

DEUTZ Terms of use for Serdia

1. Subject matter and scope of application, conclusion of contract

- 1.1. DEUTZ AG, Ottostraße 1, 51149 Cologne, Germany grants the use of the DEUTZ software product Serdia ("SERDIA") as part of a license agreement between DEUTZ AG as licensor ("DEUTZ") and its customer as licensee ("CUSTOMER"). These terms of use ("SERDIA TERMS") govern the legal framework for the use of SERDIA.
- 1.2. These SERDIA TERMS shall apply accordingly also to the program modifications (updates) for SERDIA provided by DEUTZ from time to time as well as to the documentation of SERDIA.
- 1.3. The CUSTOMER shall place an order in electronic form for SERDIA license(s) including a so-called "dongle" (hardware interface, e.g. DECOM) ("DONGLE") per license through a DEUTZ ordering portal. The CUSTOMER expressly accepts these SERDIA TERMS as contractual conditions for the use of SERDIA. With the activation of the license by DEUTZ, a legally binding contract including these SERDIA TERMS is concluded. The CUSTOMER hereby waives the receipt of a declaration of acceptance of the contract by DEUTZ. DEUTZ will provide SERDIA by remote data transmission (download from the Internet or from the DEUTZ Portal Global SIS). The source code of SERDIA is not subject matter of the contract and shall not be handed over to the CUSTOMER.
- 1.4. DEUTZ shall provide the CUSTOMER the documentation for SERDIA by remote data transmission (according to clause 1.3). The documentation describes which functions and performances can be achieved by SERDIA when used in accordance with the contract (performance description). However, the information in the performance description is not to be understood as a guarantee of quality for the respective software function, unless it is expressly designated as such in the performance description.
- 1.5. These SERDIA TERMS shall apply exclusively. Deviating, conflicting or supplementary general terms and conditions of business and purchase of the CUSTOMER shall only become part of the contract if and to the extent that DEUTZ has expressly agreed to their validity in writing. This requirement of consent shall apply in any case, for example also if DEUTZ, being aware of the CUSTOMER's General Terms and Conditions of Business and Purchase, commences performance to the CUSTOMER without reservation.
- 1.6. Individual agreements made in individual cases between DEUTZ and the CUSTOMER (including subsidiary agreements, supplements, and amendments) shall in any case take precedence over these SERDIA TERMS. The content of such agreements shall be governed by a written contract or written confirmation by DEUTZ.

2. Prerequisite for the use of SERDIA, registration ZNV platform

Prerequisite for the use of SERDIA is that the CUSTOMER, or the employees of the CUSTOMER who are going to use SERDIA, is/are registered in the central user administration platform of DEUTZ (hereinafter referred to as "ZNV Platform"). An access to SERDIA is only possible after successful registration in the ZNV platform.

3. Transfer of SERDIA/Rights of Use

- 3.1. Against the compensation according to clause 4, DEUTZ grants the CUSTOMER a simple, non-exclusive right to use SERDIA as well as the associated documentation, which is limited to the term of the license agreement and transferable according to clause 3.4 of these SERDIA TERMS. For the use of SERDIA the separate purchase of a DONGLE is required. The CUSTOMER is obliged to order a license for SERDIA for each DONGLE they want to use. Each DONGLE can be linked to one or more ZNV accesses. The copyrights and exploitation

rights to SERDIA remain in principle with DEUTZ and are not part of the agreement between DEUTZ and the CUSTOMER.

- 3.2. CUSTOMER's right to use SERDIA is limited to engine diagnosis and maintenance on DEUTZ engines according to the competence class granted by DEUTZ to CUSTOMER. The CUSTOMER undertakes to refrain from using SERDIA for any further purposes.
- 3.3. The CUSTOMER is entitled to install and use SERDIA on any number of its own computers at fixed workstations or on mobile laptops.
- 3.4. The CUSTOMER is entitled to transfer the right to use SERDIA within its dealer network and sales territory to its dealers, (OEM) repair shops and end customers. The CUSTOMER is obligated to monitor the granting of licenses appropriately on its own responsibility. CUSTOMER warrants that it shall carefully classify its dealers, (OEM) repair shops and end customers into the respective competence classes. The transfer of rights of use to SERDIA to other third parties is excluded.
- 3.5. During the use of SERDIA by the CUSTOMER, DEUTZ shall receive the following data electronically: Engine-specific data - engine operating hours, fault memory, load spectrum, sensor readings (if recorded by ECU) -, EAT data and country (hereinafter collectively referred to as "INFORMATION"). With regard to the INFORMATION, the CUSTOMER grants DEUTZ a non-exclusive, transferable, unrestricted and irrevocable right of use to use this INFORMATION free of charge, whereby this granting of rights includes the right to pass on the INFORMATION to third parties such as customers, dealers and suppliers and to process and use it in connection with the distribution and further development of DEUTZ products, provided that this use is exclusively on an anonymous basis and DEUTZ does not use or disclose any personally identifiable information or personal data of the CUSTOMER or its customers. The CUSTOMER ensures that they are authorized to grant DEUTZ the above rights as well as to provide the INFORMATION.

