General Terms and Conditions

of Herbert Kannegiesser GmbH (hereinafter referred to as "Kannegiesser")

for the delivery of software and the provision and use of

product and related service data for Kannegiesser products

For use by:

1. a person who, at the time of conclusion of the contract, is acting in the exercise of their commercial or independent professional activity (entrepreneur);
2. legal entities under public law or a special fund under public law.

(hereinafter referred to as "**User**"; together with Kannegiesser also referred to as "**Parties**" and each on its own also referred to as "**Party**").

I. General

1. The scope of application of these General Terms and Conditions covers both the licensing of the "SmartVue" software developed by Kannegiesser and "SmartFlow" in all available versions, including updates and upgrades, as well as databases and associated database software (hereinafter collectively referred to as "**Software**"), as well as contracts for the maintenance (servicing and/or support) of the Software or Software modules, and service contracts for Kannegiesser's consulting activities in this area. Furthermore, these General Terms and Conditions govern the provision and use of product data and related service data by Kannegiesser in connection with all products offered by it (machines and software).
2. Any deviating general terms and conditions of the User shall not become part of the contract, even if the order is accepted. Unless otherwise agreed, a contract shall come into effect upon written order confirmation by Kannegiesser.

II. Scope of services

1. Kannegiesser shall provide the services specified in the respective contract offer and any associated annexes.
2. Unless expressly agreed otherwise, the following services are not included in the scope of services and therefore remain the responsibility of the User:
   a) the selection and provision of the hardware and system environment on or in which the Software – which may still need to be implemented – is to be used; this also includes the necessary network access, interfaces, information, tools, etc.;
   b) the implementation and commissioning of the Software;
   c) proper backup of the User's data (regular backup and restore of data);
   d) Monitoring the performance of the Software and the data volume in the User's database; this also includes any resulting hardware adjustments.

III. Granting of rights

1. Kannegiesser grants the User a non-exclusive, geographically unrestricted right to use the Software for the number of machines, systems, and terminals specified in the respective order confirmation (license) for a period limited to the agreed contract term.

2. The User may only use the Software for their own purposes. Use of the Software on more workstations or on more machines than licenses have been purchased in accordance with Section III.1 above is expressly prohibited.
3. Kannegiesser will automatically check remotely via the Software for any exceeding of the total number of licenses purchased. Any deviations detected will be communicated to the User in writing at the latest with the annual statement. If the license count shows that the maximum permissible number of licenses has been exceeded, the User is obliged to uninstall the excess number of licenses within 30 days of receiving written notification of the results of the count, or to purchase the corresponding number of licenses at the then valid prices. This provision does not exclude the User's liability for intentional copyright infringements.
4. If Kannegiesser makes adjustments (customizing) for the User and/or is to develop any interfaces or enhancements, the rights to these shall be granted under the conditions specified in Sections IIII.1 and III.2, III.3, and III.6. The same applies to the rights of use for any maintenance/support services that Kannegiesser provides for the User.
5. Sections III.1 and III.3 to III.6 shall not apply if the Parties have expressly agreed to a trial run of the Software. In this case, the User shall receive a non-exclusive right to use the Software on a trial basis for a period limited to the duration of the agreed trial run and restricted to the respective location.
6. Notwithstanding the above provision, the rights of use shall end in the event of withdrawal from the contract, with the provision that the User may continue to use the Software until the User has installed a new system, but for a maximum of 3 months, during which time the User shall continue to pay the corresponding license fees on a pro rata basis.

IV. Reproduction rights

1. The User may reproduce the Software to the extent that the respective reproduction is necessary for the contractual use. This includes, in particular, the installation of the Software and loading it into the working memory. Reproduction processes serving the purpose of proper data backup are also part of the contractual use.
2. In addition, the User may make a copy for backup purposes.
3. All other rights to the Software and documentation, including copies, remain with Kannegiesser.

V. Resale or licensing

The User may not sell the Software to third Parties or allow third Parties to use it for a limited period of time without the express prior written consent of Kannegiesser.

