

General Terms of Use

Last Updated: 03.03.2022

1. General

1.1 Scope of Application

These general terms of use shall apply in the version valid at the time of conclusion of the contract to all business relations between us PROVISIO GmbH, Wilhelm-Schickard-Straße 1, 48149 Münster, Germany, and you. If you use any terms that conflict with these general terms of use, we hereby expressly object to them.

1.2 Contractual Agreement

The contract language is German and English. "Software" means our programs "SiteKiosk" in all its forms (Classic, Online, One), which can be used via Windows and Android, and our server software (SiteRemote, SiteKiosk Online Server, SiteKiosk One Server).

1.3 Contract of use

1.3.1 Conclusion of contract

To use our software, it is necessary to download and install it after the conclusion of the contract. During this process, we will request the data needed for us to provide the service. The entries are confirmed by clicking the "Install" button. The provision of the software represents our offer and the activation of the "Install" button means your acceptance of the conclusion of a user contract. With your acceptance the contract is concluded.

1.3.2 Your account

The password that enables you to access the personal area has to be treated as strictly confidential and may not be disclosed to third parties under any circumstances. You shall take appropriate and reasonable measures to prevent third parties from obtaining knowledge of your password. An account cannot be transferred to other users or other third parties. We are not liable for any damage caused by misuse of the password. You are also obligated to keep the content and profile information posted by you up to date at all times and to inform us immediately of any misuse of your profile.

1.3.3 Term and termination

The user relationship is concluded for an indefinite period. It begins with the activation of the account and can be terminated by you at any time by deleting your profile via the usual account deletion routine or by giving notice to us in text form. We will only remove an account whose paid term still exists only for a good cause. With the termination of the user contract, the profiles and contents assigned to the account will also be deleted. The right to terminate without notice for a good cause remains unaffected. An important reason exists in particular if:

- you have provided incorrect or incomplete information when concluding the contract,
- you repeatedly violate other contractual obligations and do not cease the breach of duty even after being requested to do so by us.

1.4 Subsequent amendment of the terms of use

We shall be entitled to make subsequent amendments and additions to the general terms of use to existing business relationships, insofar as changes in legislation or case law make this necessary or other circumstances lead to the contractual equivalent relationship being disturbed to a more than insignificant extent. A subsequent amendment to the terms of use shall become effective if you do not object within six weeks after notification of the amendment. At the beginning of the period, we will expressly draw your attention to the effect of your silence as acceptance of the contractual amendment and give you the opportunity to make an express declaration during the period. If you object within the time limit, both we and you may terminate the contractual relationship without notice, unless we allow the contractual relationship to continue under the old general terms of use.

2. Performance description

2.1 General

We offer you a wide range of services in the area of “Public Access Terminal Software”. The concrete conditions (in particular duration and costs) can be found in the contract concluded separately with you. Please note that in the case of software deliveries or installations, the source codes are not included in the scope of delivery owed.

2.2 Performance

We are entitled to have the contract or parts of the contract fulfilled by third parties.

2.3 Time of performance

Unless expressly agreed otherwise, performance (access to our software or provision) shall be effected by us within 5 days. The period for performance shall commence on the day after the payment order is issued to the remitting bank in the case of payment in advance or on the day after the conclusion of the contract in the case of payment by invoice. The period ends on the following fifth day. If the last day of the period falls on a Saturday, Sunday or a public holiday recognized by the state at the place of performance, the period ends on the next working day. If applicable, our software is already available to you for a specific test period.

2.4 Right of retention

You may only assert a right of retention for counterclaims that are due and based on the same legal relationship as your obligation.

3. Your responsibility

3.1 General

You are solely responsible for the content you place in our software. You may not violate any applicable laws or these general terms of use with the content. You also undertake not to transmit any data whose content violates the rights of third parties (e.g. personal rights, rights to a name, trademark rights, copyrights, etc.). In particular, content with criminal content may not be published or untrue facts asserted.

3.2 Indemnification

You shall indemnify us against all claims asserted against us by third parties on account of such infringements. This also includes the reimbursement of costs of necessary legal representation.

3.3 Data backup

You are jointly responsible for backing up the information sent to us. We cannot be held responsible for the loss of your transmitted information, as we do not provide a general data backup guarantee.

3.4 Mandatory information

It is your own responsibility to ensure that you comply with and properly provide any mandatory information that may be required when using our software. We merely provide you with our software as technical assistance.

3.5 Abusive content

Abusive content will be deactivated or deleted by us without prior notice if we have access to it. Such content violations are given, for example, in the following cases:

- for sending spam,
- to send and store offensive, obscene, threatening, insulting content or content that in any other way violates the rights of third parties,
- send and store viruses, worms, trojan horses, harmful computer codes, files, scripts, agents or programs,
- uploading programs that are capable of disrupting, interfering with or preventing the operation of the service,
- attempting to gain unauthorized access to our service or to individual modules, systems or applications, or granting such access to third parties,
- Content that glorifies violence, is pornographic or otherwise offensive or punishable by law.

