

Terms and Conditions

These Terms and Conditions contain the following legal documents relating to this website:

- A. a description of general use of the website and disclaimer; and
- B. a download agreement ("Download Agreement") governing the purchase and use of products or services provided by us; and
- C. general terms.

A. General use of Website and Disclaimer

1. IN GENERAL

- 1.1. In these Terms and Conditions, "we" means Ontrex AG (and "us" and "our" will be construed accordingly); "you" means our customer or potential customer for the use of the Website and downloads (and "your" will be construed accordingly).
- 1.2. This document governs your relationship with www.ontrex.ch ("Website"). Ontrex AG owns and operates this Website. Access to and use of this Website and the products and services available through this Website (collectively, the "Services") are subject to the following terms, conditions and notices (the "Terms of Service"). By using the Services, you are agreeing to all of the Terms of Service, as may be updated by us from time to time. If you disagree with any part of this disclaimer, you must not use our website. You should check this page regularly to take notice of any changes we may have made to the Terms of Service.
- 1.3. You may view, download for caching purposes only, and print pages from the website for your own personal use, subject to the restrictions below.
- 1.4. You must not (save in accordance with the express terms of our Download Agreement): (a) republish material from this Website; (b) sell, rent or otherwise sub-license material from the website; (c) show any material from the website in public; (d) reproduce, duplicate, copy or otherwise exploit material on our website for a commercial purpose; (e) edit or otherwise modify any material on the website; or (f) redistribute material from this website.
- 1.5. Access to this Website is permitted on a temporary basis, and we reserve the right to withdraw or amend the Services without notice. We will not be liable if for any reason in case this Website is unavailable at any time or for any period. From time to time, we may restrict access to some parts or all of this Website.
- 1.6. Nothing on this Website should be construed or treated as advice. Whilst we endeavour to ensure that the information on this Website is correct, we do not warrant its completeness or accuracy; nor do we commit to ensuring that the Website remains available or that the material on the Website is kept up-to-date. To the maximum extent permitted by applicable law we exclude all representations, warranties and conditions relating to this Website and the use of this Website (including, without limitation, any warranties implied by law of satisfactory quality, fitness for purpose and/or the use of reasonable care and skill).
- 1.7. This Website may contain links to other websites (the "Linked Sites"), which are not operated by us. We have no control over the Linked Sites and accept no responsibility for them or for any loss or damage that may arise from your use of them. Your use of the Linked Sites will be subject to the terms of use and service contained within each such site.
- 1.8. This Terms and Conditions constitutes the entire agreement between you and us in relation to your use of our Website, and supersedes all previous agreements in respect of your use of this Website.

2. PRIVACY POLICY

Our privacy policy, which sets out how we will use your information, can be found at <https://www.ontrex.ch/en/privacy/>. By using this Website, you consent to the processing described therein and warrant that all data provided by you is accurate.

3. PROHIBITIONS

- 3.1. You must not misuse this Website. You will not commit or encourage a criminal offense; transmit or distribute a virus, trojan, worm, logic bomb or any other material which is malicious, technologically harmful, in breach of confidence or in any way offensive or obscene; hack into any aspect of the Service; corrupt data; cause annoyance to other users; infringe upon the rights of any other person's proprietary rights; send any unsolicited advertising or promotional material, commonly referred to as "spam"; or attempt to affect the performance or functionality of any computer facilities of or accessed through this Website. Breaching this provision would constitute a criminal offense and we will report any such breach to the relevant law enforcement authorities and disclose your identity to them.
- 3.2. We will not be liable for any loss or damage caused by a distributed denial-of-service attack, viruses or other technologically harmful material that may infect your computer equipment, computer programs, data or other proprietary material due to your use of this Website or to your downloading of any material posted on it, or on any website linked to it.