VI. Decompilation and program modification

1. Modification or editing of the Software by the User or a third party is not permitted.
2. The conversion of the program code provided into other code forms (decompilation) and other types of reverse engineering of the various stages of production of the Software are only permitted if they are carried out in order to obtain the information necessary to achieve the interoperability of an independently created computer program and this information cannot be obtained elsewhere. The User must first request the required information from Kannegiesser.
3. A further prerequisite for decompilation is that the reverse engineering or program observation is only carried out by means of actions to which the User is entitled within the scope of his reproduction rights.
4. Copyright notices, serial numbers, and other features serving to identify the program may not be removed or altered under any circumstances unless Kannegiesser expressly agrees to the removal or alteration in advance. The same applies to the suppression of the display of such features.

VII. Duties of care

1. The User is obliged to prevent unauthorized access to the Software by third Parties.
2. The User shall instruct its employees to comply with the copyright of the Software in favor of Kannegiesser. In the event of a copyright infringement by employees of the User, the User is obliged to cooperate in clarifying the copyright infringement and, in particular, to inform Kannegiesser immediately of the corresponding infringing acts.
3. The User is responsible for ensuring that their data is properly backed up. To this end, they must regularly back up their data and also check that the backup is functioning correctly by restoring the data. The User must perform the first data backup before starting the initial installation of the Software, and thereafter in any case before each new installation or installation of updates, upgrades, enhancements, and/or new releases of the Software.

VIII. Prices and terms of payment

1. Unless otherwise agreed, prices are ex works and include shipping from the factory in the case of delivery of a data carrier. If the implementation and commissioning of the Software is also part of the contract, the prices include delivery to the User and implementation of the Software at the User's premises, including the necessary preparatory work. Sales tax at the applicable statutory rate shall be added to the prices.
2. In the absence of a special agreement, payment shall be made without any deductions within 10 working days of the invoice date to Kannegiesser's account.
3. The User may only offset or withhold payments due to defects if he is actually entitled to payment claims due to material defects and defects of title in the service. In the case of other claims for defects, the User may only withhold payments to an extent that is proportionate to the defect. Section XII, Clause 6 applies accordingly. The User has no right of retention if the defect is time-barred. Otherwise, the User may only offset or exercise a right of retention with undisputed or legally established claims.
4. Insofar as the implementation and commissioning of the Software is part of the scope of services, the following applies:
   a) The costs of implementing and commissioning the Software shall be borne by the User.
   b) The User shall, at its own expense and risk, provide the necessary equipment for implementation and commissioning (in particular hardware and system environment in accordance with Section II, Clause 2a) in a timely manner and provide a sufficiently qualified employee who is familiar with the User's system environment. If the User fails to meet these obligations by the contractually agreed date and Kannegiesser is therefore unable to implement and commission the Software as agreed, the invoice for the Software shall be due for payment immediately upon expiry of the agreed date.
   c) If the implementation or commissioning of the Software is delayed due to circumstances at the User's location through no fault of Kannegiesser, the User shall bear all costs for waiting time and any further travel required by Kannegiesser.
   d) Kannegiesser shall not be liable for work to be arranged by the User.
   e) In all other respects, Kannegiesser's applicable installation conditions shall apply to wages, travel expenses, meals, and similar items.

