TERMS OF SERVICE FOR WIKITUDE'S
SOFTWARE DEVELOPMENT KIT

1   GENERAL

1.1   The Wikitude Software Development Kit (hereinafter referred to as "Wikitude SDK") and ancillary services are licensed and provided to You subject to these Terms of Service (hereinafter referred to as "the Terms of Service"). This version of the Terms of Service becomes effective as of 03 December 2019 (the "Effective Date") and applies to all license purchases effected by You on or past the Effective Date. License purchases prior to the Effective Date remain subject to the Terms of Service Wikitude SDK (2018-05-03) available at https://www.wikitude.com/legal/old-legal-documents/.

1.2   Deviating or additional provisions, in particular terms and conditions used by You, do not become part of the agreement between You and Wikitude unless the contrary is expressly declared to You in writing by Wikitude.

2   DEFINITIONS

2.1   "**Accredited Academic Institution**" means public or (upon condition of public status or recognition) private universities, colleges, vocational/trade schools as well as other educational entities.

2.2   "**Affiliate**" means, with respect to any legally recognizable entity, any other such entity Controlling, Controlled by, or under common Control with such entity. "**Control**" means direct or indirect: (i) ownership of more than fifty percent (50%) of the outstanding shares; or (ii) for an entity that does not have outstanding shares, more than fifty percent (50%) of the ownership interest representing the right to make decisions for such entity.

2.3   "**Applicable Laws**" means any applicable domestic or foreign law including any statute, subordinate legislation or treaty, and the common law and equity, any applicable judgment, injunction, award or decree of any domestic or foreign legislative, executive, judicial or administrative body or person having or purporting to have jurisdiction in the relevant circumstances or instrumentality thereof including any federal, state, provincial or municipal body or entity, in each case that relate to the use of the Wikitude SDK.

2.4   "**Authorized Users**" means Your employees and/or other sub-contractors using the Wikitude SDK exclusively on computers owned or controlled by You and exclusively for the purposes covered by Your license.

2.5   "**Claims**" mean any fines, damages (general, special and punitive), legal fees, costs, charges, expenses, lost profits, attorneys' fees, engineering and other technical expert fees, settlement amounts, judgments and interest, arising from or related to any Third Party Claim, Third Party

cause of action, Third Party demand, or Third Party lawsuit, any tax or penalty, any judicial or administrative investigation, or any inquiry or proceeding or any settlement thereof.

2.6   "**Commercial License**" means any license granted to You in in return for payment of royalty fees and entitling You to distribute and/or make available Derivative Works on a commercial scale.

2.7   "**Consumer**" means any natural person who is acting for purposes which under any applicable consumer law are considered outside his/her trade, business, craft or profession.

2.8   "**Derivative Work**" means any software or other work of authorship, whether in source or object form, that is, or is part of, an application for End Users created incorporating or using otherwise the Wikitude SDK or elements thereof. "**Trial Derivative Work**" means a Derivative Work that is subject to a trial license. "**Educational Derivative Work**" means a Derivative Work that is subject to a license for Educational Purposes.

2.9   "**Device**" means each mobile computing device able to install a Derivative Work, including but not limited to smartphones or tablets.

2.10   "**Educational Purposes**" means the purpose of teaching, practicing and training within Accredited Academic Institutions. It does under no circumstances involve making available of the Wikitude SDK for use to any person that is not a member of an Accredited Academic Institution.

2.11   "**End User**" means any individual or legal entity that uses and has permission to use an application that is or contains a Derivative Work for any purpose other than software development.

2.12   "**Enterprise License**" means a Commercial License that entitles you to use the Wikitude SDK for a purpose not covered by the Limited Consumer Applications License. You specifically require an Enterprise License in the following situations: (i) You intend to use any of the Products to create an application that is a tailored solution for a specific enterprise or a specific group of enterprises or any other specific limited number of enterprises; (ii) You intend to create an application that shall be distributed via other distribution channels than those mentioned in sec. 2.14, including via distribution channels that are primarily targeting commercial customers ("Enterprise Stores") or; (iii) You only distribute your application including the Wikitude SDK via an app stores primarily targeting consumers but you intend to exceed (or have exceeded) the maximum number of installs as indicated in the Product Description.

