

# Software Purchase and License Terms

of roometric GMBH  
represented by the Managing Director,  
Mr. Bertram Thyssen, Baseler Straße 165, 12205 Berlin, Germany,  
(hereinafter referred to as "Seller")

## § 1 Scope

These Software Purchase and License Terms shall apply to the legal relationship between the Customer (hereinafter referred to as "**Buyer**") and the Seller with respect to the purchase of the software "roometric" (hereinafter referred to as "**the Software**") with or without a smartphone. The Seller hereby expressly objects to any terms and conditions of purchase, general terms and conditions of business or other agreements of the Buyer that conflict with the following provisions. These shall not become part of any agreement between the parties unless they are expressly confirmed by the Seller in writing.

## § 2 Subject

- (1) The subject matter of the Seller's services is the permanent transfer of the software "roometric" including service description and application documentation (hereinafter collectively referred to as "**Subject Matter**") of the Seller to the Buyer against payment for use in the Federal Republic of Germany. The Seller reserves the right to offer the software either as an isolated download or pre-installed on a smartphone.

The software is used for the quick, simple measurement of room areas and for the three-dimensional representation of rooms. It allows to measure complex room areas roughly in the sense of an estimation. It therefore does not replace precise and inexact measurement of spaces with the aid of conventional measuring aids, such as a folding rule or optical or acoustic distance meters.

The mandatory requirements for the use of the software are:

- Augmented reality-capable smartphones with Android operating system or iOS operating system.
- Smartphone with AR chip

- (2) The source code of the Software is not part of the subject matter of the contract.
- (3) The performance description and application documentation valid at the time of dispatch or online provision of the subject matter of the contract and available to the Buyer prior to conclusion of the contract shall be conclusively decisive for the quality of the Software delivered by the Seller. The Seller shall not be liable for any further quality of the software. In particular, the Purchaser may not derive any further obligations from other

representations of the Software, from public statements or from advertising statements, unless the Seller has expressly confirmed in writing a quality that goes beyond this.

- (4) The Software is offered either as an online copy for download.
- (5) The Seller reserves the right to provide further services in connection with the Software, either for a fee or free of charge, via the website at [www.roometric.com](http://www.roometric.com). The Purchaser shall not be entitled to any specific claim in this respect. There is no concrete claim to this.

### **§ 3 Rights to the Software, Scope of Use**

- (1) The Seller is the owner of all rights to the Software as well as to any property rights with regard to the contractual items.
- (2) The Software and any other contractual items are protected by copyright and bear the copyright notice of the Seller or the respective rights holder. The copyright notices may neither be changed nor deleted. With the purchase of the Software, the Buyer obtains rights to the Software and the Contractual Objects exclusively to the extent described below.
- (3) The Seller grants the Buyer a non-exclusive right of use to the Software, which is conditional upon payment of the full purchase price, is limited to the territory of the Federal Republic of Germany and, with the exception of the test version (cf. Section 11), is not limited in time for use on a mobile end device (smartphone) for the purpose provided for in this Agreement.
- (4) The Purchaser may use the Software solely for the purpose of processing its internal business transactions and those of companies that are affiliated within the meaning of Section 15 of the German Stock Corporation Act ("Group Companies"). In particular, it is not permitted to process and further develop the software or to use it for software development. The components of the Software shall be licensed as a single unit and may not be installed separately or on different devices by the Purchaser. Likewise, the operation of a computer center for or the temporary transfer of the Software to third parties (e.g. within the scope of so-called "Application Service Providing" or within the scope of a subletting) is not permitted.
- (5) The Purchaser is permitted to transfer the data and files created within the scope of the contractual use of the Software to its end customers, insofar as the Purchaser has access to the Software.
- (6) (6) Duplications of the Software are only permitted to the extent necessary for the contractual use of the Software. The Purchaser may make backup copies of the

Software in accordance with the rules of technology to the extent necessary. Backup copies on movable data carriers shall be marked as such and shall bear the copyright notice of the original data carrier.