In case of recurring violations, we reserve the right to block or delete your account. In this case, payments already made cannot be refunded. The right to extraordinary termination remains unaffected.

3.6 Illegal or immoral activities

You agree that you will not use our software for any illegal or immoral activities.

3.7 Manual

Please always refer to the manual which may be provided to you as an aid in electronic form.

3.8 Reversal (e.g. in case of withdrawal or revocation) or termination of the contract

In the event of revocation or termination of the contract, you must destroy the copies of the software product handed over to you or made by you, as well as the license key, unless you have a right to retain them. Data carriers, the supplied hardware including the spare copy and the material must be returned to us, unless you have a right of retention in this respect as well.

3.9 Rooting of your Android device

Please contact the manufacturer of your Android device if you want to root the device. Rooting may violate the manufacturer's guarantee or have other negative effects.

3.10 Non-existence of warranty right

A warranty claim is in particular not given, as far as the claimed defect is caused by:

- Non-compliance by you with our instructions on installation, assembly, commissioning, use and operation
- Unsuitable or improper use by you
- Faulty installation, assembly, commissioning or handling by you
- Interventions in the software by you.

4. Usability of the services

4.1 Further development of the service / availability

We make every effort to adapt our services to current technical developments. We therefore reserve the right to make changes to the agreed services, insofar as such changes do not affect the core services and are reasonable for the contractual partner, taking into account the interests of the contractual partner. We are also entitled to interrupt the software operation partially or entirely within reasonable limits for updating and maintenance. In this respect, we do not guarantee the availability of the services offered at any time and do not guarantee that the services provided or parts thereof will be made available and can be used from any location. Your warranty rights are not affected by this.

4.2 Technical requirements

The use of the software requires corresponding compatible devices. It is your responsibility to put or keep the device in a condition that allows the use of the software services.

4.3 Malfunctions

In case of defects or malfunctions, we ask you to report this immediately so that we can eliminate the problem. If the malfunction is due to your fault and the elimination/processing is not part of your booked scope of services, we will charge you for the costs incurred by us for the inspection and any necessary elimination.

5. Our software

5.1 General

Please note that you will only be granted license rights if the purchased software is the original. A certificate of authenticity ("Certificate(s) of Authenticity") may be attached to our software. The license entitles you to install and use the software on the respective and device. If the software is to be installed or used on more than one device and/or by more than one person, additional licenses must be purchased. This applies in particular to Terminal Services. This does not apply to so-called shareware, which is intended for distribution and use by additional persons. Our software is also based on the Android system Webview from Google, the Chromium browser engine from Google in conjunction with the Electron Framework or the Internet Explorer from Microsoft. We are unable to remedy any defects that can demonstrably be attributed to these software components or programs. The right of revocation as well as warranty rights remain unaffected.

5.2 Duplication

The software is protected by copyright. Our copyright covers in particular the complete program code, the structure as well as the appearance and the design of the software in particular however also the supplied data files as well as program documentation. With the conclusion of the contract and the payment of the agreed amount, you secure only the rights of use of the software for the agreed purpose. You may not copy the licensed program as well as the documentation neither in whole nor in part, with the exception of the production of a machine-readable copy of the software for backup or archiving purposes. You are obligated to affix our copyright notice to this spare copy or to include it therein. Any registration number present in the software, as well as incorporated therein, may not be removed.

5.3 Transfer to third parties

The right to use the software may only be transferred to a third party under the terms of this contract. The third-party must expressly agree to the terms of this contract. In this case, you may not retain any copy (either in printed or machine-readable form). You must transfer the complete software product (including all components, the media and printed materials, all updates, and the Certificate(s) of Authenticity) and the licensing data to the third party. If the software product is an update, the transfer must include all prior versions of the software product. You are not entitled to rent, lease or lend the software product. In addition, the recipient must provide us with his personal data to change the registration file without being requested to do so.

5.4 Prohibition of modification

You may not make any changes to the licensed software or have them made by third parties. You are prohibited from creating derivative works from the software or from copying the written material. You are not entitled to reverse engineer, decompile or disassemble the software product. However, this applies only to the extent that applicable law does not expressly permit such possibility, notwithstanding this limitation.

5.5 Copyright notice

To the extent that we have included a copyright notice/copyright notice on the software, you may not remove or modify such notice/copyright notice without our consent.

5.6 Updates and upgrades

We are entitled to modify the software within the scope of (necessary) updates and upgrades. These changes are also subject to copyright protection.

5.7 Compensation

We reserve the right to claim damages for any violation of the contractual license terms, especially in case of copyright infringement.

