

# Cubeware

## Terms of Use

### 1. General Information

1.1. Any use of this Website provided by Cubeware GmbH, → “*Cubeware Website*”, is subject to these Terms of Use.

These Terms of Use may be amended, modified or replaced by other terms and conditions, e.g. for the purchase of products and services.

1.2. **With accessing or using the Cubeware website these Terms of Use are accepted in their then current version.**

1.3. If the User uses this Cubeware website as business customer, i.e. that it is not acting for purposes which are outside its trade, business or profession, or as administration customer, § 312i para. 1 sentence 1 no. 1 - 3 of the German Civil Code does not apply.

1.4. In the case of Web offers aimed at companies or public enterprises, such companies or enterprises are represented by the user and must assume that the user has appropriate knowledge and acts accordingly.

### 2. Services

2.1. This Cubeware website contains specific information and software and documentation, for viewing or downloading.

2.2. Cubeware may stop the operation of the Cubeware website in full or in part at any time. Due to the nature of the internet and computer systems, Cubeware cannot accept any liability for the continuous availability of the Cubeware Website.

### 3. Registration, Password

3.1. Some pages of the Cubeware website may be password protected. In the interest of safety and security of the business transactions, only registered Users may access said pages. Cubeware reserves the right to deny registration to any User.

Cubeware particularly reserves the right to determine certain sites, which were previously freely accessible, subject to registration. Cubeware is entitled, at any time and without obligation to give reasons, to deny the User the right to access the password-protected area by blocking its User Data (as defined below), in particular if the User

- uses false data for the purpose of registration
- violates these Terms of Use or neglects its duty of care about User Data;
- violates any applicable laws in the access to or use of the Cubeware Website; or
- did not use the Cubeware website for a longer period.

3.2. For registration the User shall give accurate information and, where such information changes over time, update such information (to the extent possible: online) without undue delay.

The User shall ensure that its e-mail address, as supplied to Cubeware, is current at all times and an address at which the User can be contacted.

3.3. Upon registration the User will be provided with an access code, comprising a User ID and a password (→ “User Data”).

On first access the User shall promptly change the password received from Cubeware into a password known only to the User.

The User Data allows the User to view or change its data or, as applicable, to withdraw its consent to data processing.

3.4. The User shall ensure that User Data is not accessible by third parties and is liable for all transactions and other activities carried out under its User Data.

At the end of each online session, the User shall log-off.

If and to the extent the User becomes aware that third parties are misusing its User Data the User shall notify Cubeware thereof without undue delay in text form.

3.5. After receipt of the notice under paragraph 3.4, Cubeware will deny access to the password-protected area under such User Data.

Access by the User will only be possible again upon the User's application to Cubeware or upon new registration.

3.6. The User may at any time request termination of its registration in writing, provided that the deletion will not violate the proper performance of contractual relationships.

Details are regulated in the Cubeware [Privacy Statement](#).

#### **4. Rights of Use to Information, Software and Documentation**

4.1. The use of any information, software and documentation made available on or via this Cubeware website is subject to these Terms of Use or, in case of updating information, software or documentation, subject to the applicable license terms previously agreed to with Cubeware.

Separately agreed to license terms, for example software downloads, shall prevail over these Terms of Use.

4.2. Cubeware grants User a non-exclusive and non-transferable license, which may not be sub-licensed, to use the information, software and documentation made available to the User on or via the Cubeware website to the extent agreed, or in the event of no such agreement to the extent of the purpose intended by Cubeware in making same available.

4.3. Software shall be made available at no expense in object code.

There shall be no right for the source code to be made available.

This shall not apply to source code related to open source software, which license conditions take priority over these Terms of Use in the case of transfer of open source software and which conditions require the making available of the source code.

In such case Cubeware shall make the source code available in return for the payment of expenses.

4.4. Information, software and documentation may not be distributed by the User to any third party at any time nor may it be rented or in any other way made available.

Unless such is allowed by mandatory law, the User shall not modify the software or documentation, nor shall it disassemble, reverse engineer or decompile the software or separate any part thereof.

