

Preamble

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1.7 "Service package" stands for a software maintenance contract through which the licensee receives access to the latest editions (updates) of the licensed software. In addition, the licensee can take advantage of e-mail support as part of the service package.

1.8 "Designated Hardware" means the computer hardware and operating system as specified by HAYER NIAGARA on which the Software is licensed for use.

1.9 "Licensee" means the purchaser of the Software.

1.10 "Specification" means the description of the software with its technical information and/or performance as listed in the offer or at www.niaflow.com.

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5.3 Before the licensee can demand subsequent performance, he must have used all diagnostic aids available to him to describe the defect - including telephone support from HAYER NIAGARA - and have communicated the result to HAYER NIAGARA in an evaluable form. Error messages must be logged and the system statuses must be described.

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5.5 If the review of a previous error report shows that a warranty case does not exist, the costs of the review and repair shall be charged to the Licensee on a time and material basis. A functional impairment of the software resulting from hardware defects, environmental conditions, operating errors, etc. is not a defect.

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6 Prices and terms of payment; delivery

6.1 The prices for the software license and the service package can be found in the price list at www.niaflow.com or in an individual offer. All prices are quoted as software downloads plus the applicable statutory VAT.

6.2 Terms of payment for the software and service package: 100% in advance, unless there are changes due to an individual offer.

6.3 The licensee can only offset claims that are undisputed or have been legally established.

6.4 HAYER NIAGARA may invoice the following services separately at the applicable list prices - if commissioned by the licensee:

6.4.1 Support with the commissioning of the software at the licensee's premises.

6.4.2 On-site support at the licensee's premises for the analysis and rectification of faults caused by improper handling or other circumstances not attributable to the software, or about which the licensee has informed HAYER NIAGARA in writing after expiry of the limitation period in accordance with clause 5.4.

6.4.3 Individual training and consulting.

6.5 There is no entitlement to the granting of discounts, see 2.4.

6.6 After registration on NIAflow.com, the software can be downloaded and installed. After receipt of payment, the software license will be synchronized by the license server during the restart of NIAflow.

7 Taxes and fees

Sales taxes and all other taxes, duties, bank charges, fees, levies and similar charges that may be due outside the Federal Republic of Germany for the software license and the service package are not part of the stated price and must be borne and paid by the buyer.

8 Technical requirements

8.1 Hardware: minimum screen resolution is 1280 x 800

8.2 Software: Microsoft Windows 10 and higher, Microsoft Framework 4.8

8.3 HAYER NIAGARA recommends that the designated hardware is permanently connected to the Internet. However, in order to use the service package properly, a connection to the Internet is required at least once every 30 days.

9 Liability

9.1 Insofar as German law applies in accordance with clause 10.1, the following shall apply:

9.1.1 Notwithstanding anything to the contrary in these terms and conditions, HAYER NIAGARA shall not be liable for loss of profit, loss of use, loss of production, costs of downtime, loss of contracts or consequential or indirect loss. This also includes, but is not limited to, loss of data, even if HAYER NIAGARA has been advised of the possibility of such loss or damage. HAYER NIAGARA is therefore not liable for the loss of data and/or programs, databases, etc. through the use of the software, especially if the damage is due to the fact that the licensee has failed to carry out virus protection or data backups and thereby ensure that lost data, etc. can be restored.

9.1.2 This exclusion of liability shall not apply in the event of intent or gross negligence or in the event of culpable injury to life, limb or health. It also does not apply in the event of culpable breach of material contractual obligations or cardinal obligations. A cardinal obligation within the meaning of this provision is an obligation of HAYER NIAGARA, the fulfillment of which makes the proper execution of the contractual relationship between the parties possible in the first place, the breach of which jeopardizes the achievement of the purpose of the contract and on compliance with which the licensee regularly relies. In the event of a slightly negligent breach of essential contractual obligations or cardinal obligations, HAYER NIAGARA shall only be liable for reasonably foreseeable damage typical of the contract. The exclusion of liability also does not apply in cases of liability under the Product Liability Act. It also does not apply to damages due to fraudulent misrepresentation or within the scope of special guarantee commitments. The rules on the burden of proof remain unaffected by this.

9.2 Insofar as Swiss law applies in accordance with clause 10.2, the following shall apply:

9.2.1 Notwithstanding anything to the contrary in these Terms, neither party shall be liable to the other party for any consequential, exemplary, indirect, special or incidental damages (including, but not limited to, loss of product, profits or revenue), whether arising in law, tort or strict liability, or arising out of or in connection with the Proposals or any liability to third parties, even if a party has been advised of the possibility of such damages.

9.2.2 This exclusion of liability does not apply in the event of intent or gross negligence or in the event of personal injury caused by a negligent act attributable to HAYER NIAGARA or insofar as the law mandatorily stipulates otherwise

10 Place of jurisdiction and general terms and conditions

10.1 Transactions between German business partners in a purely domestic situation

10.1.1 If the Licensee is a merchant, the sole place of jurisdiction shall be the Local Court of Münster.

10.1.2 For all legal relationships between HAYER NIAGARA and the licensee in the case of a purely domestic matter, the law of the Federal Republic of Germany applicable to legal relationships between domestic parties shall apply exclusively.

10.2 Business between HAYER NIAGARA and international business partners

10.2.1 All disputes arising out of or in connection with this agreement shall be settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules. The arbitral tribunal shall meet in Düsseldorf. The language of arbitration proceedings shall be English.

10.2.2 This Agreement shall be governed by Swiss substantive law. The application of the Convention on Contracts for the International Sale of Goods (CISG) is excluded.

**Appendix 1 to " General license and delivery conditions for software"
Third-party software used by the NIAflow client**

log4net by The Apache Software Foundation

Apache License 2.0

SPDX identifier

Apache-2.0

License text

Apache License

Version 2.0, January 2004

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Programmatically adding attachments to emails in C# and VB.NET by David M Brooks, Technical Lead

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