

## Cybus License and Service Terms and Conditions

### 1. GENERAL

- 1.1 The following Cybus License and Service Terms and Conditions (hereinafter referred to as the "License T&C") shall apply to all legal transactions and in particular to the licensing of software or the provision of services between Cybus GmbH (hereinafter referred to as "Cybus") and its customers (hereinafter referred to as the "Customer"); (Cybus and Customer individually hereinafter also referred to as the "Party" or jointly as the "Parties"). Unless otherwise agreed, these License T&C in the version valid at the time of the offer by Cybus shall also apply to all future contracts between the Parties without explicit referral in each individual case.
- 1.2 These License T&C apply only to entrepreneurs in the exercise of their independent professional or commercial activity pursuant to § 14 BGB (German Civil Code).
- 1.3 These License T&C apply exclusively. Any deviating, conflicting or supplementary terms and conditions of the Customer shall only become part of the Agreement if and to the extent that Cybus has expressly agreed to their application in writing or in text form. This shall also apply if Cybus commences the licensing or services with knowledge of conflicting or deviating terms and conditions of the Customer.
- 1.4 Individual agreements made with the Customer in individual cases (including collateral agreements, supplements and amendments) shall in all cases prevail over these License T&C. Subject to proof to the contrary, the content of such agreements shall be governed by a written contract or confirmation in text form by Cybus.
- 1.5 Legally relevant declarations and notifications by the Customer with regard to the contractual relationship (e.g. setting of deadlines, reminders, withdrawal) must be made in writing or in text form. Legal formal requirements and further proof, in particular in the case of doubts about the legitimacy of the declarant, remain unaffected.

### 2. SUBJECT MATTER OF THE AGREEMENTS

- 2.1 The subject matter of the Cybus Connectware License Agreement (hereinafter: "Agreement") is the (a) provision of the Cybus Connectware standard software (hereinafter: "Connectware") with the status specified in the Agreement for the term of the Agreement, (b) a test instance of the aforementioned Connectware for a test environment to be provided by Customer (hereinafter: "Test Instance"), and (c) access to the Cybus Portal (hereinafter: "Portal"); (Connectware, Test Instance and Portal together hereinafter: "Cybus Products") as well as the granting of storage space in the Portal for the Customer's data required by the use of the Cybus Products. Optionally, an additional support agreement may be concluded which governs maintenance and

support services of the Cybus Products ("Support Agreement").

- 2.2 The quality and functionality of Connectware is conclusively determined by the product description. The Customer can access the current product description and the product description relevant to the Agreement under <https://docs.cybus.io/> and inform itself about the quality and functionality. The information contained in the product description are quality descriptions (*Beschaffenheitsbeschreibungen*).
- 2.3 Installation and configuration services as well as training and other services are not subject matter of the Agreement, unless they have been explicitly agreed upon as subject matter of the Agreement by the Parties. At the request of the Customer, however, the Parties may conclude corresponding agreements, in particular also for the separate remuneration of such services.

### 3. CONCLUSION OF CONTRACT

Offers from Cybus are subject to change without notice, i.e. they merely contain an invitation to the Customer to submit a binding offer. Cybus is free to declare its offer to be binding in writing. A contract shall only be deemed to have been concluded upon (a) the signing of the contract by both parties, (b) an order confirmation by Cybus in writing or by e-mail or (c) the commencement of the provision of services by Cybus.

### 4. INDIVIDUAL ORDER/INDIVIDUAL AGREEMENT

Any use by the Customer beyond the scope of the Agreement requires the effective agreement of an individual order, for which the provisions in section 3 of these License T&C apply accordingly.

- 4.1 Cybus is entitled to improve, further develop or otherwise modify the Cybus Products (hereinafter uniformly referred to as "Modifications"). The resulting changes to the nature and functionality of Connectware will be updated regularly by Cybus in the product description. Changes to the Cybus Products shall be made available to the Customer for new orders in accordance with this Section 4.
- 4.2 These License T&C shall apply accordingly to the individual order or individual agreement.

### 5. ACCESS AND USE OF THE PORTAL

- 5.1 The Portal, the computing power required for its use and the necessary storage space for data are provided by a data processing centre commissioned by Cybus.
- 5.2 Access to the internet is not the subject of the Agreement. The Customer bears sole responsibility for

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the functionality of the internet access, including the transmission paths of the computer used.

- 5.3 The Customer has the option to store the data required for the use of Connectware on the virtual data server set up for it by Cybus and to access such data within the scope of the use of Connectware.