5.8 Shareware version

Our software can be tested as a shareware version for an unlimited period of time. License codes unlock the software. After entering the license codes, the shareware notes disappear. After each input of your data, the following information will be sent to us automatically, if an internet connection is available:

- Your registration name
- Your registration code
- Number of registered licenses / basic licenses
- Your company name and name
- Your IP address, e-mail address, if applicable WLAN SSID, MAC address and the name of your computer
- If applicable Windows name and version
- If applicable Android version
- CPU information
- If applicable Internet Explorer version

This information will not be shared with third parties, and is only used for statistical purposes and to match the stored information in our licensee database. We expressly reserve the right to use this information to investigate license misuse and to deactivate the license key if misuse is suspected. If you do not make any payment for purchased license keys despite being requested, we reserve the right to deactivate the license key.

5.9 Third-party license rights

Our software is partly based on products that are not created by us, but which may be freely used according to the license conditions applicable today (e.g. Chromium by Google or Internet Explorer by Microsoft). We cannot guarantee that the components we currently use can or may be used by other providers in the future. Therefore, a runability and run-authorization of the software can only be ensure for the current state of the software of the components used. You have no right to adapt the software to future versions of these external components. A list of the used components, the license-legally prescribed denomination of the originators and right owners, as well as if necessary source code with our adjustments / supplements to open source software to be published can be found under the URL <https://www.google.com/search?q=open-source.provisio.com>. When using outside the Federal Republic of Germany, please note that third-party software must be licensed independently by you. The program parts mentioned in the external list may be used explicitly free of charge. You are responsible for the correct end use of the third-party software. We are the owner of a license of the United States patents with the numbers 6,078,848 and 5,761,071. The owner of these patents is the company Netkey, USA. ["NETKEY"® Licensed; U.S. Patent Nos. 6,078,848 and 5,761,071].

5.10 Our Parental Control Filter

You can optionally use our parental control filter to block adult and pornographic content. Please note that this filter program only works according to mathematical rules and cannot really judge whether a website is harmful to minors or not. Therefore, we are not responsible when using the filter content is displayed in the browser that should not have been shown by law or in your opinion (e.g. obscene or scandalous content). The same applies to websites that are not actually harmful to minors but are classified as such. The filter list is maintained by us free of charge and made available to you. However, we reserve the right to discontinue the service or charge maintenance fees if you still wish to filter lists. This has to be agreed with us separately.

6. Right of use and copyright to our other documents

We have the exclusive right of use or copyright to drawings, illustrations, sketches, price lists, models and other documents which have been created by us or which you receive from us. These may not be made accessible to third parties without our consent and must be returned to us immediately upon request.

7. Liability

7.1 Exclusion of liability

We as well as our legal representatives and vicarious agents shall only be liable for intent or gross negligence. Insofar as essential contractual obligations (i.e. obligations whose compliance is of particular importance for achieving the purpose of the contract) are concerned, we shall also be liable for slight negligence. In this case, liability shall be limited to the foreseeable damage typical for the contract. Towards entrepreneurs, we shall be liable in the event of a grossly negligent breach of non-essential contractual obligations only to the extent of the foreseeable damage typical for the contract.

7.2 Reservation of liability

The above exclusion of liability shall not apply to liability for damages resulting from injury to life, body or health. The provisions of the Product Liability Act shall also remain unaffected by this exclusion of liability.

7.3 Data backup

We carry out effective data backups as part of the service provision, but do not provide a general data backup guarantee for the data transmitted by you. You are also responsible for creating appropriate backups of your data at regular intervals to prevent data loss. We will exercise reasonable care in providing the agreed service and will provide the data backup with the necessary expertise. However, we do not guarantee that the stored content or data you access will not be accidentally damaged or corrupted, lost or partially removed.

7.4 Liability for content

As the software producer, we are not liable for your incorrect content when using our software. We do not check the content posted by using our software (particularly regarding the infringement of third-party rights). We also do not guarantee the accuracy, timeliness, completeness, quality or legality of the content that does not originate from us. We merely make our software available to you. The handling is up to you.

7.5 Further costs

Please note that we are also not liable for any costs incurred by you in connection with the installation and/or maintenance of our software, unless you have booked these services and we are not responsible for the costs incurred. This also includes telephone charges, communication costs and provider costs. The other liability terms remain unaffected.

8. Final provisions

8.1 Jurisdiction

Our place of business is agreed as the exclusive place of jurisdiction for all legal disputes arising from this contract, provided that you are a merchant, a legal entity under public law or a special fund under public law.

8.2 Choice of law

Unless mandatory statutory provisions according to your home country's law conflict with this, German law shall apply to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods.

8.3 Consumer dispute resolution procedure

The EU Commission has created an Internet platform for the online resolution of disputes concerning contractual obligations arising from online contracts (OS platform). You can access the ODR platform at the following link: <http://ec.europa.eu/consumers/odr/>. We are unwilling and not obliged to participate in a dispute resolution procedure before a consumer arbitration board.

8.4 Severability clause

The invalidity of individual provisions shall not affect the validity of the remaining general terms of use.