

General Terms and Conditions (GTC)

www.multitouch-appstore.com | Version 2.0 | Date: 30.09.2020



A. General Provisions

1. Scope of application

- 1.1 The following general conditions of use (the “**Terms**”) apply to the utilization of the website www.multitouch-appstore.com (the “**AppStore**”) operated by eyefactive GmbH, Haferweg 40, 22769 Hamburg, Germany (hereinafter referred to as “**eyefactive**”) and the therein offered services as well as for all contracts entered between eyefactive and the contractual partner (hereinafter referred to as the “**Client**”) in relation to software products from the AppStore.
- 1.2 eyefactive shall not recognize any client’s conflicting, deviating or supplementary general terms and conditions of business unless eyefactive has expressly accepted them in writing.
- 1.3 These Terms are structured as follows: **Part A.** contains general provisions applying to all clients of the AppStore. **Part B.** contains license terms governing the use of free test versions of eyefactive’s touchscreen apps (hereinafter, collectively referred to as “**Apps**” and each individually as an “**App**”). **Part C.** contains license terms governing the paid use of the Apps. The special conditions from Part B. and Part C. apply supplementary to the general provisions explained in Part A.
- 1.4 Only legal and natural persons in terms of § 14 BGB are authorized to make purchases under these Terms. Legal and natural persons who are not entrepreneurs in the sense of §14 of the German Civil Code are entitled to use only the free test versions of the Apps.

2. Registration, user account, login

- 2.1 In order to use the AppStore, the client is required to register for it first. By registering and submitting his/her registration information, the client requests the opening of an account for using the AppStore (hereinafter referred to as a “**user account**”).
- 2.2 If the client would like to use free test versions of the Apps, the client will not be required to add any payment information in the user account. If the client would like to purchase any licenses, the client needs to add the relevant payment information in the user account.
- 2.3 After receiving the application for registration, eyefactive decides at its own discretion on its acceptance. In case of acceptance of the application, a declaration of acceptance will be issued. A confirmation mail, including a link for activation, will be sent to the client’s registered email address. After the client clicks on the activation link, the user account will be activated.
- 2.4 Any natural or legal person can register a user account and use the free test versions of the Apps. However, only individual persons, corporate bodies and business partnerships being entrepreneurs in the sense of §14 of the German Civil Code (BGB) are permitted to make purchases under these Terms. The registration of a corporate body can only be executed through an authorized individual person that avails his/her name to the registration form.
- 2.5 For the sole purpose of verifying the entrepreneurial capacity in the sense of § 14 BGB, eyefactive is entitled to demand the presentation of adequate documents (e.g., a copy of trading license or a trade register excerpt).
- 2.6 In the scope of the registration process, the client has to provide the data required by eyefactive in a complete and truthful way (hereinafter referred to as “**login credentials**”). If the login credentials change after registration, the client has to update this information in the AppStore or inform eyefactive instantaneously about the changes.
- 2.7 The client agrees to his/her email address being disclosed to eyefactive upon login in order to provide the client with support within the scope of AppSuite if necessary. For the purposes of this document, the term “**AppSuite**” refers to the content management software (CMS) which connects to the AppStore.

2.8 The client declares his/her consent to eyefactive supplying tips and tricks for the use of the platform via email. The client may revoke this declaration of consent at any time.

2.9 When logging in to the AppStore for the first time via the downloaded AppSuite, the login name, the password, and a hardware key will be transmitted to eyefactive. The hardware key pertains to the hardware on which the AppSuite is installed.

3. General duties of the client

- 3.1 The client must not convey his/her personal access data (user ID/ password) to third parties and must protect it against third-party access. The client must not transfer his user account to a third person.
- 3.2 The client must comply with all technical regulations published in the documentation by eyefactive.

4. Costs

4.1 eyefactive may grant to the client various discounts. Further information about these discounts can be found on the website <https://www.multitouch-appstore.com/en/features/licence>. eyefactive may modify or cancel these discounts for future contractual relationships at any time.

