

**CARAT (上海) 软件开发有限公司 (以下简称CARAT) 的通用业务条款和条件**  
**General Terms and Conditions of CARAT (Shanghai) Software Development Ltd.**  
(Hereinafter referred as CARAT)

CARAT 软件开发有限公司 (以下简称“CARAT”)  
通用业务条款和条件

1. CARAT 在中华人民共和国 (以下简称“中国”, 为本条款和条件之目的, 不包括香港、澳门特别行政区和台湾地区) 境内提供的所有商品和服务, 均受以下条款和条件的约束, 这些条款和条件是 CARAT 为了重复使用而制定, 并已被买方接受且适用于未来所有的商业交易。

2. 如果买方希望使用与CARAT提供的与CARAT软件 (版本为V.2016.3.0.0的, 在上海市软件行业协会注册的编号为沪RJC-2017-0003, 以下简称“CARAT 软件”) 之应用软件相关的个别商品或服务, CARAT将向买方提供下载。一旦CARAT以书面形式确认买方的商品或服务使用申请, 下载将生效。使用申请将包含CARAT提供的商品或服务标的以及买方应支付的金额。

3. 只要买方按照合同条款付款且不违反合同, 在合同存续期内, CARAT就将授予买方在一个非排他性单个权利 (“使用许可”), 在指定的时间期限内, 在常设业务机构内的一台或多台计算机上使用通过数据存储媒体提供的程序。该使用许可包含一个解锁代码, 使用期限届满后代码自动失效, 使用许可将终止, 除非使用许可被同意延期 (如果需要, 使用新的解锁代码)。如果常设业务机构内使用的是多方访问系统, 使用许可将适用于该系统的所有用户。买方有权将CARAT软件以物理形式 (即保存在数据存储介质上) 从一台计算机转移到另一台计算机上, 前提是CARAT软件始终仅在一个业务机构中使用。任何超出此范围的使用都是不允许的。特别是:

- CARAT软件或随附的书面材料不得提供给第三方或以其他方式使第三方能够访问或取得;
- CARAT软件或其部分不得被出售、再许可、转让、赠送、出租、出借、质押或作为抵押品让渡;

- 未经CARAT事先书面同意, 不得对CARAT软件进行修改、翻译、反编译、反汇编或实施逆向工程, 也不得通过其他方式确定或获取其源代码, 买方每次违约, 应支付人民币500,000元的违约金; 或者, 禁止从 CARAT软件衍生任何作品、规避或试图规避与使用 CARAT软件相关的技术限制 (例如解锁代码) 或复制书面材料 (“滥用”)。

买方仅被授予对CARAT软件的使用权, 并未被授予任何所有权。买方仅获得对物理数据存储介质的所有权。这并不包括获得对软件程序本身的权利, 包括任何副本、更新、修改或衍生作品。CARAT特别保留了对CARAT软件出版、复制、编辑和开发的所有权利。所有的CARAT软件 (包括副本、更新、修改和衍生作品) 均为CARAT的商业秘密和/或是中国和其他国家或地区的CARAT著作权或知识产权之标的; 程序的名称也受到法律的保护。

4. 作为软件维护程序的一部分, CARAT软件会根据最新的发展而持续更新。CARAT将促使CARAT软件自动向买方提供最新的版本。CARAT有权自行决定对CARAT软件进行更改或更新。产品更新 (数据和程序更新) 仅以从CARAT网站下载的形式提供给买方。买方可以使用CARAT软件进行更新。买方对自己由于未能保持足够的网络连接而未能下载更新而导致的任何损失或功能性损害承担全部责任。CARAT应买方的要求而进行的个别修改将按照CARAT的每日费率加上发生的额外支出收费。

5. 即使使用现有最好的技术, 也无法开发出能够在每个应用组合中都运行完美的计算机软件。CARAT软件的设计可以使其按照程序信息和用户说明中的描述在所有个人计算机上被使用。在准备安装时, 买方须遵守当前的技术标准。买方必须仅使用经CARAT批准的适用于CARAT软件的操作系统、数据存储介质、设备和其他设备专用附件 (“系统