- (7) If the Purchaser has acquired the Software by way of online download, it shall be entitled to copy it onto a smartphone or a data carrier when passing it on to third parties as permitted under Section 7 of this Agreement.
- (8) The Purchaser shall be entitled to make changes, extensions and other modifications to the Software within the meaning of Section 69c No. 2 of the German Copyright Act (UrhG) exclusively within the legally indispensable scope. Before the Buyer eliminates errors himself or through third parties, he shall allow the Seller at least two attempts to eliminate the error. The Buyer shall not be entitled to its own rights of use and exploitation of such modifications beyond the rights of use granted under this Agreement. However, the Seller may - in return for reasonable remuneration - demand the granting of an exclusive or non-exclusive right of use, unlimited in terms of territory and time, with the right to grant sublicenses.
- (9) The Buyer shall be entitled to decompile the Software exclusively within the statutory limits of Section 69e of the German Copyright Act (UrhG), and only in the event that the Seller, despite a written request and the setting of a reasonable deadline, has not provided the necessary data and/or information to establish interoperability with other hardware and software.
- (10) If the Seller provides supplements (e.g. patches, supplements to the application documentation, etc.) or a new version of the Software (e.g. update, upgrade) which replaces the previously provided version of the Software within the scope of rectification under warranty law or on the basis of a maintenance agreement to be concluded separately between the parties, this new version shall also be subject to the provisions of this Agreement. If the Seller provides a new version of the Software, the Buyer's rights and rights of use under this Agreement with respect to previous versions ("old Software") shall expire as soon as the Buyer makes productive use of the new Software version, even without an express request by the Seller to return the Software. The Seller shall, however, grant the Buyer a three-month transitional period during which both versions of the Contractual Objects may be used side by side.
- (11) The Seller reserves the right, subject to separate agreement, to make the Software available to the Buyer for a certain period of time initially for test purposes. In such cases, the aforementioned rights of use shall initially be granted exclusively for the limited test period. The rights to the software and the other contractual items shall therefore automatically expire at the end of the test period, unless the Buyer has decided to purchase the software permanently at the end of the test period.

- (12) Any duplication, distribution, making available to the public or modification of the application documentation and other subjects of the contract shall not be permitted.

#### **§4 Purchase Price, Terms of Payment, Reservation of Title and Rights**

- (1) The purchase price shall be due and payable upon issuance of the invoice, but not before delivery of the Software or its
- (2) The Buyer shall only be entitled to use the Software beyond the rights of use granted in this Agreement (cf. § 3 of this Agreement) with the prior written consent of the Seller. This applies in particular to additional use of the software on more than one smartphone. In the event of additional use without the Seller's consent, the Seller shall be entitled to invoice the amount incurred for the use of each additional mobile terminal in accordance with the Seller's price list valid at that time, unless the Buyer proves that the Seller has suffered significantly lower damages.
- (3) All prices are quoted net, i.e. plus the applicable statutory value added tax.
- (4) In the event of online provision of the Software, the Seller shall provide a suitable Internet connection and shall bear the fees of the respective telecommunications provider for Internet use.
- (5) The Seller shall retain the rights to the Software (cf. § 3 para. 3 of these Terms and Conditions) and ownership of the delivered contractual items until the purchase price has been paid in full.

#### **§ 5 Installation, training and maintenance**

- (1) The Buyer shall be responsible for installing and calibrating the Software if it is not supplied already installed on a smartphone. The installation and calibration instructions described in the application documentation and the hardware/software requirements specified therein must be observed to ensure trouble-free operation of the software. At the Buyer's request and in return for separate remuneration, the Seller shall undertake the installation of the Software on the basis of a separate agreement to be concluded.
- (2) The Seller shall provide instruction and training by separate agreement on the basis of the applicable price lists.
- (3) Maintenance or further development of the Software beyond the scope of the warranty shall not be part of this contract. However, the parties may conclude a separate maintenance agreement for the Software on the basis of the applicable price lists.