2.13   "**Intellectual Property Rights**" means all intellectual property rights, industrial property rights and other similar rights recognized throughout the world, whether existing under statute or at common law or equity, now or hereafter in force or recognized, including: (i) copyrights, rights in trade secrets, rights in marks, patents, design rights, data base rights, rights in processes, rights in methods, moral rights, mask work rights, publicity and personality rights, and privacy rights; and (ii) any application or right to apply for any of the rights referred to in paragraph (i), and all enhancements, improvements, renewals, extensions and restorations.

2.14   "**Limited Consumer Applications License**" means a license that entitles you to create one application (Derivative Work) for the purpose of distribution of such application via public app stores that are primarily targeting Consumers, such as in particular the iTunes App Store and the Google Play Store. The Limited Consumer Applications License covers a limited number of installs, as indicated in the Product Description. For distribution exceeding the limited number of installs indicated in te Product Description You are required to acquire an Enterprise License.

2.15   "**Person**" means an individual (and the heirs, executors, administrators, or other legal representatives of an individual), partnership, joint venture, corporation, company, government (or any department or agency or instrumentality thereof), trustee, trust, unincorporated

organization, or any other legal entity of whatever kind or nature irrespective of jurisdiction of origin or formation.

2.16 "**Privacy Policy**" means Wikitude's Privacy Policy as the same may be amended, modified, supplemented or restated from time to time in accordance with its terms by Wikitude.

2.17 "**Product**" means any version of the Wikitude SDK including, if applicable subject to the Product Description, licenses, extensions, entitlement to upgrades and/or Support services as made available for You to order by Wikitude on their website. "**Product Description**" means the description of the Product you purchased by Wikitude on their website (at the time You effect Your order) and provided to You in the order confirmation Wikitude sends to You upon acceptance Your order.

2.18 "**Software**" means all computer software and accompanying documentation (including all future upgrades, additions, substitutions, and other modifications thereof).

2.19 "**Support**" means the support services for the Software provided by Wikitude during the respective Support period; You may or may not be entitled to Support subject to the Product You ordered (see Product Description). Regular support hours are Monday to Friday from 9:00 AM to 5:00 PM (CET/CEST), no Support is provided on Saturday, Sunday and recognized public and bank holidays in Austria. Wikitude reserves the right to limit or suspend the Support subject to prior announcement on up to seven working days per year. You will be pre-notified about working days with limited or suspended service at least one week ahead.

2.20 "**StartUp Company**" means a company that fulfills the following criteria: (i) the company has been set up less than two years ago; (ii) all shareholders are natural persons; (iii) the total of company's gross revenues and received funds in the last financial year did not exceed € 100,000.00 (hundred thousand Euro).

2.21 "**StartUp License**" means a Commercial License only available to a StartUp Company for creation of one or more Derivative Works (applications) for own use or for one defined customer that is also a StartUp Company.

2.22 "**Third Party**" means any person that is neither You nor Wikitude nor an Authorized User.

2.23 "**Third Party Software**" means any Software that is subject to Intellectual Property Rights of a Third Party.

2.24 "**Trader**" means any natural person or any legal person, irrespective of whether privately or publicly owned, who is acting, including through any other person acting in his name or on his behalf, for purposes relating to his trade, business, craft or profession.

2.25 "**Multiple Consumer Application License**": means a license that entitles You to create and distribute the number of applications (Derivate Works) specified in the Product Description of Your Multiple Consumer Application License for one specific client of Yours. You are required to purchase a separate Multiple Consumer Application License for every client of Yours for who you wish to be entitled to create a multiple number of applications (Derivative Works). The respective client needs to be indicated as the beneficiary of the Multiple Consumer Application License. The Multiple Consumer Application License may not be used for creating applications (Derivative Works) for any other person or legal entity than the indicated client.

2.26 "**Wikitude**" means Wikitude GmbH, Schrannengasse 6, 5020 Salzburg, Austria.

2.27 "**Wikitude Software Development Kit**" or "**Wikitude SDK**" means software developed by Wikitude, which enables You to integrate augmented reality (AR) views into Your applications. This software may be incorporated by You in Your Derivative Works and therefore may be also

provided to Your end costumer under the provisions of the Terms of Service. The Wikitude SDK consists of:

a) Wikitude SDK library – the actual binary file;
b) Wikitude SDK sample code;
c) Wikitude SDK sample content; and
d) Wikitude SDK documentation.