5. Payment

- 5.1 eyefactive may provide the client with different payment options. The license fees shall be prepaid by the client by using eyefactive’s system for automatic payments.
- 5.2 If the client inserts a valid VAT number in the user account that entitles eyefactive to include EUR 0,00 VAT (VAT reverse-charged) in the invoice to the client, eyefactive will: (i) show the amount of EUR 0,00 VAT when showing the applicable fees to the client; (ii) collect VAT in the amount of EUR 0,00 when issuing invoices to the client.
- 5.3 A payment is deemed completed from the date on which the amount is freely available to eyefactive or third parties authorized by eyefactive. In the event of a default of payment eyefactive shall be entitled to charge interest for businesses at 9 percentage points above the respective base rate of the EZB in accordance with the Discount Rate Transitory act. eyefactive reserves the right to additionally charge the client a standard amount of EUR 40 in the event of a delay. Collection charges shall pass the buyer.
- 5.4 The client is only entitled to the fulfilment of the obligation to pay by offsetting if his/her counterclaims have been stated legally binding and undisputed. Furthermore, the client is only entitled to the right of retention insofar as his/her counterclaims are based on the same contractual relationship.
- 5.5 eyefactive is entitled, in the event of eyefactive withdrawing from the contract (for instance due to the client’s delay of payment), to prohibit the further use of eyefactive software and to demand the deletion of all copies of the eyefactive software.

6. Termination of user account

- 6.1 The user account can be terminated either by eyefactive or the client with a notice period of 2 weeks.
- 6.2 The contractual parties’ right of termination without notice for good cause remains unaffected. A good cause for eyefactive exists, e.g., (i) if a client culpably breaches an essential contractual obligation or (ii) in the event of an insolvency proceeding which is opened or its opening was refused due to a lack of sufficient assets.
- 6.3 Terminations must be in written form. The requirement of written form shall be deemed met if executed by email, telefax, or letter.

7. Blocking of user account

7.1 eyefactive shall have the right to temporarily deactivate the client’s user account if there are specific reasons to believe that the client violates these terms of use, right of third parties, or if eyefactive has

any other justified interest in blocking the account. When determining whether or not to block an account eyefactive will take the client's legitimate interests into consideration.

- 7.2 In case of temporary blockage of the user account, eyefactive will inform the client on the matter via email.

8. Designation for reference purposes

- 8.1 The client entitles eyefactive to make use of his/her name and logo for marketing purposes (including, without limitation, self-promotion on the eyefactive website), for all advertising material of eyefactive, as well as for product presentations and trade fairs. The client hereby authorizes eyefactive to (i) write a promotional article about eyefactive's business relationship with the client and (ii) make the article publicly available through the AppStore and other online and offline channels.

9. Changing the terms of use

- 9.1 eyefactive reserves the right to change these Terms, insofar a change of legislation, the jurisdiction of the supreme court or a change or advancement of the technical framework with respect to the subject matter require an amendment of these Terms and these changes do not disadvantage the client unreasonably. eyefactive shall inform the client of any changes in these Terms via email at least four weeks prior to their coming into effect.
- 9.2 The changes shall take effect if the client does not revoke in writing or via email within four weeks after receipt of the notification of change (email). eyefactive will notify the client of this legal consequence in the notification of change (email).
- 9.3 Any existing software licensing contracts between eyefactive and the client at the time the changes enter into force shall remain unaffected by these changes.

10. Data tracking and data protection

- 10.1 To avoid misuses of the licenses, the AppSuite is regularly checking the validity of the purchased licenses.
- 10.2 The AppSuite sends unpersonalized tracking information about the user behavior to the AppStore with the aim to allow eyefactive to use the collected data for marketing and analytics purposes. The client can disable the collection of data for such purposes by adjusting the AppSuite settings.
- 10.3 Unless the client adjusts the settings of the AppSuite to disallow the AppSuite from sending such data, the AppSuite sends unpersonalized tracking information about the user behavior to the AppStore with the aim to provide clients with insights about their own user behavior. The provision of the aforementioned insights is part of eyefactive services associated with the paid licenses. Please note that, in order to provide the client with historical insights about his or her user behaviour, eyefactive may collect unpersonalized tracking information about his or her user behavior in the AppStore even before the client subscribes for a paid license enabling him to get insights about his or her behavior.
- 10.4 eyefactive will put reasonable technological and organizational measures to ensure that all data collected by eyefactive is protected.
- 10.5 The collection of personal data by eyefactive is governed by the Data Processing Addendum (DPA) available at <http://mediaroom.eyefactive.com/appstore/dpa/dpa-en-multitouch-appstore.com.pdf>.