#### **§ 6 Protection of the Software and the Application Documentation**

- (1) Unless the Purchaser has been expressly granted rights under this Agreement, all rights to the subject matter of the Agreement (and all copies made by the Purchaser) - in particular copyrights, rights to or underlying inventions and technical property rights - shall vest exclusively in the Seller. This shall also apply to any processing of the subject matter of the contract by the Seller. The Buyer's ownership of the respective data carriers of such copies shall remain unaffected.
- (2) The Buyer shall keep the contractual objects provided in safe custody in order to exclude any form of misuse. The Buyer shall not make the subject matter of the contract available to third parties without the prior written consent of the Seller. Third parties in the aforementioned sense shall not include the Buyer's employees or other persons who are present at the Buyer's premises for the contractual use of the Contractual Objects. § 7 of this contract remains unaffected.
- (3) The Buyer is not permitted to change or remove copyright notices, trademarks, logos, marks and/or control numbers of the Seller.
- (4) Upon request of the Seller, the Buyer shall provide information about and inspect any copies of the Contractual Objects made by him on data carriers in accordance with the contract and their whereabouts.
- (5) If the Buyer transfers data carriers, memory or other hardware on which the Contractual Objects are stored (in whole or in part, unchanged or modified) to third parties without a transfer pursuant to § 7 of this Agreement or if it relinquishes direct possession thereof, it shall ensure that all stored Contractual Objects are completely and permanently deleted beforehand.

## **§ 7 Transfer of Software**

- (1) The Contractual Objects may only be transferred to a third party in a uniform manner and subject to complete and final relinquishment of its own use of the Contractual Objects. The temporary or intermittent transfer of the Software to third parties against payment is prohibited, irrespective of whether the Contractual Objects are transferred in physical or incorporeal form. The same shall apply to the gratuitous transfer.
- (2) The transfer of the subject matter of the contract shall only be permissible after the Purchaser has informed the Seller of the full name and address data of the new user. The Buyer shall also assure in writing that he has passed on all original copies of the Contractual Objects to the third party and has deleted all copies he has made himself. Furthermore, the transfer of the Contractual Objects shall only be permissible if the third party has declared its consent in writing to the Seller to the present terms and conditions of use and transfer. § 8 Cooperation and information obligations of the Buyer.

## **§ 8 Cooperation and information obligations of the purchaser**

- (1) The Purchaser has informed itself about the essential functional features of the Software and bears the sole risk that the Software meets its wishes and requirements; in case of doubt, it shall seek advice from employees of the Seller or from competent third parties before concluding the contract.
- (2) The Buyer shall be solely responsible for ensuring that the hardware and software requirements specified in the application documentation are met for the operation of the Software, unless the Seller provides software or hardware on the basis of the contractual obligations.
- (3) The Buyer shall thoroughly test the Software for freedom from defects and for usability in the existing hardware and software configuration prior to its use. The same shall apply to software received under warranty or a separately concluded maintenance agreement.
- (4) The accuracy of the test results depends decisively on the Buyer's compliance with the instructions issued by the Seller for the installation and operation of the software. The Purchaser shall inform itself at regular intervals about current instructions on the Internet pages accessible at [www.roometric.com](http://www.roometric.com) and shall take these into account when operating the Software. Within the framework of the separate maintenance contract, the Seller shall also offer additional telephone or online support.
- (5) Insofar as the Seller has further service obligations (e.g. training, on-site installation, etc.) in addition to the provision of the contractual items, the Buyer shall cooperate with the Seller in this respect.
- (6) The Buyer shall grant the Seller access to the Contractual Objects for troubleshooting purposes, at the Buyer's discretion either directly or by means of an Internet connection/remote data transmission. The Seller shall be entitled to check whether the Contractual Objects are being used in accordance with the provisions of this Contract. For this purpose, it may demand information from the Buyer, in particular about the period and scope of use of the Contractual Objects, as well as inspect the Buyer's books and documents and hardware and software. For this purpose, the Seller shall, if necessary, be granted access to the Buyer's business premises during normal business hours.
- (7) The Buyer shall take reasonable precautions in the event that the Software does not work properly in whole or in part. In particular, it shall back up its data at regular intervals, carry out fault diagnoses and regularly check the results of the software.
- (8) The Seller may assume that all data of the Buyer with which it may come into contact are backed up, unless the Buyer advises it in advance to the contrary.

