

General Terms and Conditions of Business of ATOSS Software AG

– hereinafter referred to as the "COMPANY" –

Am Moosfeld 3 · 81829 Munich · Telephone +49. 89. 4 27 71-0 · Fax +49. 89. 4 27 71-100 · www.atoss.com

Software licenses

§ 1 Object of the agreement

The COMPANY shall grant to the CUSTOMER a perpetual but nevertheless nontransferable and non-exclusive right to the use of the programs described in the relevant individual agreement and in the relevantly described scope on the following terms and conditions.

The contractual services shall be listed conclusively in the relevant individual agreement. An individual agreement shall arise as the result of order confirmation and acceptance of license material by the CUSTOMER, or when both the CUSTOMER and the COMPANY sign a license agreement. The date on which the acceptance declaration or signed license agreement is delivered to the COMPANY shall be deemed to be the date of the agreement.

§ 2 Scope of the right of use

1. Use

Use of the license material refers to each entire or partial copying (data reading) of machine-readable license material on a computer for the purpose of processing instructions or data contained therein. All programs - with the exception of programs operated on separate servers for technical reasons according to the relevant program description - must be stored on a central computer or in a defined cluster configuration (hereinafter referred to jointly as "Particular Machine"). The license material may be used on peripheral units (client) through access to the Particular Machine or the relevant server as part of the relevant license model. Use on further Particular Machines besides the Particular Machine designated in the individual agreement or specified as a result of installation of the license material is permitted only according to a previously concluded ancillary license. If the Particular Machine cannot be used, use is temporarily permitted on another machine. If the CUSTOMER exchanges the Particular Machine for another machine, this other machine shall be accepted as the Particular Machine by modification of the agreement at the request of the CUSTOMER. The right of use shall also extend to the requisite use of the documentation relating to the licensing material.

The right of use shall be subject to the following restrictions:

The use of the programs shall be restricted to supporting the CUSTOMER's internal business operations and those of group companies to which it is related. Use for the purposes of supporting the business operations of a third party shall require a separate agreement.

The CUSTOMER may not issue sub-licenses without the COMPANY's prior written consent, and may not

- a) lease, lend or transfer the programs as part of IT services, particularly as part of the operation of a computing center or of an outsourcing operation or as part of time sharing agreements or in any other way as part of temporary use, or to use the programs for third-party purposes, or to allow third parties to use the programs.
- b) use the programs to develop proprietary programs.

The granting of the right of use shall be subject to a suspensive condition by the conclusion of an individual agreement as well as the timely payment of license fees. The COMPANY reserves the right to the ownership of the contractual objects (e.g. data carrier media, manual) until the complete settlement of the receivable.

The right of use shall also extend to the requisite use of the program specification relating to the programs (documentation and manuals).

The CUSTOMER is entitled to prepare a copy of the machine-readable license material for the purposes of data security. The CUSTOMER shall also be entitled to use the license material for tests, archiving and other non-productive purposes

on a backup server. Manuals may be reproduced for in-house purposes.

2. License models

The programs shall be licensed on the basis of various license models described below. The relevant, agreed license model per product or module shall be derived from the individual agreement. Adherence to the provisions of the license shall be partially secured by technical appliances (connection codes, dongles etc).

a) *License model based on employee master records:* If licensing is based on employee master records, use shall be restricted to a particular number of employee master records. The term employee master record refers to the master records stored in the database. In this respect, the term "active employee master records" refers solely to the master records stored in the database relating to employees with whom the CUSTOMER has entered into employment contracts at the relevant date, or who render services for the CUSTOMER as employees of other companies, and who are allocated to their own master record within the database. The term "inactive employee master records" refers to master records stored in the database relating to employees who have already left the workforce, and whose data the CUSTOMER retains for archiving purposes or to prepare long-run analyses. Solely reading rights exist with respect to data arising from inactive employee master records, and, in particular, no modification of these data is permitted.

