General Terms and Conditions – BSS Data

12.01.2023

1. Content

1.1. Bowitek ApS, CVR-no. 32471595 (hereinafter called "Bowitek") hereby grants the Customer a non-transferable and non-exclusive right to use BSS Data (Checklists / Bowitek Safety Solutions).

1.2. BSS is a correlation of Bowitek Safety Solutions, which contains "hazard descriptions", mitigations modules in terms of "measures", and single "checklists". All together called BSS Data.

1.3. BSS Data is prepared to be used in Safexpert™ software and is delivered as separate files to be installed.

1.4. BSS Data is proprietary of Bowitek and Bowitek reserves all rights to BSS Data.

2. Scope of Applicability

2.1. These General Terms and Conditions (hereinafter called "T&C") is an incorporated part of the terms of reference between the Customer and Bowitek. These T&C applies for any agreement concerning use of BSS Data between the Customer and Bowitek, without regard for the basis for the agreement.

2.2. The Customer by default accepts the terms in T&C when installing BSS Data.

3. Definitions

3.1. The below mentioned definitions applies for these T&C between the Customer and Bowitek:

3.1.1. "The Customer" means any company or individual, who has entered into an agreement with Bowitek concerning BSS Data.

3.1.2. "T&C" means these General Terms and Conditions, which applies for all Bowitek BSS Data, without regard for the basis for the agreement. These T&C can be updated and modified at any time by Bowitek upon notification to the Customer.

3.1.3. "The Parties" means the Customer and Bowitek.

3.1.4. "Delivery" means the moment when BSS Data is shipped from Bowitek to the Customer or otherwise is made available to the Customer if delivery is done online (e.g. e-mail, link or download).

3.1.5. "Agreement" means the purchase of license, which the Customer have entered into with Bowitek concerning BSS Data.

4. Extent

4.1. Bowitek must deliver BSS Data to the Customer in accordance with these T&C. Delivery is conditional on the Customer defraying all expenses as they fall due for payment.

4.2. Bowitek is only responsible for BSS Data and therefore not for other software, including tasks or obligations not explicitly described in an Agreement between the Parties. Bowitek is not responsible for software, tasks or obligations that are wholly or partially provided or to be fulfilled by the Customer, Customer's other contractors and/or third parties.

4.3. The Customer is given a license to use BSS Data under the conditions mentioned in these T&C, unless expressly stated otherwise in writing. The Customer is under no circumstances entitled to modify, redistribute or reverse engineer BSS Data.

4.4. BSS Data is marked with a unique ID, which is connected to the Customer. BSS Data may under no circumstances be distributed or copied to third parties, including subsidiaries and affiliates etc.

5. Use of BSS Data

5.1. Bowitek provides BSS Data as a software license. The license allows the Customer to use the specific acquired BSS Data (descriptions, solutions, measures or checklists, etc.): (1) as long as the use does not exceed the total number of the specific BSS Data licenses acquired.

5.2. BSS Data licenses may only be used in the extent that the number of licenses acquired (the BSS, a specific checklist etc.), matches the number of Safexpert™ database installation(s) for a given time zone. Access to BSS Data require additional license(s) for each separate time zone.

5.3. BSS Data can be used by several users at the Customer.

5.4. Unless expressly stated otherwise in writing, the Customer may not (1) use or offer BSS Data as a service to third parties, (2) give third parties external access to BSS Data, or (3) rent, lease, sell, grant or transfer rights from BSS Data (or parts of BSS Data) or (4) allow that any part of BSS Data is copied to a third party.

5.5. The Customer is only entitled to use the content of the BSS Data in accordance with these T&C. If the Customer sells or transfers equipment to third parties, the Customer is obliged to delete any BSS Data from the equipment before handing it over to the third party.

6. Prices and Terms of Payment

6.1. If the Customer neglects to defray invoices as they fall due for payment, all rights to use BSS Data terminate. The Customer must cease all use of BSS Data immediately and uninstall BSS Data.

6.2. If Bowitek has not received payment from the Customer on the day of payment, Bowitek is entitled to suspend the Customer's access to BSS Data. Bowitek may reactivate the Customer's access to BSS Data upon receipt of payment.

7. Development

7.1. Bowitek develops and improves BSS Data on a regular basis, however, BSS Data is licensed as it is and exists.

8. Intellectual Property Rights Infringement

8.1. All intellecutal property rights to BSS Data, including copyright, trademarks and other intellectual property rights to BSS Data that are incorporated or used in BSS Data, belongs solely to Bowtek, their subcontractors or third party.

8.2. The Agreement between the Parties does not entail a whole or partial assignment of ownership of any rights to the Customer, unless expressly stated otherwise in writing.

8.3. Bowitek is entitled to use any general knowledge, including information technology, ideas, concepts, know-how or techniques that Bowitek obtains in relation to delivery of BSS Data to the Customer. Bowitek is entitled to develop, manufacture, deliver and negotiate identical or similar software in relation to third parties.

9. Assignment

9.1. The Customer is not entitled to assign their rights and/or obligations related to the BSS Data in whole or partially, including – but not limited to – the right to use BSS Data, no matter if the assignment is taking place due to direct or indirect sale, lease or loan etc. to a third party, unless and until Bowitek expressly confirm their acceptance in writing.

9.2. Bowitek may assign their rights and obligations related to BSS Data to a third party without the Customer's preceding accept in whole or partially.