- (9) The Buyer shall bear the disadvantages and any additional costs arising from a breach of the above duties and obligations.

### **§ 9 Online registration, access data**

- (1) The Seller reserves the right to provide the Buyer with online access to the Seller's website, via which additional services can be provided or software can be made available for download. After registration, a user account will be created for the Buyer. He will then be provided with the necessary access and usage data (hereinafter referred to as "Access Data" including the password). For security reasons, the Seller is entitled to change the Buyer's access data at a later date. In this case, the Buyer shall be notified of the new Access Data without delay.
- (2) The Buyer shall be solely responsible for protecting the Access Data. He has to keep the access data secret and may not make them accessible to third parties subject to a written consent of the Seller. The Buyer is aware that third parties with knowledge of the access data may be able to place orders with the Seller on behalf of the Buyer. If the Buyer discovers or suspects that his access data are being used by third parties, he is obliged to change the access data immediately or - if he is unable to do so - to inform the Seller immediately.
- (3) In the event of justified suspicion of misuse of the Buyer's access data, in particular if this has been reported by the Buyer, the Seller is entitled to block access immediately. The seller will immediately inform the buyer about the blocking.
- (4) The seller is not liable for damages incurred by the buyer due to misuse or loss of access data. This shall not apply if the damage was caused by the Seller intentionally or through gross negligence.

**§ 10** (not applicable)

### **§ 11 Duty to examine and give notice of defects**

The Buyer shall assume an obligation to inspect and give notice of defects in respect of all deliveries and services of the Seller within the scope of the performance of this contract in accordance with the statutory provisions of § 377 of the German Commercial Code (HGB).

### **§ 12 Defects of quality and title, other defaults in performance, limitation period**

- (1) The Seller warrants in accordance with the provisions of the law on the sale of goods that the contractual items have the agreed quality in accordance with § 2 para. 3 of this contract and that no rights of third parties prevent the Buyer from using the contractual items to the extent stipulated in the contract.

- (2) In the event of material defects, the Seller shall first provide a warranty by means of subsequent performance. For this purpose, he shall, at his discretion, either provide the Buyer with a new, defect-free software version or remedy the defect. The Seller shall also be deemed to have remedied the defect if it demonstrates to the Purchaser reasonable possibilities of avoiding the effects of the defect. In the case of defects of title, the Seller shall first provide warranty by subsequent performance. For this purpose, the Seller shall, at its discretion, provide the Buyer with a legally flawless opportunity to use the delivered contractual items or replaced or modified contractual items of equivalent value. The warranty of title shall be excluded if the contractual objects are not used in the agreed area of use (cf. § 2 para. 1 of these provisions). The Seller shall be entitled to make subsequent performance dependent on the Buyer having paid at least a reasonable part of the remuneration.
- (3) The Seller shall be obliged to take over a new software version if the contractual scope of functions is otherwise maintained. The rights of the Buyer under § 439 BGB shall remain unaffected.
- (4) If two attempts at subsequent performance fail, the Buyer shall be entitled to set a reasonable period of grace for the rectification of defects. In doing so, he shall expressly point out in writing that he reserves the right to withdraw from the contract and/or demand compensation in the event of renewed failure.

If the repair fails even within the grace period, the Buyer may withdraw from the contract or reduce the remuneration, unless the defect is insignificant. The Seller shall pay damages or compensation for futile expenses due to a defect within the limits set out in § 13 of this contract. After expiry of a deadline set in accordance with sentence 1, the Seller may demand that the Buyer exercise his rights resulting from the expiry of the deadline within two weeks of receipt of the request.