11. Service Level Agreement (SLA)

- 11.1 The service level commitment made by eyefactive with regards to the availability of the software is specified in the Service Level Agreement (SLA) concluded by the client and eyefactive. The SLA is available at <http://mediaroom.eyefactive.com/appstore/sla/sla-en-multitouch-appstore.com.pdf>.

12. Partnership agreement

- 12.1 eyefactive may enter in partnership agreements with partners of eyefactive. Such partnership agreements may authorize partners to

act on behalf of eyefactive in accordance with these Terms.

13. Other provisions

- 13.1 Place of fulfilment for all services by eyefactive is the registered office of eyefactive GmbH, Haferweg 40, 22769 Hamburg, Germany.
- 13.2 Hamburg is agreed upon as the exclusive venue of jurisdiction towards entrepreneurs, legal persons under public law and public-law special funds.
- 13.3 German law applies exclusively. The stipulations of the United Nations agreement on contracts of international merchandise are not to be applied here.
- 13.4 If one of the legal clauses of these Terms is ineffective or should become ineffective, the other clauses remain unchanged by this. The statutory regulations apply.

B. Terms of license for free test versions of the Apps

1. Contractual item

- 1.1 The "Terms of license for free test versions of the Apps" govern the permanent free provision of test versions of the Apps and the AppSuite to the client from eyefactive as well as the associated cloud services.
- 1.2 The client receives from eyefactive software test versions from the AppStore in the form of Apps and AppSuite ("**software**") subject to the following licensing conditions.

2. Conclusion of contract

- 2.1 If the client wants to test the software for free, he is required to previously register in the AppStore and to open a user account.
- 2.2 After setting up the user account, the client can order the software for testing by clicking on the respective download button. When clicking on this button, the client makes a binding bid to eyefactive to acquire the free software test version.
- 2.3 In case of approval, eyefactive will confirm the offer immediately by providing the software for download.
- 2.4 After the download and installation of the AppSuite, some of the Apps may be already installed. Further, Apps may be downloaded and installed within the AppSuite by clicking on the download button.

3. Subject and form of services

- 3.1 The client receives the software along with the electronic instruction manual released by eyefactive (hereinafter, referred to as "**documentation**"). The documentation primarily comprises electronic help.
- 3.2 The characteristics of the software as well as the operational environment for which it was released are described in the documentation. The test versions are versions of the Apps marked with water marks and inserts.

4. Granting of the rights of use, scope of use

- 4.1 eyefactive grants the client a basic, non-exclusive right for permanent use of the software. This entitles the client only to use the software on one computer including a display connected to this computer. The client is not allowed to use the software on a server or virtual server.
- 4.2 The use of the software may only take place in object code. The client has no entitlement to be given the source code and receives no rights to the source code of the software or to related program libraries.
- 4.3 The client must not, neither partly nor entirely, rent out the software, lend it and/or sublicense it and/or make it accessible to third parties in any other way.
- 4.4 The client can make a copy for backup purposes on his/her own expenses. If originals carry a copyright notice, any copy must mention the same proprietary notice as well.
- 4.5 If not explicitly allowed by the copyright law, the software provided by eyefactive must not be regressed, decompiled, or disassembled.
- 4.6 Likewise, copyright notices, serial numbers as well as other features

erving as means of program identification must not be removed or amended. The same applies to suppressing the display of such features on the screen.

- 4.7 Resale and/or dissemination of the software is not permitted.
- 4.8 If eyefactive provides the client with software of another producer or with open-source-software (hereinafter referred to as “**third party components**”), the license conditions for third parties components that have been enclosed with the delivery item, apply additionally for third party components (hereinafter referred to as “**third party license conditions**”). The third party license conditions can change. In case of contradiction between the contents of the clauses 4.1 to 4.7 and the rules of the third party license conditions, the rules for third party license conditions have priority with exclusive reference to third party components.
- 4.9 Without prejudice to Section 4.3, the client explicitly agrees that the software may contain demo projects that can be tried and tested by the client. Some demo projects are preinstalled, whereas others need to be downloaded from eyefactive’s cloud server. The client agrees not to make accessible to third parties, use for commercial purpose or otherwise commercially exploit, rent, sublicense, sell, distribute the demo projects, without the prior written consent of eyefactive.