2.28 „**You**" (or "**Your**") means any individual or legal entity that orders and/or uses a Product, including by distributing and/or otherwise making available Derivative Works, and exercises permissions granted by the Terms of Service.

3 ACCEPTING THE TERMS OF SERVICE

3.1 If You do not wish to be bound by the Terms of Service, You may not use the Wikitude SDK. To use the Wikitude SDK, You must first agree to the Terms of Service.

3.2 You can accept the Terms of Service by actually using the Wikitude SDK (the use of the Wikitude SDK therefore constitutes Your acceptance of the Terms of Service from that point onwards); or clicking to accept or agree to the Terms of Service, where this option is made available to You.

3.3 If You are consenting to the Terms of Service on behalf of Your employer or other entity, You represent and warrant that You have full legal authority to bind Your employer or such entity to the Terms of Service. If You do not have the prerequisite authority, You may not accept the Terms of Service or use the Wikitude SDK on behalf of Your employer or other entity.

4 DEVELOPER ACCOUNT

4.1 You may only use the Wikitude SDK after opening a Wikitude developer account. When registering You shall provide true, accurate, current and complete information about Yourself as prompted by Wikitude's registration form. You shall maintain and promptly update the information provided upon registration to keep it true, accurate, current and complete all times.

4.2 For the purpose of creating license keys, Wikitude reserves the right to require you to register any Derivative Work created under a license granted by the Terms of Service prior to distribution or making available of such a Derivative Work.

5 WIKITUDE SDK LICENSE

5.1 General license provisions

5.1.1 *Different types of licenses*. Subject to the general license provisions (section 5.1) and the applicable additional license provisions set out below, You may use the Wikitude SDK by obtaining either

(a) a trial license for a trial version; or
(b) a license for a version for Educational Purposes; or
(c) a Commercial License for a commercial version whereas a Commercial License may either be an Enterprise License, a Limited Consumer Applications License, a Multiple Consumer Application License or a StartUp license.

of the Wikitude SDK.

5.1.2   *Grant of license.* Subject to Your full and ongoing compliance with the Terms of Service and unless expressly agreed otherwise in written form in an individual agreement between Wikitude and You, Wikitude hereby grants to You, and You accept, a limited, non-exclusive, non-transferrable, non-assignable, revocable license to use the version of the Wikitude SDK indicated in the summary of Your order and in the order confirmation only as authorized in the Terms of Service during the term defined in the Product Description(belated request of the license key by You or belated receipt of the license key due to belated payment by You will not entitle You to a higher version of the Wikitude SDK that may have been released in the meantime). Subject to the Product ordered by You (as indicated in the Product Description), the license granted to You by Wikitude may be restricted to use for creation and distribution of only a limited number of Derivative Works.

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(b)   You may copy the Wikitude SDK or parts thereof solely for the purpose of incorporating it/them into Your Derivative Works created in accordance with the Terms of Service, in particular sec. 5.1.4, below and for the purpose of distributing and making available such Derivative Works to End Users;

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5.1.4   *Limitation of the license to lawful and ethical use.* You are obliged to use the Wikitude SDK in a responsible manner and in compliance with all Applicable Laws and only for purposes that are permitted by the Terms of Service. Use of the Wikitude SDK for unlawful or unethical purposes, in particular creation of applications covering such purposes, is prohibited. If a Derivative Work You created does not meet the legal requirements of a country, region or territory, You undertake not to release, distribute or otherwise make available that Derivative Work in the respective country, region or territory. In general You may not use the Wikitude SDK to

(a)   develop or publish any application that is unlawful, harmful, threatening, abusive, harassing, tortuous, defamatory, vulgar, obscene, libelous, invasive of another's privacy, hateful, or racially, ethnically or otherwise objectionable;

(b)   harm minors in any way;

(c)   develop or publish any application that interferes with, disrupts, damages, or accesses in an unauthorized manner the servers, networks, or other properties or services of Wikitude or any Third Party including, but not limited to, mobile communications carrier;

(d)   forge or otherwise manipulate in order to disguise the origin of any application.

