

License Agreement for budget123

Business to Business

1. Scope of the License

1.1 **Right of Use**

- 1.1.1 Merc IT hereby grants the Licensee a limited and non-transferable right to use the Program.
- 1.1.2 The Licensee is granted the right to use the Program for one concurrent user. User is defined in this context as all 1) Internal Users, and 2) External Users, for example, auditors and external accounting officers, but only if the intention of these External Users is to change the Licensee's data. The Licensee therefore has no right to allow such External Users to use the Program for budgeting and budget control for companies other than that of the Licensee.
- 1.1.3 To the extent that the Licensee grants access to Internal and External Users to use the Program, as specified in paragraph 1.1.2, the Licensee shall in every respect be responsible for ensuring that these users do not violate these License terms and conditions. If the Licensee does not fulfil this obligation, it shall be considered a violation of these License terms and conditions and a violation of this kind entitles Merc IT to terminate the agreement.
- 1.1.4 The Licensee's right to use the Program (and any intellectual property belonging to Merc IT) does not include any License, right, authority, mandate, or other powers to create derivative works in any way based on the Program that would lead to the use of the Program or any derivative work thereof in other programs or works.

1.2 **Updates**

- 1.2.1 The Licensor will carry out continuous updates of the Program in so far as Merc IT releases new versions. Merc IT reserves the right to discontinue maintenance of older versions.

1.3 **General Conditions of Sale and Delivery**

- 1.3.1 The License is valid for a period of 6 months and is payable 6 months in advance. The agreement shall continue thereafter for a new period of 6 months unless the agreement is terminated, cf. paragraph 8.
- 1.3.2 The Program will be run at the operating centre located at the Licensor's subcontractor's address, and the conditions of this subcontract are specified in *Appendix 1* of this agreement.
- 1.3.3 Merc IT will provide the Licensee with a password to the system. The Licensee may, at its own risk, define the password. Merc IT recommends that the password consist of both letters and numbers, and that it be a minimum of 8 characters in length.

1.4 **Confidentiality**

- 1.4.1 The Licensor is in all respects not entitled to disclose confidential information about the Licensee's company that the Licensor may be familiar with.

2. Intellectual Property Rights/Copyright

- 2.1 Merc IT has full ownership of copyright, titles, and all other rights for the Program. Copyright laws and international treaty provisions protect the Program. Any breach of the rights of Merc IT or Merc IT's Licensor, including the improper management of the Program, which makes the copying of the Program's source code on behalf of third parties possible, is considered to be a material breach of these License terms and conditions and entitles Merc IT to terminate these License terms and conditions, cf. paragraph 8.2.1, and to pursue all available legal remedies.

3. Infringement of Third Party Rights

- 3.1 If a third party objects to the Licensee's use of the Program based on the claim that the use of the Program infringes the intellectual property rights of a third party (hereinafter referred to as "Infringement Claim"), then Merc IT will defend the Licensee against the Infringement Claim.
- 3.2 In the event of an Infringement Claim, Merc IT is entitled to: 1) to provide the Licensee with the right to continue using the Program, 2) resolve the claim by changing the Program or replacing the Program with other software, the functions of which are essentially the same as those of the affected Program, or 3) terminate these License terms and conditions by giving written notice and pay a sum to the Licensee equivalent to the License fee that the Licensee has actually paid for the License for the Program. Merc IT is only obligated to pay the indicated sum to the Licensee, if the Infringement Claim is brought against the Licensee within a period of five (5) years from the Licensee's acceptance of these License terms and conditions.
- 3.3 The limited warranty set out in paragraphs 3.1 and 3.2 shall not apply if the Infringement Claim arises as a result of an accident, abuse, or misuse. Any modification to the Program undertaken by anyone other than Merc IT shall void the warranty for any part of the Program that is modified or affected by such modifications.

4. Limited Warranty

- 4.1 If the Licensee delivers written documentation within a period of six (6) months after the Licensee's acceptance of these License terms and conditions that demonstrates that the Program in essence does not work, and that there are significant errors in the Program, (i.e. an error that is characterised by the fact that one or several of the Licensee's core business functions cannot be performed because the error makes operation of the Program unfeasible), then Merc IT shall 1) deliver a new version of the Program without the errors free of charge, 2) correct the errors free of charge, or 3) refund the License fee that the Licensee has actually paid for the Program. The fulfilment of Merc IT's obligations under this paragraph, 4.1, comprises Merc IT's total liability to pay compensation and Merc IT's full obligation to the Licensee as a result of any errors in the Program, and the Licensee shall make no other claims against Merc IT as a result of such errors. Error correction equates to the issuing of instructions or usage methods ("work arounds"), whereupon the errors do not have a significant impact on the Licensee's use of the Program. This limited warranty is not applicable if the error in the Program is caused as a result of an accident, abuse, or misuse. Any modification to the Program undertaken by anyone other than Merc IT shall void the warranty for any part of the Program that is modified or affected by such modifications.
- 4.2 The Program is Licensed on an as-is basis and to the fullest extent permitted by law, and Merc IT provides no form of guarantee or assurances and does not accept any other terms and conditions in relation to the Program. The Licensee has no right to make a claim against Merc IT if the Program contains errors or inconveniences that are not covered by paragraph 4.1 and Merc IT does not correct these, or if operation and use of the Program in an uninterrupted or error free state is not possible.