5. Adding of contents to the software, release

- 5.1 Within the scope of using the software, the client commits him/herself to refrain from placing any content in the software that violates third party rights, especially copyrights, trademark, or other sign rights as well as third party privacy rights.
- 5.2 The client shall indemnify eyefactive from all claims that third parties assert against eyefactive with regard to the violation of their rights as a result of contents being placed in the software by the client. In doing so, the client commits him/herself to assume the costs of the necessary legal defence of eyefactive, including all court and lawyer costs, in case he/she has him/herself caused the infringement.

6. Warranty and liability

The warranty and liability of the software provided free of charge, in case of defect in goods or title, is determined according to §§ 523, 524 BGB. For the rest, eyefactive is only liable for compensation of damages or expenditure in case of intent and gross negligence.

7. Updates, Upgrades

eyefactive is not bound to surrender updates and upgrades of software. If eyefactive provides updates and upgrades that substitute or complement the original licensed software, the aforementioned license conditions shall apply for these updates and upgrades accordingly. This does not apply if such an update or upgrade is subject to a separate license.

C: License terms governing the paid use of the Apps

1. Contractual item

- 1.1 The “License terms governing the paid use of the Apps” regulate the use of the paid versions of the Apps and AppSuite (“**software**”) as well as the associated cloud services.
- 1.2 The client can, by using the AppStore, purchase licenses for various durations for a subscription plan to use the software. eyefactive offers multiple subscription plans, one of which is a free plan. Subscription plans can have various durations, except for the free plan which is not limited in time. The duration of the first license of a subscription plan defines the permitted runtime period for that subscription plan. The client can purchase licenses from the same subscription plan for various durations, thus the client will have a subscription plan with different runtime periods with different start and end dates.
- 1.3 Licenses can be combined in a subscription pack. The first license in a subscription pack indicates the permitted runtime period of the whole subscription pack. The client can purchase licenses of different

subscription plans for various runtime periods, thus the client can have two or more subscription packs with two or more runtime periods with different start and end dates.

- 1.4 If a client wants to add a new license of a subscription plan to a subscription pack for a given runtime period that was already running for some time, the client needs to pay the license fee for the entire monthly or yearly runtime period of the subscription plan which is added to the subscription pack. Upon the expiration of that runtime period, a portion of the license fee corresponding to the unused time from the expired runtime period shall be deducted from the license fee for next runtime period. For the purposes of the preceding sentence, the term “unused time” means the time period between the start of the runtime period and the date when the new license is added is to that runtime period.
- 1.5 Each license provides the client with the right to use the software in relation to one computing device. The license is bound to the hardware parameters of the device in relation to which the license is used for the first time. In order to bind a device to a license, the device needs to connect to the AppStore online. Such a connection can be made through the AppSuite which needs to be installed and started on the device. If a device has already been connected to the AppStore, the binding process can be accomplished through the AppStore in an asynchronous manner (i.e., without the need to connect the device to the AppStore to complete the binding process).
- 1.6 The device in relation to which a license will be granted needs to be linked to the user account of the client. Once the AppStore receives all required hardware parameters from the device for which a license is sought, eyefactive will (i), by using encryption technology, create a key pair for the device and the associated license and (ii) generate a license key for the device and store it on the device.
- 1.7 The computing device in relation to which a license is granted will connect periodically to the AppStore in order to check whether the license is still active and bound to that device. eyefactive may also use other mechanisms to check if the license is still active and bound to that device. If a device is not able to connect to the AppStore prior to the expiration of a license applying to that device, the license will be deactivated automatically.
- 1.8 A license and the subscription plan runtime period related to that license will be renewed automatically if the client does not cancel the license before the expiration of the then-current subscription plan runtime period.

2. Conclusion of contract

- 2.1 The prerequisite for purchasing a license to use the software is the client’s registration which requires the client to provide eyefactive with payment information.
- 2.2 The offers in the AppStore constitute an unconditional invitation for clients to purchase licenses.
- 2.3 eyefactive declares acceptance of the offer by sending a prompt confirmation of receipt via email to the client and thereby grants the requested license. Thereafter, the products will be provided by eyefactive for immediate download.
- 2.4 The order including all details of the purchased license is stored by eyefactive. Registered clients may access the order and all details of the purchased license via the client login area (my orders) in the AppStore.