5.2   Additional license provisions for trial versions and versions for Educational Purposes

5.2.1   Wikitude reserves the right at any time and from time to time – at Wikitude's sole discretion - to

(a)   technically disable or limit the usage of the Wikitude SDK; and/or

(b)   revoke the license granted to You under the Terms of Service entirely or any part thereof at any time.

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(a)   contain a logo of Wikitude that will be shown in the cam view of Your application and/or;

(b)   contain a start animation that will be launched every time the application to which the Wikitude SDK has been integrated is started.

Any attempt to disable or circumvent the above measures is strictly prohibited and may lead to Your prosecution for intentional infringement of Wikitude's rights under civil as well as criminal law.

5.3   Additional license provisions for trial versions only

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5.4.1   A license of the Wikitude SDK for Educational Purposes exclusively entitles one single individual belonging to the teaching staff or being a registered student of an Accredited Academic Institution to use the Wikitude SDK;

5.4.2   Versions of the Wikitude SDK for Educational Purposes are provided for the sole purpose of enabling the teaching staff and the students of Accredited Academic Institutions to use the Wikitude SDK strictly limited to Educational Purposes.

5.4.3   Use of a version for Educational Purposes for any other purposes, in particular any commercial purposes is strictly prohibited and may lead to Your prosecution for intentional infringement of Wikitude's rights under civil as well as criminal law.

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5.5.4   Upon acceptance of the Terms of Service You may obtain one or more license keys by paying the Product license fee indicated in the Product Description. License orders are final, Wikitude does not refund license fees. You understand that after payment You will have no recourse for receiving a full or partial refund of the license fee, unless the Product Description includes or makes reference to a return policy of Wikitude.

5.5.5   Wikitude reserves the right to examine whether you meet the criteria for a Commercial License. In particular, if you acquired a StartUp License Wikitude reserves the right to request submission of documents evidencing the criteria for a StartUp License, such as in particular commercial register extracts, statutes or other documents indicating the ownership structure of Your Company, annual balance sheet or profit and loss account.

5.6   Prevention of unauthorized use

5.6.1   Wikitude is entitled to make the grant of a license subject to use of a license key provided to You by Wikitude. Unless otherwise provided herein, the Wikitude SDK does not track End User behavior or otherwise collect personal data. You acknowledge and consent that, unless otherwise agreed in a separate agreement, applications based on the Wikitude SDK may communicate certain information, including information about End User Devices on which they are installed, to servers of Wikitude for the purpose of license verification regarding Your use of the Products for Derivative Works. Such communication may include the following information:

- **appID***:* information on the application (Android application id, iOS bundle identifier, package name);
- **license type***:* information on the type of license of the Wikitude SDK:
- **SDK Version**: information on the version of the Wikitude SDK;

- **operating system**: information on the operating system the application is running on (e.g. IOS, Android);

- **platform**: information on the internal ID of the Product;

- **manufacturer**: information on the manufacturer of the Device;

- **model**: information on the Device type;

For some versions of the Wikitude SDK the following information may be communicated in addition to the above mentioned information (see: https://www.wikitude.com/external/doc/SDKTrackingInfo.pdf).

- **License ID**: information on the license key;

- **Device ID**: a unique ID per End User Device and app developer/publisher.

Communication of information from End User Devices as indicated above to servers of Wikitude may require justification under the Applicable Laws in some jurisdictions. You acknowledge and hereby agree to take all measures required to gather such justification in accordance with all Applicable Laws including all applicable telecommunication, data protection and other privacy laws.

5.6.2   Sharing a license key provided to You by Wikitude with any Third Party is strictly prohibited and may lead to Your Prosecution for intentional infringement of Wikitude's rights under civil as well as criminal law. If Your license key is stolen or if you suspect any unauthorized use of the license key you undertake to promptly notify Wikitude. You undertake to cooperate with and assist Wikitude in preventing, identifying and prosecuting any unauthorized use of license keys and/or the Wikitude SDK.

5.7   Intellectual Property

5.7.1   Wikitude agrees that it obtains no right, title or interest from You (or Your licensors) under the Terms of Service in or to any software applications that You develop using the Wikitude SDK, including any intellectual property rights that subsist in those applications.