IX. Delivery time, consequences of delay in performance

1. The delivery time is determined by the agreements between the contracting Parties. Kannegiesser's compliance with this delivery time requires that all commercial and technical issues between the contracting Parties have been clarified and that the User has fulfilled all obligations incumbent upon him, such as providing the necessary hardware and system environment (see Section II, Clause 2a) or making an agreed down payment. If this is not the case, the delivery time shall be extended accordingly. This shall not apply if Kannegiesser is responsible for the delay.
2. The delivery time shall be deemed to have been met if, by the end of the delivery period, the Software has left the Kannegiesser factory or the Software has been made available to the User as a download ("**Provision**"). If acceptance is required, the acceptance date shall be decisive, except in cases of justified refusal of acceptance.
3. If the Provision or acceptance of the Software is delayed for reasons for which the User is responsible, Kannegiesser will charge the User for the costs incurred as a result of the delay, starting one month after notification of readiness for shipment/download or acceptance.
4. If the failure to meet the delivery time is due to force majeure, lawful labor disputes, or other events beyond Kannegiesser's control, the delivery time shall be extended by a reasonable period, but not more than 21 days. Kannegiesser shall notify the User of the beginning and end of such circumstances as soon as possible. If impossibility or expiry of time occurs, or if the delayed performance is no longer reasonable for the customer in individual cases, the customer may withdraw from the contract.
5. The User may withdraw from the contract without setting a deadline if Kannegiesser is ultimately unable to perform the entire service before the transfer of risk. The User may also withdraw from the contract if, in the case of an order, the execution of part of the delivery becomes impossible and the User has a legitimate interest in rejecting the partial delivery. If this is not the case, the User must pay the contract price attributable to the partial delivery. The same applies in the event of Kannegiesser's inability to perform. In all other respects, Section XIII applies. If the impossibility or inability occurs during the delay in acceptance or if the User is solely or predominantly responsible for these circumstances, they remain obliged to provide consideration.
6. If, in the event of default, the User sets Kannegiesser a reasonable deadline for performance after the due date, taking into account the statutory exceptions, and if the deadline is not met, the User shall be entitled to withdraw from the contract within the framework of the statutory provisions. At Kannegiesser's request, the User undertakes to declare within a reasonable period of time whether it will exercise its right of withdrawal.
7. Further claims arising from delay in delivery shall be determined exclusively in accordance with Section XIII.

X. Acceptance upon implementation, commissioning, and customizing

1. If the implementation, commissioning, or customization of the Software is also owed, the work results of these services must be accepted by the User. Acceptance shall be uniform and in accordance with the following provisions:
   a) Kannegiesser shall notify the User when the work is ready for acceptance.
   b) Acceptance shall be carried out immediately, but no later than within a period of 10 working days from receipt of the notification from Kannegiesser. If acceptance is delayed through no fault of Kannegiesser, acceptance shall be deemed to have taken place no later than two weeks after notification of readiness for acceptance to the User.
   c) After successful completion of the acceptance test, the User shall declare acceptance in writing within 5 working days. The acceptance test shall be deemed to have been successfully completed if the services meet the contractually agreed requirements in all essential respects.
   d) The User shall notify Kannegiesser immediately if, during the acceptance test, he becomes aware of any deviations from the contractually specified requirements.

e) At the end of the acceptance test, a written report must be prepared and signed by both Parties. The report must describe the defects found and list the reasons for any refusal of acceptance. Refusal of acceptance due to minor defects is not permitted. Minor defects or shortcomings that do not impair overall functionality are considered insignificant.

2. If acceptance fails, the User shall notify Kannegiesser in writing, listing all defects preventing acceptance in the acceptance report. After the defects have been remedied, Kannegiesser shall set the User a new deadline for declaring acceptance. The User has the right to re-examine the readiness for acceptance in accordance with the above provisions. If acceptance fails again, the User is entitled to withdraw from the contract.