5. Limitation of Liability

- 5.1 Merc IT is in no way under any circumstances liable for the loss of anticipated profits, the loss of data, damage to records or data, or any other form of indirect, clearly documented accidental loss, consequential loss, or damage (jointly referred to as "losses") (which for the purposes of these License terms and conditions shall be deemed to include, but not limited to, loss of goodwill, or loss as a result of any other form of business interruption), arising due to or in connection with these License terms and conditions, or the use, or the operation of the Program or services associated with it, regardless of whether Merc IT has been advised of the possibility of such losses and whether the damage is caused inside or outside the contract. The Licensee may not demand, claim, or seek compensation from Merc IT for any of the above losses and Merc IT is not indemnified against such claims from the Licensee.
- 5.2 Merc IT disclaims any product liability resulting from loss or damage to property, which by its nature is ordinarily intended for commercial use, to the fullest extent permitted by law.
- 5.3 In all cases, regardless of circumstances, Merc IT's total liability for any loss or damage, which is a result of or in connection with these License terms and conditions or the use or operation of the Program, or services associated with it, shall be limited to the License fee that the Licensee has actually paid for the Program.
- 5.4 Merc IT is not responsible or liable for modifications or other changes to the Program or any service or support for the Program that is carried out by the Licensee or delivered by a third party. Additionally, Merc IT is not responsible or liable for defects caused by external factors, including other programs, or as a result of integration or interaction between the Program and the Licensee's own computer environment.

6. Force Majeure

- 6.1 Neither Party is responsible for any damage caused to the other Party as a direct or indirect result of the first Party being delayed or prevented from fulfilling its obligations in relation to these License terms and conditions due to a force majeure event. Force majeure includes, but is not limited to, war and mobilisation, natural disasters, strikes, lockouts, fire, damage to production equipment, import and export regulations, and other conditions that are not in the control of the affected Party.

7. Transfer**7.1 Licensee**

- 7.1.1 The Licensee is not entitled to sell/rent/lend or otherwise transfer or reassign the right to use the Program or other rights or obligations in relation to these License terms and conditions to third parties without the prior written consent of Merc IT.

7.2 Merc IT

- 7.2.1 Merc IT reserves the right to transfer its rights and obligations under these License terms and conditions, wholly or partially.

8. Termination**8.1 Licensee**

- 8.1.1 The Licensee is entitled to terminate the License agreement with one (1) day's written notice prior to the expiry of the prepaid period.

8.2 Merc IT

- 8.2.1 If the Licensee is in material breach of these License terms and conditions, or if the Licensee violates the provision in paragraph 1.1.4, then Merc IT is entitled to terminate these License terms and conditions with immediate effect and is entitled to demand compensation in this respect under applicable law and to pursue all available legal remedies. In such an event, the Licensee shall immediately cease to use the Program and erase, remove, and destroy the Program. At the same time, Merc IT is entitled to, without further notice, remove the Licensee's access to the Program.

9. Validity

- 9.1 Any provision of these License terms and conditions remains valid as long as the Licensee retains the right to use the Program.

- 9.2 Any provision of these License terms and conditions, which by its nature extends beyond the time when these License terms and conditions expire, shall continue to apply and be binding on both the Parties.

10. Waiver

- 10.1 If the Licensee or Licensor, hereinafter called the Parties, do not use or delay the use of any right or remedy in relation to these License terms and conditions or by law, that failure or delay shall not result in a waiver of that right or remedy from that Party. The fact that a Party did not use a right or remedy available to it in relation to these License terms and conditions or in law, shall not prevent that Party from using this right or remedy again or from using another right or remedy.

11. Governing Law and Jurisdiction

- 11.1 All disputes arising out of the use of these License terms and conditions or otherwise related to these License terms and conditions shall be governed by Danish law without consideration of the principles of applicable law and shall be settled, subject to paragraph 11.2, solely by the Maritime and Commercial Court in Copenhagen. The Parties expressly accept the jurisdiction of the court and hereby disclaim the right to object to this.

- 11.2 Paragraph 11.1 does not prevent Merc IT from seeking or obtaining an injunction or pursuing other extraordinary remedies from the court of the jurisdiction. Merc IT may initiate simultaneous proceedings relating to injunctions in any number of venues, to the fullest extent permitted by law.

12. Definitions**12.1 External Users**

By this are meant all third parties to whom the Licensee has provided usernames and passwords. Such third parties are persons or entities that are not Internal Users (such as, but not limited to, the Licensee's auditor, banker, and accountant).

12.2 Internal Users

By this are meant employees or wage earners who work for the Licensee, who are authorised by the Licensee to use the Program in their work for the Licensee.

12.3 The Program

By this is meant **budget123** and all components developed for **budget123** by Merc IT or Merc IT's subcontractors.