10. Terms of Delivery and Late Delivery

10.1. Bowitek's BSS Data is a standard product that contains a number of templates.

10.2. BSS Data is licensed as it is and exists, without any warranties, remedy or breach of any kind other than those set forth in this paragraph 10.

10.3. If the Customer observes essential defects or errors in BSS Data, which causes that one or more functions of commercial interest cannot be performed, the Customer must notify Bowitek in writing. After receiving the notification, Bowitek is obliged to, within 3 months after delivery, either:

    10.3.1. deliver a version of BSS Data free of charge, without essential defects or errors,

    10.3.2. correct the defects or errors free of charge within reasonable time, provided that it is possible,

    10.3.3. inform the Customer of ways of application or recommendations whereby the essential defects or errors can be circumvented by the Customer by changing the Customer's business procedures, or

    10.3.4. refund the proportional share of the in advance payed license fee (based on one year period), for the period from the time of the Customer's notification cf. paragraph 10.3., and until Bowitek's refund to the Customer, at which time the license agreement will terminate.

10.4. The Customer's remedies are conditional on using the latest version of BSS Data.

10.5. The Customer can under no circumstances raise objections, if defects or errors are caused due to circumstances for which Bowitek is not responsible, including for example:

    10.5.1. incidental events,

    10.5.2. incorrect use of BSS Data,

    10.5.3. use of BSS Data contrary to the Agreement,

    10.5.4. damage to the data-carrying medium,

    10.5.5. any circumstances attributable to the Customer and/or third party, or

    10.5.6. any changes in BSS Data made by the Customer or any third party, whether or not Bowitek has authorized such changes.

10.6. The remedies for breach of contract mentioned in these T&C makes up the remedies for breach of contract, which the Customer may raise in case of defects or errors in BSS Data.

11. The Customer's breach of contract

11.1. The Customer's use of BSS Data contrary to the Agreement and these T&C entails liability for damages in accordance with the general principles of law of torts and payment of a fine.

11.2. In particular, the Customer's copying, assignment or disclosure of BSS Data to third parties, including internally within the Customer's organization, including subsidiaries and affiliates, etc., is considered an essential breach of contract.

11.3. It is considered an essential breach of contract, if the Customer provides BSS Data as a service to third parties.

11.4. If Bowitek finds irregularities, breach of contract or suspicion thereof, the Customer must immediately allow Bowitek to review the Customer's Safexpert server and the Customer's storage of BSS Data at Bowitek's enquiry. This is done without compensation for the Customer.

11.5. Besides termination or non-payment, cf. paragraph 6, the Customer's failure to uninstall BSS Data or failure to terminate all use of BSS Data is considered an essential breach of contract, which entails payment of a fine beyond compensation, cf. paragraph 11.1.

11.6. Any breach of contract made by a former employee at the Customer, who had access to BSS Data during their employment, current employees or consultants etc. is considered an essential breach of contract, for which the Customer is liable.

12. Limitation of Liability

12.1. Bowitek's liability follows the general rules of Danish law, with the following limitations and disclaimers stated in these T&C. The limitations and disclaimers do also apply for product liability, unless stated otherwise in mandatory legislation.

12.2. The passing of risk takes place when BSS Data is delivered to the Customer.

12.3. Bowitek shall not be held liable for any indirect loss or consequential loss, including, but not limited to, loss of expected earnings, anticipated support or other payments, loss of profit, operating loss, loss of goodwill or image, or loss of or damage to the Customer's data, business- and/or operational disruption, or loss of any other type of business interruption that may occur with the use of BSS Data or defective-/inadequate performance of BSS Data.

12.4. Bowitek is not liable for errors and defects if these are caused by external events, including the use of other software or products, use of BSS Data contrary to the Agreement or if the Customer otherwise, through negligent behavior contributes to the errors or defects.

12.5. Bowitek is not liable for the applicability of BSS Data in relation to the specific use, which the Customer desires, including integration or interaction between BSS Data and the Customer's own equipment and software environment or third-party systems.

12.6. Bowitek shall have no liability to the Customer for the applicability of the functionality of updates or changes in the BSS Data or parts thereof. Bowitek is not liable for BSS Data being compatible with new versions of third-party products etc.

12.7. It is the responsibility of the Customer to ensure that BSS Data is sufficient to meet the Customer's needs, requirements and expectations. Bowitek is not liable for the result or absence of results from the Customers use of BSS Data.

12.8. It is the responsibility of the Customer to ensure that all Safexpert licenses are matched by the same number of the specific BSS Data licenses acquired (descriptions, solutions or measures, etc.).

12.9. The maximum liability of Bowitek for actual damages, regardless of the form of action, for BSS Data is limited to and cannot exceed the BSS Data license fee paid to Bowitek within the past 12 months.

13. Force Majeure

13.1. Either party shall be excused from any delay or lack of ability to fulfil obligations (not including non-payment) if caused by reason of any occurrence or contingency beyond its reasonable control, including, but not limited to, supply problems with subcontractors, long-term illness among key consultants, including viruses or cases of force majeure at subcontractors.

13.2. In case of force majeure, the affected Party is obliged to inform the other Party about the situation as soon as possible. If the force majeure situation has lasted longer than 60 calendar days, each party is entitled to terminate the Agreement that is affected by the force majeure situation immediately.

Bowitek, January 12th, 2023