4. Compensation

- 4.1. For the use of SERDIA an initial license fee per SERDIA license in the amount of the price list of DEUTZ valid at the time of the CUSTOMER's order plus VAT shall be due. With payment of this initial fee, the use of SERDIA and all technically necessary program changes (updates) for SERDIA up to and including 31.12. of the year in which the license agreement was concluded are compensated. From 01.01. of the following year, DEUTZ will charge the CUSTOMER for annual fees per license for updates and extension of the license contract for one calendar year in the amount of the respective valid price list. DEUTZ will inform the CUSTOMER about changes of the price list in reasonable time before they become effective.
- 4.2. The fees according to clause 4.1 are due according to the terms of payment agreed between DEUTZ and the CUSTOMER for the sale of DEUTZ engines or spare parts.

5. Term and Termination

- 5.1. The license contract may be terminated by either party for cause without notice. Such cause for DEUTZ shall in particular be a violation by the CUSTOMER of the provisions of clauses 3 and/or 4 of these SERDIA TERMS.
- 5.2. Each party may terminate the license contract with a notice period of three months to the end of the respective calendar year.
- 5.3. The termination of the license contract shall be made in writing.
- 5.4. In case of termination of the license contract by DEUTZ or the CUSTOMER, the CUSTOMER undertakes to immediately discontinue the use of the SERDIA licenses provided to it by DEUTZ

as well as the DONGLES. DEUTZ shall have the right to deactivate the access to SERDIA via the ZNV platform at the end of the term.

6. Warranty/Liability

- 6.1. DEUTZ does not warrant any particular quality or functionality of SERDIA. In the event that SERDIA is unavailable, the CUSTOMER shall have the following warranty rights:
- 6.2. DEUTZ shall remedy defects of SERDIA at its own choice by repair or replacement free of charge. If DEUTZ provides the CUSTOMER with a new, defect-free software version, in particular patches, bug fixes or new versions of SERDIA, the CUSTOMER shall take over the provided new software version and install it on their hardware and software environment in accordance with the installation instructions of DEUTZ. The elimination of a defect may furthermore take place in the form of instructions for action towards the CUSTOMER. The CUSTOMER shall follow such instructions.
- 6.3. Any further warranty rights regarding supplementary performance, redhibition/rescission and reduction shall be excluded.
- 6.4. The liability of DEUTZ for direct and indirect damages shall be excluded, regarding contractual and non-contractual claims, including the acts or omissions of sub-contractors and other auxiliary persons. This shall not apply in cases where the limitation of liability is invalid due to cogent law (in particular, claims for damages under § 1 Produkthaftungsgesetz (Product Liability Act)).
- 6.5. The above provisions on limitation of liability shall also apply to the personal liability of DEUTZ's employees, representatives, and bodies.

7. Choice of Law/Court of Jurisdiction

- 7.1. The laws of Switzerland shall apply except for the UN Convention on Contracts for the International Sale of Goods (CISG).
- 7.2. All disputes and differences which may arise out of or in connection with the present agreement, or the breach thereof, which cannot be settled amicably between the parties, shall be finally settled, excluding any other jurisdiction but for enforcement of the arbitral award, by arbitration under the Rules of Conciliation and Arbitration of the International Chamber of Commerce (I.C.C., Paris). The place of Arbitration proceedings shall be Geneva, Switzerland. The language of Arbitration shall be the English language. The arbitration award shall be final and binding on the Parties and subject to no appeal and shall deal with the question of the costs of arbitration and all matters relating thereto.