will automatically stop functioning.

The following provisions shall apply to the Trial Period and take precedence over the general provisions of the Agreement set in secs. 1 to 10 above:

1. We are not obliged to any maintenance or support. The statutory provisions of the German Civil Code shall apply in respect of Our warranty and liability obligations.
2. We grant You a worldwide, nonexclusive, right of use of the Software for 30 days – solely on hardware systems owned, leased or controlled by You.
3. The right granted to You pursuant to no. 2 of this Appendix A shall commence with the download of the Software.

Appendix B

The following Third Party Software is used by our apps:

1. <https://linkspotter.communardo.com/licenses.html>