XI. Warranty

1. Within the scope of the statutory warranty, Kannegiesser undertakes to provide the contractual services free of material defects and defects of title, and to ensure that the Software is not affected by errors that negate or reduce its value or suitability for normal use or use as specified in the contract.
2. Kannegiesser does not provide any warranty for material defects that are attributable to a change in the Software by the User or a third party that has not been agreed with Kannegiesser.
3. If the User's use of the Software leads to the infringement of industrial property rights or copyrights in the United States, Kannegiesser shall, at its own expense, procure the right for the User to continue using the Software or modify the Software in a manner reasonable for the User so that the infringement of property rights or copyrights no longer exists. If this is not possible under economically reasonable conditions or within a reasonable period of time, the User shall be entitled to withdraw from the contract or to reduce the contract price appropriately. Under the aforementioned conditions, Kannegiesser shall also be entitled to withdraw from the contract.
4. Kannegiesser shall indemnify the User against undisputed or legally established claims of the relevant property right holders.
5. Kannegiesser's obligations set out in this section are final, subject to Section XII, in the event of a violation of property rights or copyright. They only apply if
   a) the User immediately informs Kannegiesser of any asserted copyright and other intellectual property infringements,
   b) the User supports Kannegiesser to a reasonable extent in defending against the asserted claims or enables Kannegiesser to carry out the modification measures in accordance with Clause 3 above, and
   c) Kannegiesser reserves all defensive measures, including out-of-court settlements.
6. All claims of the User shall become time-barred 12 months after Provision of the Software or from the time of acceptance and the User's knowledge of his claim. The statutory periods shall apply to claims for damages under Section XIII Clause 1 a) to c) and e).

XII. Liability

1. Kannegiesser shall only be liable for damages on whatever legal grounds
   a) in cases of intent and gross negligence,
   b) in the event of culpable injury to life, body, or health,
   c) in the case of fraudulently concealed defects,
   d) within the scope of a guarantee commitment,
   e) in the event of Software defects, insofar as liability exists under product liability law for personal injury or property damage to privately used items.

2. Kannegiesser shall be liable in cases of simple negligence for culpable breach of essential contractual obligations, the fulfillment of which is essential for the proper execution of the contract or the breach of which jeopardizes the achievement of the purpose of the contract and on the observance of which the User may regularly rely, but limited to the damage typically expected for this type of contract.
3. Liability for the loss of data and information is limited to the restoration costs that would have been incurred if backup copies (data backups) had been made regularly and in accordance with the risk.

XIII. Confidentiality

1. The Parties undertake to maintain confidentiality regarding all business secrets of the other Party and all information and data obtained from the other Party, and to oblige their personnel to do the same by means of a written agreement ("**Confidential Information**"). In the event of a breach of this obligation by the personnel of one Party, that Party shall be liable to the other Party without the possibility of providing exculpatory evidence in accordance with § 831 BGB (German Civil Code).
2. Exceptions to this confidentiality obligation shall only exist if this Confidential Information
   a) is generally known or publicly available at the time of receipt by the contractual partner, or
   b) has been disclosed to the recipient by a third party without a confidentiality obligation, or
   c) was known to the recipient prior to receipt by the contractual partner or was developed independently by the recipient, or
   d) has been released in writing by the transferring contractual partner, or
   e) must be disclosed on the basis of a final or provisionally enforceable administrative or judicial decision.
3. The burden of proof for the existence of one of these exceptions lies with the respective recipient of the information.
4. A contracting Party may only refer to the business relationship between the Parties in advertising or other documents with the prior written consent of the other contracting Party. The same applies to the use of trademarks, trade names, and other designations of the other Party.
5. The above obligations shall also apply after the termination of the contractual relationship.

XIV. Data protection

1. The Parties undertake to comply with data protection regulations. This includes the obligation to collect, process, make accessible or otherwise use personal data only for the purpose agreed with the respective contractual partner. In accordance with Art. 32 GDPR, both Parties are obliged to take appropriate technical and organizational measures necessary to ensure the protection of personal data.
2. The Parties shall only employ personnel who have been bound to confidentiality in writing.
3. The disclosure of personal data to third Parties is strictly prohibited. Exceptions to this rule are the disclosure of personal data to third Parties due to legal obligations or with the prior documented consent of the other Party. If one Party discloses personal data due to a legal obligation, the other Party must be informed of this prior to the transfer, stating the legal basis if possible.