### 6. TEST INSTANCE FOR USE AS A DEVELOPMENT ENVIRONMENT

- 6.1 The costs for the use of the Test Instance are covered by the remuneration set out in the Agreement.
- 6.2 The Customer may use the Test Instance exclusively for its own test purposes, on its test environment and in particular not for productive use. For this purpose, the Customer shall – with regard to the Test Instance – make use of support services for error handling as well as further developments provided to the Customer for Connectware. In all other respects, the provisions in Sections 7 and 19 of these License T&C shall apply with regard to the rights of use.
- 6.3 The deployment and use of the Test Instance is the sole responsibility of the Customer. In this respect, unless expressly stated otherwise in the Agreement, the Customer shall not be entitled to any claims against Cybus arising from or in connection with the Test Instance; i.e. the Customer hereby already waives any claims, whether known or unknown, present or future, irrespective of their origin and legal basis, or declares them to be settled.

### 7. GRANT OF RIGHTS

- 7.1 The Customer is granted the simple, non-exclusive, non-transferable and non-sublicensable right to use the software exclusively for his own business purposes, limited to the term specified in the Agreement and in the manner described in these License T&C.
- 7.2 With the exception of any scope agreed in the Agreement, the Customer is not entitled to rent to third parties or otherwise sublicense the Cybus Products, to reproduce the Cybus Products publicly by wire or wireless means or to make them available to third parties, whether against payment or free of charge.
- 7.3 Customer shall be entitled to make a backup copy of Connectware if this is necessary to secure future use. On the created backup copy, Customer shall visibly affix (a) the notice "Backup Copy", (b) a copyright notice of Cybus and (c) the required copyright notices for Open Source Software pursuant to Section 7.7.
- 7.4 The Customer is only entitled to decompile and reproduce the Cybus Products to the extent that this is provided for by law and/or in accordance with the respective open source open license terms set forth in

Annex 1 to these License T&C. However, this shall only apply if Cybus has not provided the Customer with the information required for this purpose within a reasonable period of time upon request.

- 7.5 If the Customer uses the Cybus Products to an extent that exceeds the acquired rights of use in terms of quality (with regard to the type of use permitted) or quantity (with regard to the extent of use permitted), the Customer shall immediately acquire the rights of use necessary for the permitted use against payment. Any claims for damages by Cybus for the unauthorized use shall remain unaffected.
- 7.6 Unless otherwise agreed, the Customer shall acquire the same rights to the maintenance services pursuant to Section 8 as to the software originally provided pursuant to Section 2.1.
- 7.7 The Cybus Products use open source software. The open source software is copyrighted and subject to its own license terms, which take precedence over the terms of the Agreement and these License T&C. The open source software components used and their respective license terms are available at <https://www.cybus.io/> and can also be made available as a ZIP file at the Customer's request prior to conclusion of the Agreement.
- 7.8 Copyright notices, serial numbers and other features serving to identify the program may not be removed or altered from Cybus products.

### 8. MAINTENANCE OF CYBUS PRODUCTS/SERVICE

- 8.1 During the term of the Agreement, Cybus will provide the following maintenance and support services:
- (a) Support services/error handling on the Cybus Products solely as agreed in the Agreement or in the Support Agreement and
- (b) Further developments of the Cybus Products.
- 8.2 Unless otherwise expressly stipulated in the Agreement or agreed between the Parties, the maintenance and support services referred to in Clause 8.1 shall be provided exclusively to the Customer, i.e. not to the Customer's customers. Further specifications on the type and scope of the maintenance services may be agreed separately between the Parties.
- 8.3 Consulting and/or support services for the installation, configuration, operation of the Cybus Products or inquiries that do not relate to the defects of the Cybus Products but to, for example, organizational or business issues in the Customer's business processes and/or third-party software are not part of the support services. Cybus will inform the Customer if a service requested by the Customer is not part of the support services. These additional services must be ordered separately by the Customer.