4. INTELLECTUAL PROPERTY, SOFTWARE AND CONTENT

- 4.1. The intellectual property rights in all software and content made available to you on or through this Website remains the property of us or our licensors and are protected by copyright laws and treaties around the world. All such rights are reserved by us and our licensors. You may store, print and display the content supplied solely for your own personal use.
- 4.2. You are not permitted to publish, manipulate, distribute or otherwise reproduce, in any format, any of the content or copies of the content supplied to you or which appears on this Website nor may you use any such content in connection with any business or commercial enterprise.

B. Download Agreement

5. INTRODUCTION

- 5.1. You will be asked to expressly agree to the Download Agreement before you place an order for downloads on our website.
- 5.2. In the context of the Download Agreement, software package ("Software Package" or "Downloads") means a collection of software tools that automates the process of installing, upgrading, configuring, and removing computer programs for a computer's operating system in a consistent manner.
- 5.3. For the avoidance of doubt, downloading our Software Packages does not include a licence of the underlying software and you are responsible to separately buy such software and/or register yourself or your institution in order to use such software.

6. ORDER PROCESS

- 6.1. The advertising of downloads on our website constitutes an "invitation to treat"; and your order for downloads constitutes a contractual offer. The Download Agreement will not come into force between you and us unless and until we accept your order in accordance with the procedure detailed below.

- 6.2. In order to enter into the Download Agreement, you will need to take the following steps: (i) you must add any Downloads you wish to purchase to your shopping cart, and then proceed to the checkout; (ii) you must provide your invoicing details, confirm your order and give your consent to the Download Agreement and accept that you do not purchase a software license but an installation routine to deliver software on your computer or network; (iii) we will send you an invoice; (iv) upon payment of the invoice we will send you an email containing a link to download the Software Package you ordered or a copy of the Software Package (at which point, in each case, this Download Agreement will come into force).
- 6.3. We will not file a copy of the Download Agreement specifically in relation to your order. We may update the version of the Download Agreement on the website from time to time, and we do not guarantee that the version you have agreed to will remain accessible. We therefore recommend that you print and retain a copy of the Download Agreement for your records.
- 6.4. The only language in which we provide the Download Agreement is English.
- 6.5. Before you place your order, you will have the opportunity of identifying whether you have made any input errors. You may correct those input errors before placing your order using the Website interface.

7. DOWNLOADS

- 7.1. Our Website offers a range of downloadable Software Packages. These Software Packages are usually for the latest version of the respective software but we may also provide Software Packages for older versions.
- 7.2. We reserve the right to extend or decrease the number or versions of Software Packages available for download.
- 7.3. We may offer to download the Software Packages as standalone packages but may also offer to subscription options that allows you to download the recent versions of a certain Software Package for a predefined period of time.

8. PRICE AND PAYMENT

- 8.1. Prices for Downloads are quoted on our website. It is possible that some of the prices on the website may be incorrect. We will verify prices as part of our sale procedures so that a Download's correct price will be stated when you pay for the Download.
- 8.2. Payment must be made upon the submission of your order. We reserve the right to withhold the Downloads if the price is not received from you on time, in full, in cleared funds.
- 8.3. The prices on the website exclude value added taxes (where applicable).
- 8.4. Payment for all Downloads must be made by through bank transfer to our account or any other mean offered by us for payment.
- 8.5. Prices for Downloads are liable to change at any time, but changes will not affect Download agreements that have come into force.

9. YOUR WARRANTIES

You warrant to us that:

- a) you are legally capable of entering into binding contracts;
- b) you act as a business customer and not as a consumer;
- c) you have full authority, power and capacity to agree to the Download Agreement; and
- d) the information provided in your order is accurate and complete;

10. LICENCE TO USE DOWNLOADS

10.1. In this Section, "Download" means the Software Package that you purchase from our Website.

10.2. Subject to your payment of the applicable price and compliance with the terms of the Download Agreement, we grant to you a worldwide non-exclusive licence to make any Permitted Use of paid and downloaded Software Packages; providing that you must not in any circumstances make any Prohibited Use of any Software Package.