XV. Right to use data

1. Depending on the product, Kannegiesser may receive usage and analysis data from Kannegiesser machines ("**Product Data**") and/or usage and analysis data from or by Kannegiesser machines together with the Software ("**Related Service Data**") (jointly "**Usage Data**") as part of on-site or remote services. Specifically, this refers to the data specified at https://www.kannegiesser.com/fileadmin/user_upload/20250911_Data_Catalogue_EU_Data_Act_EN.pdf. The User grants Kannegiesser a simple right of use in accordance with Article 4(13) of Regulation (EU) 2023/2854 to compile, store, analyze, diagnose, combine, and otherwise use this data to create aggregated or derived output data ("**Evaluation Data**") ("**Data License Agreement**"). Kannegiesser will not sell Related Service Data and Evaluation Data to third Parties under any circumstances, but will use it exclusively to the extent specified in more detail below.
2. Kannegiesser agrees to use Usage Data that is non-personal data only for the following purposes: (a) fulfillment of contracts with the User or for activities related to these contracts; (b) improvement of the functionality of Kannegiesser machines and Software; (c) ensuring quality control, maintenance, and safety; (d) providing support, warranty, guarantee, or similar services or assessing claims by the User, Kannegiesser, or third parties in connection with Kannegiesser machines or Software and (e) developing new products or services, including AI solutions, by Kannegiesser, commissioned third parties, or together with other parties.
3. Kannegiesser agrees not to use Usage Data (a) to gain insights into the User's economic situation or assets, or (b) in a manner that significantly impairs the User's legitimate interests in any other way.
4. Kannegiesser agrees to take protective measures for the Usage Data that are appropriate in the circumstances, taking into account the state of the art, the potential damage that could arise in the event of data loss or disclosure of the data to unauthorized third parties, and the costs associated with the protective measures.
5. Kannegiesser is authorized to use Evaluation Data provided that: (a) such aggregated or derived data does not enable the identification of specific data transmitted by Kannegiesser machines or Software, or the re-identification of the User; and (b) such use of data does not undermine the provisions of Sections 2 and 3 above.
6. In order for Kannegiesser to fulfill the agreed purposes listed in Section 2, non-personal Usage Data may only be disclosed to the following recipients: (a) linked companies of Kannegiesser in accordance with Article 3(3) Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (c) companies that provide services for Kannegiesser, such as data analysis, (d) companies that offer support, warranty, guarantee, or maintenance services for Kannegiesser machines or Software. Disclosure may also take place by the User transmitting the Usage Data directly to the aforementioned third parties.
7. Kannegiesser obliges third parties who receive Usage Data to materially the same extent as Kannegiesser is obligated to the User under these General Terms and Conditions. In addition, Kannegiesser obliges third parties with whom Kannegiesser exchanges Usage Data: (a) not to disclose this data unless the User gives his consent to such disclosure or unless it is in his interest or necessary for the fulfillment of a contract between the User and the third party.
8. Kannegiesser is authorized to transfer Evaluation Data to third Parties. The provisions in this section do not apply if Kannegiesser is obliged to transfer Usage Data to a specific third party due to mandatory legal provisions, in particular due to a court order or an order from another authorized body.
9. The rights of use granted under this Section XV. Shall be free of charge for Kannegiesser.
10. If the User is not an end customer, they are obliged, within the scope of the sale of Kannegiesser machines, to conclude a Data License Agreement with the end customer in accordance with Sections XV, XVI, and XVII for Kannegiesser.