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- 8.4 Cybus is in particular entitled to carry out the elimination of errors on the premises of the Customer or to bring about the elimination of the error by means of remote maintenance or by means of an update provided with an automatic installation routine for download.
- 8.5 If it turns out that an error reported by the Customer does not actually exist or is due, for example, to a circumstance pursuant to Clause 8.9 (hereinafter referred to as a "Bogus Error"), the Customer shall bear the costs incurred by Cybus in the course of the error analysis in accordance with Cybus' current price list applicable at the time of the error report.
- 8.6 The Customer shall be responsible for the proper and compliant installation of further developments of Connectware, in particular taking into account the obligations under Clause 9.2. Upon the Customer's request, Cybus shall support the Customer in this respect against payment of a separate fee.
- 8.7 Only the Cybus Products are subject to maintenance, and these only in the most current version, i.e. including the latest further developments unless otherwise agreed in the Support Agreement. If the Customer wishes to maintain an older version of Connectware and/or its own instance, it must notify Cybus accordingly. Cybus may offer the Customer a separate maintenance agreement for the maintenance of older versions of Connectware and/or its own instance. Maintenance of an older version of the Portal is not possible.
- 8.8 Maintenance services do not include treatment of defects in the Cybus Products that are due to
- Cybus Products used by Customer in a hardware and/or software environment which does not meet the system requirements specified in Annex 2 to these License T&C or the Operating Concept pursuant to the Agreement,
  - the Customer not having installed an update or a further development for Connectware and/or the test instance if the error would have been eliminated by this further development,
  - the Customer or third parties having made modifications to the Cybus Products without being entitled to do so (a) by operation of law (b) under the Agreement or (c) with the prior written consent of Cybus, or
  - the Customer or third parties having carried out incorrect operation or having set system parameters incorrectly.
- 8.9 Cybus' employees do not enter into any employment relationship with the Customer. The Customer shall issue instructions exclusively via the key users with effect for and against the Customer.
- 9. OBLIGATIONS OF THE CUSTOMER**
- 9.1 The key users to be appointed by the Customer must be trained in the use of Cybus Products. Cybus must be notified immediately in writing or by e-mail of any change of key users.
- 9.2 The Customer shall take reasonable precautions in case Connectware does not work or does not work properly within the environment in which it is used. This includes, in particular, the testing of Connectware as well as any modifications, extensions and recreations of Connectware in a development environment (e.g. using the Test Instance) as well as data backup.
- 9.3 Unless and to the extent the Customer expressly notifies Cybus in advance, Cybus may always assume that all Customer Data has been backed up before Cybus comes into contact with it.
- 9.4 The Customer shall take appropriate measures to protect the Cybus Products and all services and information relating to the Cybus Products, in particular the access data, from access by unauthorized third parties.
- 9.5 To the extent necessary, Customer shall support Cybus free of charge in diagnosing and remedying errors/defects within a reasonable scope.
- 9.6 Faults in the Cybus products and/or defects in Connectware and the Portal must always be described in detail, in particular stating the symptoms and effects. The error/defect notification shall enable the reproducibility of the error/defect.
- 9.7 If the Customer culpably fails to perform its obligations under Clauses 9.1, 9.5 and/or 9.6 even after expiry of a reasonable grace period set by Cybus, it shall reimburse Cybus for any costs incurred as a result. Any further claims of Cybus, in particular for breach of (cooperation) obligations by the Customer under this Clause 9, shall remain unaffected.
- 10. SCOPE/ADJUSTMENT OF THE REMUNERATION**
- 10.1 For the term of the Agreement, the license fees already include (a) the use of Connectware to the agreed extent, (b) the use of the Portal, (c) the use of the Test Instance and (d) the limited maintenance services described in the Agreement. In the event that the term of the Agreement has ended, but the term of an individual order extends beyond this term, the respective license costs of the individual order shall include the continued possibility of use for the aforementioned services.
- 10.2 Cybus is entitled to adjust the remuneration in the event of changes in market conditions, significant changes in procurement costs, changes in the law as well as changes in procurement prices with two (2) months' prior written notice to the beginning of a contractual year, provided that Cybus neither initiated nor has any

influence on such changes. In making such adjustments, Cybus shall also reasonably take into account and credit any cost reductions. In the event of an increase of more than five (5) %, the Customer is entitled to terminate the Contract by giving Cybus one (1) month's prior notice before the increase takes effect. Cybus shall set out the corresponding changes to the Customer in a transparent manner, without, however, being obliged to disclose the calculation.