环境”)。CARAT将确保数据存储介质 (DVD和/或CD-ROM) 作为初始安装的一部

分在交付时没有材料缺陷。如果发现任何材料缺陷, CARAT将在合理期间内免费更换有缺陷的数据介质。买方有义务使用可接受的备份方法定期备份数据。CARAT确保CARAT软件符合厨房设计软件的最新技术标准和要求, 并且在交付后的一年内符合用户文档中描述的功能; CARAT承诺勤勉努力使得CARAT软件尽可能安全可靠地运行、不会中断; 但是, CARAT无法随时预测或防范法律、技术和其他风险, 并在法律允许的范围对该等风险负责, 包括但不限于不可抗力、罢工、骚乱、病毒 (含木马病毒)、服务中断、数据丢失以及其他因黑客入侵、运行未经许可的第三方软件、系统不稳定、第三方服务 (例如互联网服务提供商) 或政府措施等可能造成的损失或风险。如果尽管买方操作正确, CARAT软件仍然结果不佳, CARAT将在合理期限内调查原因并修复发现的任何缺陷。如果无法纠正缺陷或交付替代品, 买方可自行决定要求降价或撤销个别合同。在法律允许的范围, 在操作不当、物理或电力过载、不合适的系统环境、不当使用、维护或服务不足 (CARAT并不对此负责)、事故或由于第三方产品或数据而导致故障的情形下, 买方不得要求赔偿, 并且买方索赔的最高限额以支付的约定使用许可之年度费用为限。

除本条款和条件第5条外, CARAT排除任何明示或默示的保证。CARAT在任何情况下都不对间接或后果性损害负责、不对收入、收益、利润、商业声誉的损失负责, 不对数据的丢失或损坏负责。

6. 如果买方向CARAT支付的费用不是一次性付款, 而是周期性付款, 在工资或其他成本发生变化的情况下, CARAT有权自下一个日历月开始对正在进行的合同的费用予以合理调整。买方应按月提前向CARAT支付费用加上法定税率的增值税, 以确保CARAT不会 (因此) 产生任何邮费或其他费用。如果买方拖欠付

款, CARAT有权根据2007年3月16日通过并颁布的《中华人民共和国物权法》对因业务关系产生的进一步义务主张留置权, 以及

按照拖欠金额每日万分之三主张违约金, 或解除合同。在违约的情况下, 其他所有法定权利均不受影响。

7. 一旦合同终止, 买方有义务免费返还CARAT软件所有的原始数据存储介质。合同终止的十天内, 原始数据存储介质需要送达CARAT办公所在地, 发出前通知CARAT相关运输方式途径。

8. 在合同期内以及合同结束后或CARAT对CARAT软件的支持和维护服务结束后两 (2) 年内, 买方必须对CARAT软件的使用保留详细和完整的记录。CARAT (或经CARAT授权的人员) 有权检查这些记录和系统环境, 以验证CARAT软件的使用是否符合这些条款和条件, 以及买方是否支付了使用CARAT软件的全部费用 (“核查”)。CARAT每年最多可进行一次审核, 且须经合理事先通知在正常工作时间内进行。如果核查发现欠款, 在不损害CARAT的任何其他权利或法律救济的情况下, 买方应在十五个工作日内向CARAT支付欠款以及合理的核查费用。

9. 当CARAT以书面形式 (“接受文件”) 接受买方书面的 “购买CARAT软件申请” (“申请文件”) 时, 合同关系开始。这些条款和条件连同申请文件和接受文件构成了合同。合同为无固定期限合同, 任何一方可在每一个日历年结束时解除合同, 但须提前六个月书面通知。如果买方未遵守或未完全遵守其合同义务, CARAT可以在不损害其他任何法定或合同权利的情况下解除合同。在其他情况下, CARAT无需说明理由即解除合同的权力不受影响。在以下情况下尤其如此:

- 买方未支付两个月许可费或在更长期间内欠款金额相当于两个月的付款金额;
- 买方无力偿付债务; 或
- 买方违反合同实质性条款。

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在买方的行为使得CARAT不能合理预期将继续该合同关系的情况下，CARAT也可以终止合同。

如未经通知即终止合同，买方必须向CARAT偿付剩余合同期限的全部许可费，减去CARAT未发生的费用。

为确保服务不中断，买方特此同意，如果CARAT位于德国的母公司授予的CARAT许

可被撤销，则买方和CARAT之间的合同应转让给CARAT德国，且相关服务应由CARAT德国继续提供。

10. 这些条款和条件在中国上海徐汇区达成一致。因此合同关系而产生的任何争议，双方应努力寻求共同可接受的解决方案；如果未达成解决方案，各方同意由合同签订地（上海市徐汇区）人民法院管辖。合同双方的所有权利和义务均载于本条款和条件以及申请文件和接受文件（即合同）中。修订和补充（文件）仅在双方以书面形式签署时

生效。合同的成立和效力及其履行受中国法律管辖，排除其冲突法条款和国际民事诉讼法。如果本合同或本通用条款和条件的个别条款无效或失效，不影响其余条款的效力。

11. 本条款和条件自2019年12月1日起生效。当买方收到书面通知以及新的条款和条件时，本条款和条件即告失效。新的条款和条款开始适用。

日期：2019年12月1日

**悦厨（上海）软件开发有限公司**

通讯地址：上海市徐汇区东安路8号青松城大酒店10层1024室

联系电话（销售和市场部）：+86（0）21 6422 8016

邮件：info@carat.cn

网址：www.carat.cn

As at: 1 December 2019

**CARAT (Shanghai) Software Development Ltd.**

Postal address:

Room No. 24, 10th Floor, Pine City, No. 8 Dongan Road, Xuhui District, Shanghai, P.R. China

Postal code: 200032

Phone (Sales and Marketing): +86 (0) 21 6422 8016

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1. All goods and services provided by CARAT in the territory of the People's Republic of China, for the purpose of these Terms and Conditions, excluding the Special Administrative Regions of Hong Kong and Macau and excluding Taiwan (hereinafter referred to as 'China') are subject to the Terms and Conditions below, which have been formulated by CARAT and are intended for repeated use, and which have been accepted by the Buyer and apply to all future business transactions.

2. If the Buyer wishes to use individual goods/services from CARAT in connection with the »CARAT SOFTWARE« application software, version V.2016.3.0.0, registered with the Shanghai Software Industry Association under the number 沪 RJC-2017-0003 ('CARAT SOFTWARE'), a download will be issued to the Buyer. The download will become effective once CARAT confirms in writing the Buyer's application to use the goods/services. The Buyer's application will contain the subject matter of the goods/services to be provided by CARAT as well as the amount to be paid by the Buyer.

3. So far as the Buyer makes payments in accordance with the terms of the contract and is not in breach of the contract, CARAT grants the Buyer the non-exclusive individual right, for the duration of the contract, to use the programs that have been made available on data storage media on one or several computers within a permanent business establishment for a specified period of time ('usage license'). The usage license contains an unlocking code that automatically becomes invalid when the use period expires, and the usage license will terminate unless an extension to the usage license (with a new unlocking code if required) is agreed. In the event that a multi-access system is used within a permanent business establishment, the usage license will apply to all users of such

system. The Buyer is entitled to transfer the CARAT SOFTWARE in physical form, i.e.

saved on data storage media, from one computer to another provided that the CARAT SOFTWARE is always used within one business establishment only. Any use above and beyond that is not permitted. In particular:

- CARAT SOFTWARE or the accompanying written material may not be given to a third party or made accessible to a third party in some other manner;
- CARAT SOFTWARE or parts thereof may not be sold, re-licensed, transferred, given away, leased, loaned out, pledged, or assigned as collateral;
- CARAT SOFTWARE may not be modified, translated, decompiled, disassembled or reverse-engineered, or the source code determined or acquired by some other means without the prior written consent of CARAT, a breach of which shall be subject to a contractual penalty of RMB 500,000 payable by the Buyer for each instance of breach; or deriving works from CARAT SOFTWARE, circumventing or trying to circumvent the technical restrictions associated with using CARAT SOFTWARE (e.g. the unlocking code), or duplicating the written material ('misuse') is prohibited.