b) *Workplace-based license model:* If licensing is performed on the basis of workplaces, use is restricted to a particular number of workplaces. Workplace-based licensing is performed either on the basis of single user licenses or on the basis of a particular number of workplaces which have simultaneous access to the Particular Machine or an approved server (concurrent user licenses).

b1) *Single user license:* In the case of a single user license agreement, the CUSTOMER is solely entitled to use the license material for a particular number of workplaces. The software must be deleted completely from other workplaces before use on further workplaces so that, in overall terms, the particular number of workplaces is not exceeded.

b2) *Concurrent user licenses:* In this instance, the CUSTOMER is solely entitled to use the license material through the simultaneous access of a particular number of workplaces (concurrent users) on the Particular Machine or the designated server(s).

c) *Named user license model:* In the case of licensing on the basis of named users, use is restricted to a particular number of users. In this instance, the CUSTOMER is entitled to the restricted use of the license material for a designated number of users who are approved to use the relevant module. The named users may be deleted at any time, and replaced by a corresponding number of users approved for the relevant module.

d) *Terminal-based license model:* If licensing is based on the connection of a particular number of logging terminals or other hardware, use is restricted to a particular number of external hardware appliances to which the product or module is connected.

e) *Other license models:* Other license models must be agreed in the individual agreement.

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3. Object code license

License material is supplied exclusively in the object code version. Even a partial conversion into source code and its processing is not permitted. The CUSTOMER is nevertheless entitled to combine machine-readable license material with other programs as part of the mandatory provisions of the Copyright Act to produce inter-operability with other systems.

The CUSTOMER is not permitted to view the source code. If requested by the CUSTOMER, the relevant current version of the source code and the related internal documentation can be lodged on a sealed data carrier medium with a generally recognized depository centre (e.g. TÜV Product Service GmbH, Munich). The CUSTOMER is solely entitled in one of the following cases to use the source code version of the licensed programs, and exclusively for defect elimination, adjustment of the licensed programs to modified requirements, further development or other maintenance works:

- a) Insolvency proceedings with respect to the COMPANY's assets have commenced, or a corresponding petition has been declined due to lack of funds (presentation of a certified commercial register extract).
- b) The COMPANY has been deleted due to lack of assets, or a liquidation resolution has been entered in the commercial register (presentation of a certified commercial register extract).
- c) Written consent of the COMPANY to use the source code version of the licensed programs.

Irrespective of the above regulations, the CUSTOMER is prohibited in all cases from any commercial use of the source code version of the licensed programs.

§ 3 Securing rights to the license materials

All rights to the license material, including all complete or partial copies of the machine-readable license material produced by the CUSTOMER, even if it is connected with other programs in processed, translated or unchanged or processed form, shall remain with the COMPANY, irrespective of the CUSTOMER's ownership of the record carrier. The CUSTOMER is obligated to attach the COMPANY's copyright mark to all these copies.

The CUSTOMER is obligated not to make the license material, including copies of any type, accessible to third parties (including other licensees of the relevant program). This also applies for the instance of a complete or partial sale or windup of the CUSTOMER's enterprise. Employees of the CUSTOMER or COMPANY shall be deemed not to be third parties, as well as other persons at the CUSTOMER's enterprise to the extent that they are obligated to the contractual use of the license program.

§ 4 Delivery

Delivery shall be in the form of the delivery of the license material on machine-readable record carriers within the scope of the order confirmation/license agreement. If required, the data carrier shall contain the software in several versions, which are activated by a release code (key).

At the COMPANY's election, the delivery of the license material may also occur through the provision of the license material on a server and transfer of the information required for download to the CUSTOMER.

The COMPANY shall perform the installation only according to a service that shall be mandated separately, and which shall incur costs accordingly.

The COMPANY shall not be responsible for either the operation or the administration of third-party products. Third-party products in this sense refer to all hardware and software components acquired outside the license agreements, irrespective of whether they are required to operate the COMPANY's software.