The User may make one backup copy of the software where necessary to secure further use in

accordance with these Terms of Use.

4.5. The information, software and documentation are protected by copyright laws as well as international copyright treaties as well as other laws and conventions related to intellectual property.

The User shall observe such laws and shall not modify, conceal or remove any alphanumeric code, marks or copyright notices neither from the information nor from the software or documentation, or any copies thereof.

4.6. §§ 69a et seq. of the German Copyright Law shall not be affected hereby.

## 5. Intellectual Property

5.1. Notwithstanding the provisions in § 4 of these Terms of Use, information, brand names and other contents of the Cubeware website may not be changed, copied, reproduced, sold, rented, used, supplemented or otherwise used in any other way without the prior written permission of Cubeware.

5.2. Except for the rights of use and other rights expressly granted herein, no other rights are granted to the User. Any and all patent rights and licenses are expressly excluded. Cubeware has no obligation requiring the grant of further rights.

5.3. Cubeware may use without charge any idea or proposal stored by a User on the Cubeware Websites for the development, improvement and sale of its products.

## 6. Duties of the User

6.1. In accessing or using the Cubeware website the User shall not

- harm other persons, or infringe their personal rights;
- violate any intellectual property right or any other proprietary right;
- breach public morality in its manner of use;
  
- transmit any malware content;
- transmit, store or upload hyperlinks or contents to which the User is not entitled, in particular in cases where such hyperlinks or contents are in breach of confidentiality obligations or unlawful;
- or
- distribute spam.

6.2. Cubeware may deny access to the Cubeware website at any time, especially if the User breaches any obligation arising from these Terms of Use.

## 7. Hyperlinks

The Cubeware website may contain hyperlinks to the web pages of third parties.

Cubeware shall have no liability for the contents of such web pages and does not make representations about or endorse such web pages or their contents as its own, as Cubeware does not control the information on such web pages after the moment of setting a link and is not responsible for the contents and information given thereon.

## 8. Liability for defects of title or quality

8.1. Insofar as any information, software or documentation is made available at no cost, any liability for defects as to quality or title of the information, software and documentation especially in relation to the correctness or absence of defects or the absence of claims or third-party rights or in

relation to completeness and/or fitness for purpose are excluded except for cases involving willful misconduct or fraud.

- 8.2. The information on the Cubeware website may contain specifications or general descriptions related to the technical possibilities of individual products which may not be available in certain cases (e.g. due to product changes).

The required performance of the product shall therefore be mutually agreed in each case at the time of purchase.

## **9 Other liability, Viruses**

- 9.1 The liability of Cubeware for defects in relation to quality and title shall be determined in accordance with the provisions of § 8 of these Terms of Use.

Any further liability of Cubeware is excluded unless required by law, e.g. under the Act on Product Liability or in cases of willful misconduct, gross negligence, personal injury or death, failure to meet guaranteed characteristics, fraudulent concealment of a defect or in case of breach of fundamental contractual obligations.

The damages in case of breach of fundamental contractual obligations is limited to the contract-typical, foreseeable damage if there is no willful misconduct or gross negligence.

- 9.2 Although Cubeware makes every endeavor to keep the Cubeware website virus-free, Cubeware doesn't guarantee this.  
The User shall, for its own protection, take the necessary steps to ensure appropriate security measures and shall utilize a virus scanner before downloading any information, software or documentation.
- 9.3 §§ 9.1 and 9.2 do not intend nor imply any changes to the burden of proof to the User's disadvantage.

## **10. Supplementary Agreements, Place of Jurisdiction, Applicable Law**

- 10.1. Any supplementary agreement requires the written form.
- 10.2. The place of jurisdiction is Rosenheim.
- 10.3. These Terms of Use shall be governed by German laws only.
- 10.4. If differences between the German text and the English translation occur, the German text overrules the translation.
- 10.5. The application of the United Nations Convention on Contracts for the International Sales of Goods (CISG) of 11 April 1980 is excluded.

Kolbermoor, 05.04.2018