

Terms and Conditions of License and use smart.finder

smart.finder is an independent technology component protected by copyright which is offered by con terra GmbH (licensor) for efficient searching of geographical information. The lawful acquisition of the smart.finder software entitles the licensee to use such software only in compliance with the following Terms and Conditions of License and Use.

By using the software you accept these Terms and Conditions.

If you do not accept these License Terms and Conditions, you will not be entitled to use smart.finder.

1 Scope of use

1.1 Permitted Use

The Licensee shall be granted in respect of smart.finder a networkable right of use and adaptation for any number of users which is non-exclusive, non-transferable, territorially unlimited and temporally restricted to the term of use agreed upon. The licensee shall be granted the following rights of installation and use:

- 1 installation (web application) on a web server;
- 1 additional installation on a further server for the purpose of operation as active/passive cluster (failover);
- 1 additional installation for stage or test environment.;
- use for Application Software Providing (ASP) is only admissible in case of acquisition of a "smart.finder ASP license" in the scope therein defined.

The use of smart.finder shall be admissible only in connection with the simultaneous use of specified Esri standard software products; the licensor reserves the right to change the scope of such (Esri) products¹ at any time.

Copies are permitted to make only for backup, archiving, replacement or for error tracing. The delivery of the source code/object code shall not be owed hereunder. The licensee shall receive additionally (electronic) documentation. Furthermore, the use of smart.finder by consultants and persons employed in the fulfillment of licensee's obligations shall be permitted within the scope of proper use in compliance with these terms and conditions of license and use. The licensee shall install the software himself, unless otherwise provided for.

Extensions or modifications of the smart.finder software are only permitted by using the interfaces as specified in the documentation.

1.2 Unpermitted Use

The licensee shall not be entitled to wholly or partly sell or transfer smart.finder to third parties (this is applicable only to licenses granted for a limited period of time), to rent, lease, lend, commercially distribute, publish, reverse develop (reverse engineering), decompile or disassemble them, unless permitted by law.

Furthermore, the licensee shall not be entitled to wholly or partly use smart.finder for commercial hosting services, The software may contain components of external software and/or open source software for which special licence conditions are to be observed. Insofar as this is necessary for the lawful use of the software, the respective applicable external or open source software licence conditions will be provided in the folder „software\license\third-party“ of this software. The licensee undertakes only to install the software when he also agrees with these external software or open source software licence conditions, which primarily have priority over these conditions of use. If the licensee does not agree to them, he will refrain from installing and using the software.

2 Warranty

2.1 Within the warranty period the licensor shall be obligated to remedy defects in the delivered software, including the documentation.

2.2 At licensor's discretion, the remedy of defects shall be effected free of charge by means of subsequent improvement or replacement. The licensee shall be obligated to report any defects in the software promptly to the licensor. When reporting defects he shall take into consideration, to a reasonable extent, any instructions of the licensor regarding the analysis of the problem and shall furnish the licensor all information known to him required for remedying the defect.

¹ Currently, Esri JavaScript Web API

2.3 The licensee shall not be entitled to give notice of termination pursuant to section 543 sub-section 2 sentence 1 no. 1 of the German Civil Code for nongranteeing of the contractual use in respect of licenses granted for a limited period of time, before the licensor has been given sufficient opportunity to remedy the defects and provided that such remedying of defects has been unsuccessful. The remedying of defects shall only be considered unsuccessful if such remedy is impossible, if it has been denied or unduly delayed by the licensor, if there are reasonable doubts regarding the prospects of success, or if for any other reasons such remedy of defects is unreasonable to the licensee.

2.4 The licensee's rights regarding defects shall be excluded if the licensee has modified the leased object, or has had the leased object modified, without licensor's approval, unless the licensee demonstrates that such modifications do not affect the analysis or remedy of defects in a manner which is unacceptable to the licensor. Licensee's rights in respect of defects shall remain unaffected, provided that the licensee has been entitled to realize such modifications, in particular within the scope of exercising the right of remedying defects himself pursuant to section 536a subsection 2 of the German Civil Code, and if he has carried out such modification properly and has documented it in an understandable manner.

3 Liability

3.1 The licensor shall be liable, limited to the compensation of the foreseeable damage typical for this type of contract, for any damage based on slight/negligent breach of essential duties by the licensor or any of his legal representatives or persons employed in the fulfillment of his obligations. Essential duties are those the fulfillment of which is crucial for the proper execution of the contract and the fulfillment of which the licensee may rely on.

3.2 Licensor's strict liability in tort pursuant to section 536a sub-section 1, 1. alternative of the German Civil Code, for defects already existing at the time of the execution of the contract shall be excluded. Liability for indirect or consequential damage and lost profit, for any legal reason whatsoever, shall be excluded.

3.3 The licensee shall take any appropriate measures, in particular also with regard to third parties, in order to prevent smart.finder from being used in an inadmissible manner in violation of the copyright.

4 Maintenance and Support

The licensor may, at his discretion, make available to the licensee updates and upgrades of the software. This shall include all editions in the form of patches, updates, upgrades or releases. As a rule, such editions shall be made available via download.

The Enterprise Edition includes the additional support services *hotline/advising* and the answering of *written inquiries* without removal of failures. All other editions does not include such services. Additional support services may be acquired separately. All support services are available daily Monday to Friday 9 a.m. to 4 p.m. Central European Summer Time (CEST)/ Central European Time (CET), except for holidays (North Rhine-Westphalia).

5 Final Provisions

8.1 Modifications of and amendments to this contract, including this written-form provision and representations and warranties regarding features, must be made in writing in order to be effective.

8.2 In the event that any provision hereunder should be or become wholly or partly invalid, or that this contract should contain a gap, this shall not affect the legal validity of the remaining provisions hereunder. The parties to the contract shall be obligated to replace the invalid provision by a valid provision which corresponds to the sense and purpose of the invalid provision.

8.3 This contract shall be governed by the law of the Federal Republic of Germany, the UN Convention on Contracts for the International Sale of Goods being excluded.