5.7.2   Except for the limited and revocable license granted to You herein, the Terms of Service do not transfer any Intellectual Property Rights from Wikitude to You or to any Third Parties. The Terms of Service do not grant You any right or license to use trademarks or any other protected designations of Wikitude.

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5.8   Third Party Software

5.8.1   The Wikitude SDK may be provided to You in a way that includes Third Party Software. If so, reference to such Third Party Software and the respective license provisions is included in the Product Description and/or in the technical documentation of the respective Product; all technical documentations can be found on the website of Wikitude. Third Party Software included in a Product for which You acquired a Commercial License shall never form an obstacle to commercial use of an application You created; You shall read and comply with the terms by the right holder(s) of such Third Party Software.

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6   PROVISION OF THE WIKITUDE SDK

6.1   You acknowledge and hereby accept that the nature and form of the Wikitude SDK may be subject to temporary and/or permanent changes without prior notice (including but not limited to updates, bug fixes and patches) and that future versions of the Wikitude SDK may be incompatible with applications developed on previous versions of the Wikitude SDK.

6.2   Wikitude reserves the right at any time and from time to time – at Wikitude's sole discretion - to stop providing the Wikitude SDK, features within the Wikitude SDK, extensions, plugins or services to You or to any Third Party with or without prior notice.

6.3   You acknowledge and agree that Wikitude shall not be liable to You or to any Third Party for any modification of the nature and form of the Wikitude SDK or for stopping to provide the Wikitude SDK.

6.4   You understand that You have under no circumstances no legal Claim whatsoever by which Wikitude would be obliged to provide You with technical support concerning the Wikitude SDK and it's parts, except explicitly stated otherwise in the Product Description or agreed individually in a separate written agreement.

7   CONFIDENTIALITY

7.1   Information You receive in the course of buying and using a Product and its components, in particular the Wikitude SDK, is considered confidential, including, but not limited to, information on content, functionality and range of functions of the Wikitude SDK. You shall treat all such information as confidential and transfer this confidentiality obligations to all Authorized Users. No confidential information may be disclosed to Third Parties without the prior written consent of Wikitude.

7.2   The foregoing obligation, however, shall not apply to any part of the information that (i) has been disclosed in publicly available sources of information, (ii) is, through none of Your or Your Authorized Users' fault, hereafter disclosed in publicly available sources of information, (iii) is now in Your possession without any obligation of confidentiality, or (iv) has been or is hereafter rightfully disclosed to You by a Third Party, but only to the extent that the use or disclosure thereof has been or is rightfully authorized by that Third Party.

8   PRIVACY

8.1   You must comply with all Applicable Laws including all applicable privacy laws; and with Wikitude's publicly disseminated Privacy Policy; and with all provisions of the „Google Analytics Terms of Service" at any time. You shall be solely responsible to obtain all necessary consents and approvals of Your End Users. In particular You are responsible to provide End Users with all

information required and to obtain all required consents in the required form under Applicable Law.

8.2   If Your Derivative Work is an application that collects, uses, processes, transmits and/or discloses End User Data, You represent and warrant that You will have obtained all necessary consents from the End user to the collection, use, processing, transmission and/or disclosure of such information. In addition, the use of location data should be limited solely as necessary to provide services or functionality for Your application (e.g., the use of collected personal information for marketing purposes is prohibited, unless permitted under Applicable Law and expressly consented to by the End User). If Your Derivative Work stores personal or sensitive information provided by users, it must do so securely.

8.3   Wikitude does not track individual usage of the applications (Derivative Works) You created unless the following constitutes such tracking under the Applicable Laws of the jurisdictions in which Your Derivative Works are made available to End Users. You acknowledge and hereby agree that Wikitude may anonymously track and report the distribution of Your Derivative Works through use of information set out in section 5.6.1. You must indicate to Your End Users, either in the app itself or in Your terms of service, that the distribution of Your application may be anonymously tracked and reported and You must provide such information to the users. If required by Applicable Law, You must obtain the End User's consent hereto.