Examples:

- Hardware (servers etc)
- Network
- Operating system
- Database
- Web servers

The CUSTOMER is correspondingly responsible for the installation, administration and functionality of these products. The integration of patches and updates, data security etc. shall be the responsibility of the CUSTOMER.

If required, the COMPANY shall nominate firms and contacts to carry out the above-mentioned tasks. In exceptional cases, the COMPANY may also be mandated to install these third-party products. The warranty for third-party products shall be according to the terms of the relevant manufacturer.

Above and beyond the warranty pursuant to the following figure 6, the COMPANY shall provide no warranty that the supplied license material is free of viruses. The COMPANY shall nevertheless declare that it has no knowledge of viruses within the supplied license material. The COMPANY shall check data carriers before delivery using generally available virus scanners that correspond to the relevant present state of technology, as to whether the license material or data carriers contain viruses.

§ 5 Payment, payment modalities

Payment shall consist of a one-off license fee. The one-off license fee shall fall due for payment with the delivery of the license material as a consideration for the time-unlimited granting of the right of use.

All invoices shall be payable within 10 days following the invoice date, and without deduction. The VAT shall be invoiced separately using the VAT rate applicable at the time of the service.

§ 6 Warranty

The COMPANY shall guarantee that the programs essentially satisfy the functions described in the documentation if they are used on the platform designated in the individual agreement according to the documentation.

Warranty claims shall not extend to programs that the CUSTOMER modifies, or that the CUSTOMER fails to utilize in the system environments described in the product specification, unless the CUSTOMER proves that this was not the reason for the defect. The reproducibility or demonstrability of the defects shall form the precondition for warranty claims. The CUS-

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CUSTOMER must report defects immediately by providing information known to it and which allows the defect to be identified, and must take measures to a requisite extent to alleviate the identification of the defects and their causes.

Following proper reporting, the COMPANY is initially entitled to make subsequent satisfaction of the order by removing or circumventing the defect, or by the delivery of defect-free license material. Defect rectification shall be effected by forwarding a data carrier medium bearing a version free of defects, which the CUSTOMER shall install. To the extent that it is technically possible, the COMPANY shall also be entitled to provide the defect-free version to the CUSTOMER by download version, instead of by sending a data carrier medium. If the subsequent satisfaction of the order fails to occur within an appropriate period, or the COMPANY fails to eliminate or circumvent a significant divergence from the product specification within an appropriate time period, and in such a way that the program can be used by the CUSTOMER, the CUSTOMER shall be entitled to withdraw from the agreement, or to demand a reduction of the license fees, and, if legal prerequisites are present, also demand compensation for damages along with withdrawal.

The CUSTOMER shall support the COMPANY to an appropriate extent in the elimination of defects. If it is impossible to eliminate defects with an appropriate level of expense, the COMPANY, with respect to the related programs, shall be entitled to withdraw from the agreement irrespective of any claims on the part of the CUSTOMER.

Warranty claims shall be limited to a period of 12 months following delivery.

§ 7 Conditions of use

Each program shall be developed for use on particular machine types and for operation together with other particular equipment and programs by the COMPANY. The system requirements for the use of the programs shall be described in the documentation, and will be ensured by the CUSTOMER. The CUSTOMER must state any specific conditions of use that it has in advance in writing, which the COMPANY must confirm in writing. To the extent that no separate statement is made, the related statements made on this topic in the COMPANY's corresponding documentation shall apply. The warranty obligation shall lapse if a program is used under any conditions other than these conditions of use.

§ 8 Liability

Irrespective of legal reason, the COMPANY's liability shall be limited to €25,000.00 or the one-off fee for the license material, which has caused the damage, or which forms the object of the claim. The higher amount shall apply in each case.

The COMPANY shall not be liable for lost earnings, unrealized cost-savings, damages arising from third-party claims and other direct and indirect losses, as well as for recorded data. Paragraph 9 shall be hereby unaffected.