XVI. Access to data and disclosure

1. The Usage Data shall (a) be made available to the User by Kannegiesser together with the relevant metadata required for the interpretation and use of this data (collectively referred to as "**Data**" in this Section XVI) and (b) be provided to a data recipient at the request of the User or a third party acting on their behalf, upon presentation of proof of authorization to dataact@kannegiesser.de with the subject "Request for access to machine data in accordance with Regulation (EU) 2023/2854" and stating the customer number.
2. If the User submits a request in accordance with option (b) above, Kannegiesser shall agree with the data recipient on the terms and conditions for the provision of the Data on fair, reasonable, and non-discriminatory terms and in a transparent manner in accordance with Regulation (EU) 2023/2854. The User acknowledges that such a request cannot benefit a third party that is considered a gatekeeper in accordance with Article 3 of Regulation (EU) 2022/1925 and that it does not apply in connection with the testing of new related products, substances, or processes that are not yet on the market.
3. The Parties or the data recipient may use the services of a third party to enable the exercise of their rights under this section. Such a third party shall not be considered a data recipient within the meaning of Regulation (EU) 2023/2854, provided that it does not process the Data in connection with its own business purposes. The use of such a third party must be notified to the other party in writing and in advance.
4. Kannegiesser shall provide the User with the Data in at least the same quality in which it is available to Kannegiesser, and in any case in a comprehensive, structured, commonly used, and machine-readable format. Kannegiesser fulfills this requirement by sending the Usage Data directly from the machine or Software to a server set up by the User via a corresponding REST API upon the User's request. Kannegiesser cannot provide any further Data, as the Usage Data is aggregated directly into Evaluation Data upon receipt by Kannegiesser at runtime and is not stored beyond that.
5. The User receives access to the Data after the REST API has been set up accordingly: (a) easily and securely, (b) without undue delay after Data has been made available to Kannegiesser, and (c) continuously and in real time.
6. Kannegiesser shall provide the User with any assistance the User requires to exercise their right of access to the Data in accordance with Article 4 of Regulation (EU) 2023/2854 and which cannot reasonably be expected to be obtained by other means because this would be impossible or would involve an effort or cost that is clearly disproportionate to the effort or cost that Kannegiesser would incur. This includes, in particular: the provision of information readily available to Kannegiesser about the origin of the Data and any rights that third parties may have in relation to the Data, such as the rights of data subjects under the GDPR, or facts that may give rise to such rights.
7. The above paragraphs 1 - 3 apply accordingly to the provision of Data to a data recipient at the request of the User. Kannegiesser and the data recipient shall conclude a separate agreement specifying the modalities of the provision of Data. Since not all Product Data is transferred to Kannegiesser, but is in some cases stored exclusively locally on the Kannegiesser machines or User´s end device, Kannegiesser can only provide third Parties with a reduced data set.

XVII. Term of the data license agreement

1. Upon termination of the Data License Agreement by the User in accordance with Section XV, Kannegiesser will immediately cease to retrieve Usage Data. However, Kannegiesser shall continue to be entitled to use and disclose the data generated or recorded prior to the date of termination of the agreement as described in the preceding sections.
2. To terminate the Data License Agreement, an explicit notice of termination must be sent by email to dataact@kannegiesser.de , stating the customer number. Termination of the Data License Agreement alone while a maintenance and/or support agreement is still in force is not possible. In this case, the Data License Agreement must be terminated together with the maintenance and/or support agreement in accordance with its termination provisions.

3. The User acknowledges and agrees that not all data generated by Kannegiesser machines and Software is transmitted to Kannegiesser; instead, a large portion of the data remains with the User. Insofar as data is sent to Kannegiesser, it is processed during runtime and stored only in aggregated form. Consequently, Kannegiesser does not have any Usage Data from the past that can be made available to the User after termination of the Data License Agreement.

XVIII. Applicable law / Place of performance / Place of jurisdiction

1. All disputes between the Parties arising from or in connection with these General Terms and Conditions and agreements concluded under their inclusion shall be governed exclusively by the laws of the Federal Republic of Germany, excluding the United Nations Convention on Contracts for the International Sale of Goods of April 11, 1980 (UN Sales Convention) and statutory provisions referring to it.
2. The place of jurisdiction for all disputes arising from or in connection with these General Terms and Conditions is the court responsible for Kannegiesser's registered office. However, Kannegiesser is entitled to bring legal action at the User's headquarters.
3. The place of performance for all deliveries arising from the contractual relationship is Kannegiesserring 8, 32602 Vlotho, Germany, unless otherwise specified.
4. Should any provision of these Terms and Conditions of Sale be invalid and/or unenforceable, this shall not affect the validity of the remaining provisions. In the event of a loophole, the Parties undertake to replace the missing provision with a contractual provision that corresponds to the mutual will of the Parties. The same shall apply if a loophole arises because a provision is void or unenforceable and no statutory provision is available to fill the loophole.

Status: 09/2025

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