The "Permitted Uses" are:

- a) downloading a copy of each Software Package;
- b) using the Software Package to distribute the underlying software within your network;

The "Prohibited Uses" are:

- a) the sale, licensing, sub-licensing, renting, leasing, give away or commercial distribution of any Downloads in any format;
- b) the publishing of any Downloads;
- c) the use of any Downloads to provide services for third parties, e.g. delivering software on your customer's computers or networks;
- d) the use of any Download in any way that is unlawful or in breach of any person's legal rights under any applicable law, or in any way that is offensive, indecent, discriminatory or otherwise objectionable;
- e) the use of any Download to compete with us, whether directly or indirectly.

10.3. All rights in the Downloads not expressly granted in the download agreement are hereby reserved.

10.4. You must retain, and must not delete, obscure or remove, all copyright notices and other proprietary notices placed by us on any Downloads.

10.5. If you breach any of the terms of the Download Agreement, then the licence set out in this Section will be automatically terminated upon such breach (whether or not we notify you of termination).

10.6. Upon the termination of the licence set out in this Section, you will promptly and irrevocably delete from your computer systems and other electronic devices all copies of the Downloads in your possession or control, and will permanently destroy any paper or other copies of the Downloads in your possession or control.

11. REFUNDS

11.1. In general, we do not refund Downloads as Software Packages are "consumed" by downloading.

11.2. If you are entitled to a refund under this Download Agreement due to an exception, we will usually refund any money received from you using the same method originally used by you to pay for your purchase. We will process the refund due to you as soon as possible and, in any event, within 30 days of the day we received your valid notice of cancellation.

12. FORCE MAJEURE

In this Section, "force majeure event" means:

- a) any event which is beyond our reasonable control;

- b) hacker attacks, or virus or other malicious software attacks or infections;
- c) problems with the internet, part of the internet, or any third-party internet service provider; and/or
- d) power failure, industrial disputes affecting any third party, governmental regulations, fires, floods, disasters, civil riots, terrorist attacks or wars.

Where a force majeure event gives rise to a failure or delay in us performing our obligations under the Download Agreement, those obligations will be suspended for the duration of the force majeure event.

13. LIMITATIONS OF LIABILITY

- 13.1. Nothing in the Download Agreement will: (a) limit or exclude the liability of a party for death or personal injury resulting from negligence; (b) limit or exclude the liability of a party for fraud or fraudulent misrepresentation by that party; (c) limit any liability of a party in any way that is not permitted under applicable law; or (d) exclude any liability of a party that may not be excluded under applicable law.
- 13.2. The limitations and exclusions of liability set out in this Section and elsewhere in the Download Agreement: (a) are subject to the preceding paragraph; and (b) govern all liabilities arising under the Download Agreement or in relation to the subject matter of the Download Agreement, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty.
 - We will not be liable to you in respect of any losses arising out of a force majeure event.
 - We will not be liable to you in respect of any business losses.
 - We will not be liable to you in respect of any loss of or damage to profits, income, revenue, or anticipated savings.
 - We will not be liable to you in respect of any loss of use or production.
 - We will not be liable to you in respect of any loss of management time or office time.
 - We will not be liable to you in respect of any loss of business, contracts, commercial opportunities or goodwill.
 - We will not be liable to you in respect of any loss or corruption of any data, database or software.
 - We will not be liable to you in respect of any special, indirect or consequential loss or damage.
- 13.3. Our aggregate liability to you in respect of a particular contract under the Download Agreement will not exceed the total amount paid or (if greater) payable by you to us under that contract.
- 13.4. You accept that we are a limited liability entity and we have a legitimate interest in limiting the personal liability of our partners, members and employees. Having regard to that interest, you agree that you will not bring any claim personally against any individual partners, members or employees in respect of any losses you that you may suffer in connection with the Downloads or the Download Agreement.