**11. TERMINATION**

- 11.1 In addition to ordinary termination, which is governed by the provisions of the Agreement, the Agreement may be terminated in writing by either Party without notice for good cause. Good cause shall be deemed to exist in particular if the Customer infringes Cybus' rights of use by using the Cybus Products beyond the scope permitted under the Agreement and fails to remedy the infringement within a reasonable period of time following a warning by Cybus.
- 11.2 The extraordinary termination of the Agreement causes the immediate termination of the Agreement and all individual agreements, unless the Parties declare by mutual agreement that they wish to maintain the individual agreement(s).
- 11.3 If the Agreement is terminated in accordance with the provisions of the Agreement and the term of an individual agreement extends beyond the term of the Agreement, the provisions of the individual agreement and these License T&C shall continue to apply accordingly to that individual agreement.
- 11.4 Termination by the Customer pursuant to § 543 para. 2 sentence 1 no. 1 German Civil Code (Bürgerliches Gesetzbuch – BGB) on the grounds of failure to provide use in accordance with the Agreement is only permissible if Cybus has been given adequate opportunity to remedy the defect and such remedy failed. Remedial action shall only be deemed to have failed (a) if remedy is impossible, (b) if Cybus refuses to remedy the defect or unreasonably delays it, (c) if there are reasonable doubts as to the prospects of success of the remedial action or (d) if for other reasons it is unreasonable to expect the Customer to accept the remedial action.
- 11.5 Notice of termination must be given in writing to be effective.

**12. DEFECTS OF QUALITY AND TITLE**

- 12.1 Cybus expressly points out that, according to the current state of the art, it is impossible to create software in such a way that it works error-free in all conceivable applications and combinations.

- 12.2 Unless otherwise stipulated below, the statutory provisions shall apply in the event of material defects and defects of title.
- 12.3 Cybus is liable for the agreed quality of Connectware and the Portal (see Clause 2.2) and for ensuring that the Customer can use Connectware and the Portal without infringing the rights of third parties. With regard to the open source software used (see Clause 7.7), the Customer's claims for defects shall be determined primarily in accordance with the license terms of the open source software set out in Annex 1.
- 12.4 Cybus's liability and warranty shall not extend to defects due to the fact that
  - Connectware and/or the Portal are used by the Customer in a hardware and software environment that does not meet the requirements specified in Annex 2 to these License T&C or the Operating Concept pursuant to the Agreement,
  - the Customer has not installed an update or a further development for Connectware provided that this update or further development would have remedied the defect, or
  - the Customer or third parties have made changes to Connectware and/or the Portal without being entitled to do so (a) by operation of law, (b) under the Agreement or (c) with Cybus' prior written consent.
- 12.5 In the event of material defects and defects of title in the contractual products, Cybus may first demand supplementary performance. In the event of a material defect, Cybus shall be entitled, at its own discretion, to remedy the defect (repair) or to make a replacement delivery. In the case of a replacement delivery, the Customer shall, if necessary, accept a new software version, unless this would result in unreasonable impairment. In the event of defects of title Cybus shall, at its option, either provide the Customer with a legally unobjectionable opportunity to use Connectware and/or the Portal or modify Connectware and/or the Portal such that third party rights are no longer infringed.
- 12.6 If, after an initial period for supplementary performance has expired without result, the Customer has granted Cybus a further reasonable grace period and this period has also expired without result, or if a reasonable number of attempts to remedy the defect, to make a substitute delivery or to provide a replacement have been unsuccessful, the Customer may, subject to the statutory requirements, at its option rescind the Agreement or reduce the fees and claim damages or reimbursement of expenses.
- 12.7 Cybus is in particular entitled to remedy defects at the Customer's premises or to remedy the defect by means of remote maintenance or by means of a downloadable update with an automatic installation routine.

**13. LIABILITY**

- 13.1 Cybus' liability for damages of any kind shall be excluded. This exclusion does not apply
- for damages caused by intent or gross negligence;
  - in cases of simple negligence for damages in the event of injury to life, body or health of a person;
  - subject to the provision in Clause 13.2, for losses caused by a breach by Cybus of its essential contractual obligations. An essential contractual obligation is an obligation, the fulfilment of which enables the proper execution of a contract in the first place and on the compliance with which the Customer may regularly rely.
- 13.2 In cases of negligent breach (simple negligence) of an essential obligation, the liability of Cybus is limited to the foreseeable, contract-typical damage. The exclusion of liability in this Clause 13.2 shall not apply to Cybus's liability for damages in the event of injury to life, body or health of a person or to claims for damages under the German Product Liability Act ("*Produkthaftungsgesetz*").
- 13.3 Cybus's strict liability pursuant to § 536a para. 1, 1st alternative BGB (German Civil Code) for defects already existing at the time of conclusion of the Agreement shall be excluded.
- 13.4 Cybus shall be liable for the loss of data only up to the amount that would have been incurred to restore the data if the Customer had properly and regularly backed up the data.
- 13.5 Unless otherwise expressly set out above, any other liability of Cybus shall be excluded.
- 13.6 The above limitations of liability also apply to the benefit of legal representatives, employees and agents of the Service Provider.