8.4   In particular if You intend to distribute or make available within the European Union Derivative Works that gain access to any other information stored in the mobile device of the End User than information technically required for the purpose of enabling You to provide a service requested by the End-User, You undertake to get the End User's consent based on the required comprehensive information, including but not limited to the type of collected information, the purposes for which such information is being collected, the way it is being used and, if applicable the Third Parties to which such information will be transmitted. The aforesaid is applicable to any information irrespective of such information qualifying as "personal data" or not. You are aware that under the EU privacy regime You need to meet in particular the following requirements:

(a)   Ask for consent before the app starts to retrieve or place information on the device, i.e., before installation of the app. Such consent has to be freely given, specific and informed;

(b)   ask for granular consent for each type of data the app will access; at least, if accessed, for the following categories: Location, Contacts, Unique Device Identifier, Identity of the data subject, Identity of the phone, Credit card and payment data, Telephony and SMS, Browsing history, Email, Social networks credentials and Biometrics;

(c)   be aware that consent does not legitimize excessive or disproportionate data processing;

(d)   provide well-defined and comprehensible purposes of the data processing in advance to installation of the app, and not change these purposes without renewed consent;

(e)   provide comprehensive information if the data will be used for third party purposes, such as advertising or analytics;

(f)   allow users to revoke their consent and uninstall the app, and delete data where appropriate;

(g)   respect the principle of data minimization and only collect those data that are strictly necessary to perform the desired functionality; take the necessary organizational and technical measures to ensure the protection of the personal data You process, at all stages of the design and implementation of the application (privacy by design);

(h)   provide a single point of contact for the users of the application. Provide a readable, understandable and easily accessible privacy policy that in particular fulfils the information duties set out in Art. 12 to 14 of the EU General Data Protection Regulation (GDPR);

(i)   enable app users to exercise their rights as a data subject as defined in the Art. 15 et seq of the GDPR (in particular, access, rectification, erasure and their right to object to data processing) and inform them about the existence of these mechanisms;

(j)   define a reasonable retention period for data collected with the app and predefine a period of inactivity after which the account will be treated as expired;

(k)　with regard to apps aimed at children: pay attention to the age limit defining children or minors in Art. 8 GDPR and in national legislation, choose the most restrictive data processing approach in full respect of the principles of data minimization and purpose limitation, refrain from processing children's data for behavioural advertising purposes, either directly or indirectly and refrain from collecting data through the children about their relatives and/or friends.

8.5　If any consent from the End User to the collection, use, processing, transmission and/or disclosure of such End User Data is denied or withdrawn, You may not collect, use, process, transmit and/or disclose the End User Data or perform any other actions for which the End Users consent has been denied or withdrawn.

9　WAIVER OF VOIDABILITY

9.1　VOIDABILITY OF THE CONTRACT FOR MISTAKE (MEANING THAT YOUR DECLARATION OF INTENT UPON ORDERING A PRODUCT, WAS GIVEN UNAWARE OR IN ERROR ABOUT ITS CONTENTS OR IN LACK OF INTENTION OF MAKING A DECLARATION WITH THIS CONTENT) IS EXCLUDED.

9.2　VOIDAVILITY FOR LAESIO ENORMIS (MEANING THAT THE VALUE OF THE ORDERED SERVICES IS LESS THAN HALF OF THE FAIR VALUE OF THE CONSIDERATION) IS EXCLUDED.

10　DISCLAIMER OF WARRANTIES

10.1　YOU EXPRESSLY UNDERSTAND AND AGREE THE FOLLOWING:

10.2　THE WIKITUDE SDK IS PROVIDED ON AN „AS IS" AND „AS AVAILABLE" BASIS.

10.3　YOUR USE OF THE WIKITUDE SDK IS AT YOUR SOLE RISK. WIKITUDE EXPRESSLY DISCLAIMS ALL WARRANTIES, ENDORSEMENTS, GUARANTEES, CONDITIONS AND REPRESENTATIONS, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY CONDITIONS, ENDORSEMENTS, GUARANTEES, REPRESENTATIONS OR WARRANTIES OF DURABILITY, MERCHANTABILITY, MERCHANTABLE QUALITY, SATISFACTORY QUALITY, ACCURACY, TITLE, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE OR USE, OR ARISING FROM A STATUTE OR CUSTOM OR A COURSE OF DEALING OR USAGE OF TRADE.

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