14. BUSINESS CUSTOMERS: INDEMNITY

- 14.1. You hereby indemnify us and undertake to keep us indemnified against all and any liabilities, losses, damages, expenses and costs (including legal expenses and amounts paid in settlement of any demand, action or claim) arising, directly or indirectly, out of a breach by you of any of your obligations under the Download Agreement or any infringement by you of any of our or our licensors' intellectual property rights.

15. DOWNLOAD AGREEMENT TERMINATION

- 15.1. We may terminate a Download Agreement immediately by written notice to you if you fail to pay, on time and in full, any amount due to use under the Download Agreement, or if you commit any breach of your obligations to us under the Download Agreement or our website disclaimer.

16. CONSEQUENCES OF TERMINATION

- 16.1. If you terminate a subscription in the middle of a billing circle, you will not receive a refund for any period of time you did not use in that billing circle unless you are terminating the Download Agreement for our breach and have so notified us in writing, or unless a refund is required by law.
- 16.2. We may limit, suspend or stop providing the Services to you if you fail to comply with these Terms and Conditions (such as a failure to pay fees when due), or if you use the Services in a way that causes legal liability to us or disrupts other's use of the Services or if you use as listed in "Prohibited Uses" according to Section 10.2. We may also suspend providing the Services to you if we are investigating suspected misconduct by you. If we suspend or terminate the Services you receive, we will endeavour to give you advance notice and an opportunity to export or copy of your content from that Service. However, there may be sensitive situations where we may decide that we need to take immediate action without notice. We have no obligation to retain your content upon termination of the applicable Service.
- 16.3. Upon the termination of the Download Agreement:
- a) we will cease to have any obligation to make available or deliver Downloads which are undelivered at the date of termination;
 - b) subject to Section 8, you will not be entitled to any refund and will continue to have an obligation to pay for Downloads; and
 - c) all the provisions of the Download Agreement (including without limitation the licence in Section 7) will cease to have effect, except that Sections 12, 13, 15 and 16 will survive termination and have effect indefinitely.

C. General terms

- 16.4. The Terms and Conditions may only be varied by an instrument in writing signed by both you and us. We may revise the Terms and Conditions published on our Website from time-to-time, but such revisions will not affect the terms of any contracts which we have entered into with you under any pre-existing Terms and Conditions.
- 16.5. If any provision of the Terms and Conditions is held invalid or unenforceable by a court of competent jurisdiction, the remaining provisions will remain in full force and effect, and such invalid or unenforceable provisions or portion thereof will be deemed omitted.
- 16.6. No waiver of any provision of the Terms and Conditions, whether by conduct or otherwise, in any one or more instances, will be deemed to be, or be construed as, a further or continuing waiver of that provision or any other provision of the Terms and Conditions.
- 16.7. You may not transfer, assign, charge, sub-contract, sub-license or otherwise deal in any of your rights or obligations arising under the Terms and Conditions. Any attempt by you to do so will be null and void. We may transfer, assign, charge, sub-contract, sub-license or otherwise deal in any or all of our rights or obligations arising under the Terms and Conditions, at any time.

16.8. The Terms and Conditions contains the entire agreement and understanding of the parties in relation to the use of our Website and the purchase of Downloads from our Website, and supersedes all previous agreements and understandings between the parties in relation to the use of our Website and the purchase of Downloads from our Website; and each party acknowledges that no representations not expressly contained in the Terms and Conditions have been made by or on behalf of the other party in relation to the use of our Website and the purchase of Downloads from our Website.

17. LAW AND JURISDICTION

The Parties accept the exclusive jurisdiction of the courts in Zurich, Switzerland providing that we may bring proceedings to enforce our contractual or intellectual property rights in any jurisdiction in which you are resident, established or operating. The Terms and Conditions are to be governed by and construed according to Swiss Law.