3. Subject and form of services

- 3.1 The client receives the software along with the documentation released by eyefactive. The documentation is primarily comprised of electronic help.
- 3.2 The characteristics of the software as well as the operational environment for which it was released are specified in the documentation.
- 3.3 The consignment takes place after activation through a corresponding license key. After activation, the already downloaded test version can be used without any watermarks and inserts.

4. Granting of the rights of use, Scope of use

- 4.1 Each license grants the client a basic, non-exclusive user right to use the software for the duration of the license. This entitles the client only to use the software on one computing device including a display connected to that computing device. The client is not allowed to use the software on a server or virtual server.
- 4.2 The regulations from B.4.2 and B.4.4 to B.4.6 and B.4.8 of these Terms apply mutatis mutandis.
- 4.3 The client may not sublicense the software neither as a whole nor in parts and/or make it available to third parties in any way (e.g., by means of Application Service Providing (ASP)). The letting and rental of the software is permitted in accordance with C.4.4.
- 4.4 The client is allowed to let or rent out the software to third persons only if he/she completely surrenders his own rights and only for the hardware that is bound to the respective license. The client has to impose contractual obligations on the leaser or borrower that correspond with the paragraphs C.4.1 and B.4.2 to B.4.7.
- 4.5 If eyefactive provides the client with software of another producer or with open-source-software (hereinafter referred to as “**third party components**”), the license conditions for third parties components that have been enclosed with the delivery item, apply additionally to third party components (hereinafter referred to as “**third party license conditions**”). The third party license conditions can change. In case of contradiction between the contents of the clauses 4.1 to 4.4 and the rules of the third party license conditions, the rules for third party license conditions have priority with exclusive reference to third party components.

5. Duty of disclosure and care of the client

- 5.1 The client is obliged to notify eyefactive immediately in case of deficient software. He/she will consider the problem analysis directions provided by eyefactive within the scope of his/her reasonable capacities and rely all information available to him/her as well as relevant for the elimination of the defect to eyefactive.
- 5.2 The client has to take appropriate precautions to protect the software from unauthorized access of third parties.

6. Adding of contents to the software, release

- 6.1 The regulations from B.5 of these Terms of use apply mutatis mutandis.

7. Client's rights in case of deficiencies

- 7.1 In case of occurring deficiencies, disruptions, or damages, the client needs to notify eyefactive immediately.
- 7.2 eyefactive is obliged to fix the deficiencies on the provided software.

8. Limitation of liability

- 8.1 eyefactive is not liable in the event of slight negligent violation of insignificant contractual obligations. In case of slight negligent violation of a substantial contractual obligation, eyefactive's liability is restricted to foreseeable damage typical of the contract according to type of goods and services. Substantial contractual obligations are obligations whose fulfilment enables the proper implementation of the contract in the first place and whose observance the contracting party can trust on a regular basis.
- 8.2 The limitations on liability do not concern product liability claims of the client. Furthermore, the liability restrictions shall not apply in the case of damage to body and health attributable to eyefactive, in the case of loss of life or in case that damage can be traced back to errors in guaranteed features or other failure of guarantee.
- 8.3 The above mentioned liability limitations apply for all claims for compensation, independent of their legal cause, and particularly for liability due to pre- and subcontractual as well as non-contractual claims.
- 8.4 The client is responsible for the regular safeguarding of his/her data. Liability for loss of data is limited to the usual recovery expenses, which would have been incurred if the client had made backup copies on a regular and risk-adequate basis.

- 8.5 As far as liability of eyefactive is excluded or limited, this also applies to their staff, employees as well as vicarious agents.

9. Contract period

- 9.1 The period of the agreement concluded based on these Terms expires (i) when the client has no active licenses or (ii) after the user account of the client is terminated.

10. Use after termination of contract

- 10.1 After the termination of the contractual relationship, the client has to refrain from any utilization of the software, except for the use of the software as test version according to B.3.2.

11. Updates, Upgrades

- 11.1 The regulations from B.7 of these Terms apply mutatis mutandis.

12. Change of hardware, technical protections

- 12.1 In case the client wants to utilize a valid software license on a different hardware than the one in relation to which the license is bound, the client has to (i) deactivate the license on the hardware in relation to which the license is bound and (ii) bind the license to another hardware.
- 12.2 eyefactive has the right to apply adequate technical measures to guarantee that the software is not used in violation of Section 12.1.