The above liability limits and liability exclusions shall not apply for damages based on a guarantee, the omission of a guaranteed characteristic, the malicious concealment of defects, or on an infringement of key contractual obligations jeopardizing the purpose of the agreement (cardinal duties), and for damages which the COMPANY or its vicarious agents have caused intentionally or as the result of gross negligence, or were caused as the result of slight negligence and have resulted in damages arising from injury to life, body or health.

§ 9 Industrial property rights and third-party copyrights

The COMPANY shall defend the CUSTOMER against all claims derived from an infringement of an industrial property right or copyright as the result of contractually used license material within the scope of the agreement, and adopt from the CUSTOMER costs and damage compensation amounts imposed by a court as part of figure 8, to the extent that the CUSTOMER has immediately informed the COMPANY in writing of such claims, and all defense measures and settlement negotiations are reserved for the COMPANY. If such claims are asserted or expected, the COMPANY may modify or exchange the license material at its cost. If this, or the securing of a right to use, is impossible with appropriate expense, each of the contractual parties may cancel the related license material without notice. In this instance, the COMPANY shall be liable to the CUSTOMER for damages directly arising from the cancellation according to figure 8.

The COMPANY shall in no way be liable if third-party claims are based on the fact that the license material was not used in a valid, unmodified version, or together with programs not supplied by the COMPANY under conditions of use not designated under figure 7.

§ 10 Limitation of actions

Claims arising from figures 8 and 9 shall be subject to a limitation period of one year from the time when the circumstances giving rise to the claim became known, or from the date on which the CUSTOMER would have become aware of this matter without gross negligence, at the latest, however, five years following the delivery of the license material. Limitation of actions in the case of liability as the result of intentional actions shall be according to statutory regulations.

§ 11 Prohibition of use

The COMPANY is entitled to prohibit the use of the license material given the existence of an important reason. Important reasons shall comprise the following, in particular: (a) infringement against the right of use regulations according to figures 1 and 2 of this agreement, and the fruitless expiry of a period of 10 days following warning; (b) petition for the opening of insolvency proceedings relating to the CUSTOMER's assets, or discontinuation of payments.

§ 12 Inspection right

The CUSTOMER shall grant the COMPANY the right to inspect adherence to the license terms by an expert obligated to confidentiality, or by remote access. The CUSTOMER shall support the expert to the requisite extent during the inspection, and shall ensure that the inspection may proceed unhindered. All examinations by an expert or remote access must be notified at least five working days in advance. The CUSTOMER must bear the costs of the examination if an infringement of the license is discovered during the investigation. In all instances of infringement against the provisions of the license agreement, the CUSTOMER is obligated to pay license fee arrears on the basis of the COMPANY's relevant valid price list.

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§ 13 Data protection

The CUSTOMER shall ensure that the COMPANY is informed of all relevant matters above and beyond statutory regulations that the COMPANY is required to know for data protection and confidentiality reasons. The COMPANY shall ensure that all persons entrusted with the processing and satisfaction of the agreement adhere to data protection terms. Both the CUSTOMER and the COMPANY shall be obligated to treat with confidentiality all confidential information, and business and operating secrets acquired as part of the contractual agreement, and, in particular, not to forward them to third parties, or to reuse them for purposes other than the contractual purposes.

§ 14 Written form requirement, legal system, place of jurisdiction

Modifications and supplements shall require written form for them to be effective. Contrary business terms on the part of the CUSTOMER shall not be applicable. Exclusively German law shall be applicable to this agreement; application of the "UN Sales Convention" (United Nations Convention on Contracts for the International Sale of Goods) shall be expressly excluded. The location for the satisfaction of all obligations arising from this agreement, and the exclusive place of jurisdiction, shall be Munich.

§ 15 Safeguarding clause

Should individual provisions prove ineffective, the efficacy of the remaining provisions shall be hereby unaffected. The parties shall cooperate in order to replace ineffective regulations with such regulations that correspond as far as possible to the ineffective provisions.