- (5) If the Seller provides services in the search for or elimination of defects without being obligated to do so, it may demand remuneration for this on a time and material basis at its usual hourly rate of EUR 100.00 net per hour. This shall apply in particular if a defect cannot be proven or cannot be attributed to the Seller. In addition, the additional expenditure on the part of the Seller which arises because the Buyer has not properly fulfilled his obligations in accordance with § 8 of this contract shall be remunerated.
- (6) Insofar as third parties assert claims which prevent the Buyer from exercising the rights of use granted to him under the contract, the Buyer shall inform the Seller of this immediately in writing and comprehensively. He hereby authorizes the Seller to take legal action against third parties in and out of court on his own. If the Buyer is sued, he shall consult with the Seller and shall take legal action, in particular acknowledgements and settlements, only with the Seller's consent. The Seller shall be obliged to defend the claims at its own expense and to indemnify the Buyer against all costs and damages incurred in connection with the defense against the claim, unless such costs and

damages are due to the Seller's breach of duty.

- (7) The Buyer may derive rights from other breaches of duty by the Seller only if it has notified the Seller thereof in writing and has granted the Seller a period of grace for remedy. This shall not apply if a remedy is not possible due to the nature of the breach of duty. Compensation for damages or the reimbursement of futile expenses shall only be paid in accordance with § 13 of this contract.
- (8) The limitation period for all warranty claims shall be 1 year and shall commence upon delivery or provision (and notification of the Buyer thereof) of the contractual items. The same shall apply to other claims of any kind against the Seller. In the event of intent or gross negligence on the part of the Seller, in the event of fraudulent concealment of the defect, in the event of personal injury or defects of title within the meaning of § 438 Para. 1 No. 1a BGB (German Civil Code) and in the event of guarantees (§ 444 BGB), the statutory warranty periods shall apply. This shall apply mutatis mutandis to claims under the Product Liability Act and in the event of a breach of material contractual obligations, i.e. contractual obligations the fulfillment of which is a prerequisite for the proper performance of the contract and the observance of which the Buyer may regularly rely on, and the breach of which, on the other hand, jeopardizes the achievement of the purpose of the contract.

### **§ 13 Liability**

- (1) Claims for damages due to breach of duty and tort as well as claims for reimbursement of futile expenses are excluded against the Seller as well as its employees, vicarious agents and assistants, unless the damage was caused intentionally or by gross negligence.
- (2) Furthermore, the aforementioned limitation of liability shall not apply in the cases specified in Section 12 (8) sentences 3 and 4.
- (3) In cases of gross negligence, liability shall be limited to the amount of the foreseeable damage which the breached obligation was intended to prevent.
- (4) In cases of breach of a material contractual obligation (cf. Section 12 (8) sentence 4), the Seller shall also always be liable only to the extent of the foreseeable damage.
- (5) The Seller shall be free to raise the objection of contributory negligence (e.g. in accordance with § 8 of this contract).
- (6) With regard to the limitation period, § 12 para. 8 shall apply accordingly.

## **§ 14 Termination of the Right to Use the Contractual Objects**

In all cases of termination of the right to use, e.g. after expiry of an agreed agreed test phase, by rescission or subsequent delivery, the purchaser shall return all deliveries of the contractual objects without delay and delete all copies, unless he is legally obliged to is not legally obliged to store them for a longer period. § 3 para. 6 of this contract remains unaffected. The Buyer shall assure the Seller in writing of such discharge.

## **§ 15 Exclusive place of jurisdiction**

- (1) The exclusive place of jurisdiction for all disputes arising in connection with this contract is the registered office of the Seller. If the Seller brings an action, he shall also be entitled to choose the place of jurisdiction at the buyer's registered office. The place of performance shall be the of the Seller.
- (2) German law shall apply exclusively, to the exclusion of the provisions of the German international private law and the UN Convention on Contracts for the International Sale of Goods (CISG).
- (3) Should individual provisions of this contract be or become ineffective, contain an or contain an inadmissible deadline provision or a loophole, the legal validity of the remaining validity of the remaining provisions shall remain unaffected. The parties parties undertake in such cases to replace the invalid provision by a valid provision which corresponds to the economic purpose of the overall provision. The same shall apply in the event of a gap in the contract.

By setting the check mark next to the word "Agree" in the installation routine of the software before its first use, the purchaser confirms that he has read and understood this agreement and agrees to it. declares.