**14. SUBJECT TO CHANGE**

- 14.1 Provided that Customer is not unreasonably prejudiced, Cybus may modify these License T&C for the following reasons: For legal or regulatory reasons; for security reasons; to optimize and further develop maintenance services and services of the Cybus Products and to add additional features; to take account of technical progress and to make technical adjustments. Cybus shall give the Customer reasonable notice of any changes to these License T&C and shall give the Customer the option to terminate the Agreement in writing or in text form within one month of notification of the change's effective date.
- 14.2 If any amendment is found to be invalid, void or for any reason unenforceable, the validity and enforceability of the remaining amendments or terms shall not be affected.

**15. FORCE MAJEURE**

- 15.1 Neither Party shall be obliged to fulfill its contractual obligations in the event of and for the duration of force majeure.
- 15.2 Force majeure shall mean an event that cannot be prevented or rendered harmless by the utmost care reasonably to be expected in the respective circumstances. In particular, the following circumstances shall be considered as force majeure events: fire/explosion/flooding for which a Party is not responsible, war, mutiny, blockade, embargo, pandemic, disruption of the supply chain, strike, industrial dispute lasting more than 6 weeks and not culpably caused by a Party, technical problems of the internet which cannot be influenced by a Party. Each Party shall immediately notify the other in writing of the occurrence of a case of force majeure.

**16. DATA PROTECTION**

The Parties shall comply with the applicable data protection provisions and shall oblige their employees deployed in connection with the Agreement and its performance to maintain data secrecy, insofar as they are not already generally obliged to do so.

**17. AUDIT**

If there is any suspicion that the Customer is exceeding the scope of the license permitted under the Agreement, the Customer shall provide Cybus with additional information, allow Cybus to inspect relevant documents and records and enable an audit of the used hardware and software environment by Cybus or by an auditing firm appointed by Cybus and acceptable to the Customer. The Customer shall assist Cybus to the best of its ability in conducting an audit. Cybus may conduct the audit on the Customer's premises during its regular business hours or have it conducted by third parties bound to secrecy.

**18. CONFIDENTIALITY/USE OF THE NAME AND LOGO**

- 18.1 The Parties agree not to disclose the terms and conditions of the Agreement and the Support Agreement.
- 18.2 The obligation of confidentiality shall continue to apply for an unlimited period of time and irrespective of the termination of the contractual relationship.
- 18.3 Each Party is permitted to use the name and logo of the other Party as a reference or for advertising purposes in online and offline channels for an unlimited period of time.

### 19. END OF THE RIGHT OF USE

19.1 In the event of termination of the Agreement or any other termination of the right of use, the Customer shall return Connectware, the Test Instance and any other software received from Cybus to Cybus without undue delay or delete them and all copies thereof, unless the Customer is required by law to retain them for a longer period or the continuation of an individual agreement beyond the termination of the Agreement requires further use. The Customer shall assure Cybus in writing of the proper deletion without undue delay after termination of the Agreement or in the event of any other termination of the right of use. The Customer shall also notify Cybus of any longer storage period required by law or of any longer use required in connection with the continuation of an individual agreement.

19.2 If the Customer requires access to its data even after termination of the license, the Customer shall notify Cybus thereof in writing in advance and in good time. At the Customer's request, the Parties may conclude a separate agreement on the storage, transfer and/or retransition of data by Cybus. Cybus shall receive separate remuneration for all support services, such as the provision of data on a separate data carrier, in accordance with Cybus' currently valid price list.

### 20. ASSIGNMENT, SET-OFF AND RIGHT OF RETENTION

20.1 The Customer may transfer claims against Cybus to third parties only with Cybus' written consent. The provision in § 354 a HGB remains unaffected.

20.2 The Customer may only offset against undisputed or legally established claims. The same applies to the exercise of rights of retention.

### ANNEX 1: OPEN SOURCE LICENSE TERMS

The license terms of the open source software can be viewed at <https://www.cybus.io/>. Upon Customer's request, Cybus will also transmit all license terms in digital form.

The source code of the open source software shall be handed over to the Customer on request together with the copyright notices, disclaimers and any other notices, e.g. on a data carrier or made available online in a password-protected area.

Unless expressly provided otherwise in the individual license terms, no license fee shall be charged for the provision of rights of use to open source software. The remuneration agreed between the Parties in the Agreement therefore does not extend to the open source software.