

## § 1 Scope of Validity

On the Toshiba & element 5 Platform (referred to in the following as “the Platform”), specially selected software products from software publishers will be offered to buyers in the software catalog, either as a for-sale full version or as a demo version (Try & Buy), for free download and subsequent fee-based registration; for which buyers will use the online and offline services of element 5.

The following terms and conditions shall be binding in their valid form at the time of use for the seller (Software Publisher) and buyers of the software who use the services of element 5 AG for the development of their business, available via the Platform of Toshiba and element 5 AG for the purpose of acquiring software. The Platform is maintained by element 5 AG, represented by the Board of Directors, Olaf Arlt, Gerrit Schumann, Christopher Reimold, Clemens Roth and Stephan Naujoks, Vogelsanger Str. 78, 50672 Cologne, Germany, Cologne Registry Court, Commercial Registry No. HRB 30389. element 5 AG reserves the right to expand or amend these terms and conditions at any time. It is the responsibility of the buyer to check the current terms and conditions before each order. Contracts between the users of these Web sites and element 5 AG are service contracts. In addition to these stipulations, the Software Publisher’s licensing terms and conditions contained in the program documentation shall also apply; they are hereby included by reference as an auxiliary to these terms and conditions.

## § 2 General Instructions

- (1) Use of the Platform shall be free of cost for buyers.
- (2) The sales contract shall exist exclusively between the buyer and the software publisher named on the respective product page. Where applicable the Software Publisher’s terms and conditions shall apply for the sales contract. **Neither Toshiba nor element 5 AG shall enter into a sales contract with the buyer.**
- (3) The software publishers are independently responsible for abiding by legal requirements and for performance on claims from contracts entered into by said publishers.

## § 3 Legal Status of the User, Conclusion of the Contract

- (1) With the demo version, the buyer has the option of testing the Try & Buy demo software on a cost-free basis during the trial period allowed to the buyer; the duration of the test may be limited by means of technical blockage functions. After the expiration of the trial period, the buyer is entitled to continue use of the software only upon payment of a fee. This requires ordering the full version, the registration of the buyer, and the payment of the purchase price to the publisher of the software. element 5 shall act as intermediary in the ordering process and is authorized by the publisher of the software to accept offers and payment on behalf of the Software Publisher from the buyer .
- (2) The ordering of the full version of the software shall be considered a binding offer by the buyer to enter into a sales contract with the software publisher in accordance with the requirements of these stipulations and the licensing conditions of the respective publisher. Element 5 shall be obligated to accept the buyer’s order on behalf of the publisher in the scope of the conditions of the product site and to process the order in the publisher’s name and on the publisher’s behalf. In the case of typographical,

printing, or calculation errors on the Platform, the software publisher and element 5 are entitled to cancel the purchase.

- (3) The sales contract shall come about with receiving the e-mail, in which element 5 confirms the order. By opening the original packaging of the Toshiba Quartals CD or by downloading and opening the software files, the buyer recognizes the software publisher's trademark protection and conditions of guarantee.

#### **§ 4 Prices**

The prices listed are gross prices (including sales tax and shipping costs) and shall be considered to be in Euros, insofar as no other currency is specified. For foreign currencies, the daily exchange rate valid at the time of the placement of the order shall be used.

#### **§ 5 Guarantee**

- (1) The incorporation of the software program of a software publisher in the catalog on the Toshiba & element 5 site or on the Quartal CD **shall not constitute a recommendation or guarantee by Toshiba or element 5.** The software has neither been tested by Toshiba Europe GmbH nor by element 5 AG to work with Toshiba's notebooks, desktops, servers or PDAs and neither Toshiba Europe GmbH nor element 5 AG accepts any liability or responsibility for any damages resulting from the use of said software.
- (2) Neither Toshiba nor element 5 shall make warranty and/or guarantee for the description, characteristics, prices, availability, legality, or behavior of Software Publisher.

#### **§ 6 Liability**

- (1) Neither Toshiba Europe GmbH nor element 5 or its agents for performance of its obligations shall carry liability for mildly negligent breach of duty, insofar as said breach does not concern duties fundamental to the contract, damages arising from death, bodily injury, or health damage, or guarantees or are affected by claims in accordance with the Product Liability Act [Produkthaftungsgesetz] and claims arising from non-performance. The same shall apply in the case of initial inability to perform or foreseeable impossibility.
- (2) If a duty fundamental to the contract is negligently breached, the duty of replacement for collateral and/or personal damage shall be limited to damages typically arising therefrom. The maximum claim for damages shall be compensation for restoration of the software copy. Any product liability claims which may arise shall be unaffected by the above limitations.
- (3) Claims for damages against element 5 and TOSHIBA Europe GmbH for loss of saved data shall be excluded insofar as the damage could have been prevented by diligent data backup on the part of the customer. Liability for loss of data shall be limited to the typical restoration expense that would have arisen in the case of regular creation of backup copies commensurate with the level of risk.

#### **§ 7 Data Protection**

- (1) All data provided to element 5 shall be entered, saved, and processed for the purpose of performing on the contract in accordance with the provisions of the German Federal Data Protection Act [Bundesdatenschutzgesetz] and the German Communication Service Data Protection Act [Teledienstschutzgesetz]. Among others these Acts implement in Germany the Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ("Directive on electronic commerce"). No data shall be forwarded to third parties unless such an intention has been explicitly stated and the customer has agreed to such a transmission. The transmission of data between companies within the same concern for the purpose of furthering the contract shall be exempt from this clause.
- (2) If a contract is entered into, element 5 is entitled to transmit the data necessary for performing the transaction to the parties of the contract and to the intermediary service providers necessary for fulfilling the contract.
- (3) In individual cases, upon the request of investigating or prosecuting offices or in the case of legitimate, credible interests of third parties, element 5 is entitled to transmit excerpts from the user's data set to said third parties upon proof of such an interest. A legitimate interest shall only be considered to exist if the prosecution of a criminal act or the initiation of a civil action is presented.
- (4) More information regarding the scope of entry, storage, and processing of user data can be found in our Data Protection Policy.

## **§ 8 Trademarks, Logos**

Regarding all logos, trademarks, brand names, etc. used in the catalog and these Web sites, element 5 has been assured by the software publishers that they hold the necessary rights for the use of said logos, trademarks, brand names, etc. If you believe that a software publisher is infringing on your rights in this regard by their use of a logo, trademark, brand name, or the like, please contact the respective software publisher directly or contact [support@element5.de](mailto:support@element5.de).

## **§ 9 Miscellaneous**

- (1) If the customer is self-employed, the agreement of usage of the Platform and these conditions shall be subject to German law exclusive of UN law. If the customer is a consumer, the usage agreement and these general terms and conditions shall be subject to the laws of the state in which the consumer has his primary residence. If the user is a merchant in the sense of the Commercial Code [Handelsgesetzbuch], a separate estate under public law, or a legal entity under public law, Cologne, Germany shall be the exclusive court of jurisdiction for all conflicts arising from the usage agreement and these general terms and conditions.
- (2) If the customer has no court of jurisdiction in the Federal Republic of Germany, the main seat of element 5 AG in Cologne shall be considered the court of jurisdiction for legal conflicts arising from this contract.
- (3) If one or more of the above conditions should be or become ineffective, this shall not affect the effectiveness of the rest of these conditions.
- (4) If problems should occur in processing the order, please contact [support@element5.de](mailto:support@element5.de) or the respective software publisher.

- (5) In the case of technical problems with the software, please contact the respective software publisher directly.

If you have any questions regarding this declaration, please contact:

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