The Buyer is granted only the right to use CARAT SOFTWARE and is granted no rights of ownership. The Buyer acquires the ownership of the physical data storage medium only. This does not include the acquisition of rights to the software programs themselves, including any copies, updates, modifications, or derivative works. CARAT reserves, in particular, all rights to publication, duplication, editing, and exploitation. All CARAT SOFTWARE, including copies,

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updates, modifications, and derivative works are trade secrets and/or the subject matter of copyright or intellectual property rights in China and other countries of CARAT; the names of programs are also protected by laws.

4. CARAT SOFTWARE is continually updated in line with the latest developments as part of the software maintenance program. CARAT will make CARAT SOFTWARE automatically available to the Buyer in the latest version. CARAT is entitled to make changes or updates to CARAT SOFTWARE at its own discretion. Product updates (data and program updates) are only available to the Buyer in the form of a download from the CARAT website. Updates can be accessed using the CARAT SOFTWARE. The Buyer is wholly responsible for any losses or functional impairments that result from failing to download updates because it has not maintained an adequate internet connection. Individual modifications at the Buyer's request will be charged at CARAT's daily rate plus any additional expenses incurred.

5. Even using the best available technology, it is not possible to develop computer software that can work perfectly in every combination of applications. CARAT SOFTWARE is designed so that it can be used on all personal computers as described in the program information and user instructions. The Buyer must comply with the current technical standards when preparing for installation. The Buyer must only use operating systems, data storage media, equipment, and other device-specific accessories for CARAT SOFTWARE ('system environment') that have been approved by CARAT. CARAT will ensure that the data storage medium (DVD and/or CD-ROM) has no material defects at the time of transfer as part of the initial installation. If any material defects are found, CARAT will replace the defective

data medium free of charge within a reasonable period. The Buyer is obliged to regularly back up data using an accepted back-up method. CARAT ensures that CARAT SOFTWARE complies with the latest standards of technology and requirements for kitchen design software, and complies with the features described in the user documentation for one year from

delivery ; CARAT guarantees that it is diligently working towards making CARAT SOFTWARE work as securely and reliably as possible without interruption; however, CARAT cannot predict or guard against legal, technical, and other risks at all times and is exempt from such risks to the extent permitted by law, including, but not limited to *force majeure*, strikes, unrest, viruses and Trojans, interruptions to service, loss of data, and other losses or risks that could occur as a result of hacking, running unlicensed third-party software, system instability, third-party services (e.g. internet service providers), or government measures, etc. If CARAT SOFTWARE delivers poor results despite proper operation by the Buyer, CARAT will investigate the causes and fix any defects that are identified within a reasonable period. If there is a failure to remedy the defect or deliver a replacement, the Buyer may demand, at its discretion, a reduction in the price or the cancellation of the individual contract. The Buyer's claims to compensation are excluded to the extent permitted by law as well as in the case of improper operation, physical or electrical overload, an unsuitable system environment, misuse, insufficient maintenance or service for which CARAT is not responsible, an accident, or faults that occur as a result of third-party products or data, and are limited to the maximum amount paid for the annual fee for the agreed usage license.

CARAT excludes all other warranties, whether expressed or implied, beyond paragraph 5 of these Terms and Conditions. CARAT is in no way liable for indirect or consequential damage, or for the loss of income, revenue,

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profit, business reputation, or for the loss or corruption of data.

6. If the amount to be paid by the Buyer to CARAT is not a one-off sum but a recurring payment, CARAT is entitled, in the event of changes to wages or other costs, to adjust the fees for ongoing contracts by an appropriate amount from the start of the next calendar month.

