

TOOLBOX SOFTWARE GMBH

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MANUFACTURER'S REPRESENTATIONS AND WARRANTIES

These Representations and Warranties are applicable to all customers (the "Customers" and each, individually, a "Customer") purchasing products (the "Products") manufactured by Toolbox Software GmbH (the "Company").

1. Warranty and Limitations:

1.1. Company warrants solely to the original purchaser of the Products that for the Warranty Period (as defined below), the Products will be free from defects in materials and workmanship under normal use, and will conform to Company's published specifications of the Products. Notwithstanding the foregoing, Company retains its right to deviate from its published specifications due to the latest innovations and improvements in function and design of the Products. The foregoing warranty is subject to the proper storage, transportation and use of the Products, and does not include defects due to normal wear and tear or deterioration.

1.2. Upon delivery, Customer shall immediately inspect the Products for conformity and visible defects. Customer shall give Company immediate written notice of any non-conformities or visible defects regarding the Products and contact Company in writing concerning return or repair, as the case may be.

1.3. Customer shall notify Company in writing of any defects of the Products. Company's sole obligation under the foregoing warranty is, at Company's option, to repair or correct any such covered defect or to replace or exchange the Product. Any repaired, corrected, replaced or exchanged Products shall be subject to the warranty set forth in 1.1., following their repair, correction, replacement or exchange. If Company has received notification from Customer, and no defects of the Product could be discovered, Customer shall bear the costs that Company incurred as a result of the notice.

1.4. With respect to orders made to custom, any defects of the Products caused by Customer's specifications are excluded from the warranty set forth in 1.1.

1.5. Company also makes no warranty that the Products manufactured under an order made to custom do not infringe the intellectual property or other proprietary rights of any third party and Customer is solely responsible for assuring that such Products do not so infringe.

1.6. The "Warranty Period" begins on the date on which the Products are being physically delivered to Customer's site, and continues to be in effect for twelve (12) months.

1.7. Company does not authorize any person or party to assume or create for it any other obligation or liability in connection with the Products except as set forth herein.

1.8. All requests and notices under this Warranty shall be directed to:

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or (for customers in the US and Canada)

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1.9. THE WARRANTY SET FORTH IN SECTION 1.1 IS MADE IN LIEU OF ALL OTHER WARRANTIES (WHETHER EXPRESS OR IMPLIED), RIGHTS OR CONDITIONS, AND CUSTOMER ACKNOWLEDGES THAT EXCEPT FOR SUCH LIMITED WARRANTY, THE PRODUCTS ARE PROVIDED "AS IS." COMPANY SPECIFICALLY DISCLAIMS, WITHOUT LIMITATION, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND THOSE WARRANTIES ARISING FROM A COURSE OF PERFORMANCE, A COURSE OF DEALING OR TRADE USAGE.

2. Limitation of Liability:

2.1. IN NO EVENT SHALL COMPANY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, REVENUE, GOODWILL OR USE, INCURRED BY CUSTOMER OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT, TORT, STRICT LIABILITY, OR IMPOSED BY STATUTE, OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. COMPANY'S LIABILITY FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT SHALL IN NO EVENT EXCEED THE PURCHASE PRICE OF THE PRODUCTS. IT IS AGREED AND ACKNOWLEDGED THAT THE PROVISIONS OF THIS AGREEMENT ALLOCATE THE RISKS BETWEEN COMPANY AND CUSTOMER, THAT COMPANY'S PRICING REFLECTS THIS ALLOCATION OF RISK, AND BUT FOR THIS ALLOCATION AND LIMITATION OF LIABILITY, COMPANY WOULD NOT HAVE ENTERED INTO THIS AGREEMENT.

2.2. IN JURISDICTIONS THAT LIMIT THE SCOPE OF OR PRECLUDE LIMITATIONS OR EXCLUSION OF REMEDIES OR DAMAGES, OR OF LIABILITY, SUCH AS LIABILITY FOR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OR DO NOT ALLOW IMPLIED WARRANTIES TO BE EXCLUDED, THE LIMITATION OR EXCLUSION OF WARRANTIES, REMEDIES, DAMAGES OR LIABILITY SET FORTH ABOVE ARE INTENDED TO APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. CUSTOMER MAY ALSO HAVE OTHER RIGHTS THAT VARY BY STATE, COUNTRY OR OTHER JURISDICTION.