The fees plus value-added tax at the statutory rate are to be paid monthly in advance by the

Buyer to CARAT, ensuring that no postage costs or other expenses are incurred by CARAT. If the Buyer is in arrears with its payments, CARAT is entitled to claim a right of retention in accordance with the Property Law of the People's Republic of China adopted and promulgated on March 16, 2007 in respect of further obligations arising from the business relationship as well as a penalty of 0.03% of the amount in arrears for each day in default, or to withdraw from the contract. In case of default, other statutory rights remain unaffected.

7. Upon termination of the contract, the Buyer is obliged to return all original data storage media for CARAT SOFTWARE free of charge. Within 10 days of the termination of the contract, the original data storage media must be delivered back to CARAT's office location after notifying CARAT of the relevant method and channel of transportation.

8. The Buyer must keep detailed and complete records documenting the use of the CARAT SOFTWARE during the term of the contract and for two (2) years after the contract has ended or the support and maintenance services for CARAT SOFTWARE have ended. CARAT (or persons authorized by CARAT) are permitted to examine these records and the system environment to verify that the CARAT SOFTWARE is being used in

compliance with these Terms and Conditions and that the Buyer has paid the full fee for the CARAT SOFTWARE ('audit'). CARAT may conduct a maximum of one audit per year, which must be carried out during normal business hours and on reasonable prior notice. If the audit reveals an underpayment, the Buyer shall pay CARAT – without prejudice to any other rights or legal remedies available to CARAT – the amount of underpayment as well as reasonable expenses for the audit within 15 working days.

9. The contractual relationship commences when CARAT accepts in writing ('acceptance document') the Buyer's written 'application to purchase CARAT SOFTWARE' ('application document'). These Terms and Conditions together with the application document and acceptance document constitute the contract. The contract is concluded for an indefinite period and may be terminated by either party at the end of a calendar year subject to a period of six months' written notice. If the Buyer fails to comply or fully comply with its contractual obligations, CARAT may – without prejudice to any other statutory or contractual rights – withdraw from the contract. The right to terminate without notice for cause in other cases remains unaffected. This is particularly the case if:

- the Buyer misses two monthly license fee payments or falls into arrears in an amount equivalent to two months' payments over a longer period,
- the Buyer becomes insolvent, or
- the Buyer is in breach of material conditions of the contract.

Cause also exists for CARAT if the conduct of the Buyer is such that CARAT cannot reasonably be expected to continue the contractual relationship.

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In the event of termination without notice, the Buyer must reimburse CARAT for the full usage license for the remaining term of the contract, minus any expenses not incurred by CARAT.

To ensure uninterrupted services, the Buyer hereby agrees that, in the event that the license granted by CARAT's parent company in Germany to CARAT is revoked, the contract between the Buyer and CARAT shall be transferred to CARAT Germany, and the service shall continue to be provided by CARAT Germany.

10. These Terms and Conditions were agreed in Xuhui District, Shanghai, China.

Should any disputes arise from this contractual relationship, both parties shall strive to find a mutually acceptable solution; in the event that a solution cannot be found, the parties consent to the jurisdiction being the place where the contract was entered into (Shanghai, Xuhui District). All rights and obligations of the parties to the contract are set out in these Terms and Conditions as well as in the application document and acceptance document (contract). Amendments and additions are effective only if in writing and signed by both parties. The formation and validity of the contract and its implementation are governed by the laws of China, excluding its conflict-of-law's provisions and international civil procedure law. Should individual provisions of this contractual relationship or these General Terms and Conditions be or become invalid, this shall not affect the validity of the remaining provisions.

11. The Terms and Conditions above are effective from 1 December 2019. They will cease to be in force when the Buyer is notified in writing and sent the new Terms and Conditions. The new Terms and Conditions shall then apply from that date.

As at: 1 December 2019

**CARAT (Shanghai) Software Development Ltd.**

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日期: 2019年12月1日

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