

General Terms of Software Licenses

granted by MID GmbH, Kressengartenstr. 10, 90402 Nuremberg, Germany (“Licensor”)

I. Preamble

1. General Introduction

Licensor develops and distributes software products either by itself or using third parties. Within the product line “Innovator”, Licensor distributes application development software as well as software for the modeling of business processes which are executable under several operating systems. The Licensee acquires the license solely for his own, internal use of the contract product- not for other purposes or for resale.

2. Definitions

For the purposes of the software license agreement (“License Agreement”) between Licensor and Licensee as well as for the entire business relations between Licensor and Licensee, the following terms shall have the following meanings.

License: A software that encompasses one or more workplaces for one or more operating system platforms within a defined operational area (corporation, division, department or similar). The License Repository stored on the respective License Server identifies the legitimate workplace (computer), the number of partial licenses and their scope as well as the expiry date (for test versions and separated single licenses) of the licensed software. The License Repository also contains information with regard to the platform license and the person responsible for the license..

License Server: A host bound program which allows the administration of the Licenses indicated in the product description.

License Repository: Data pool of the License Server according to the product certificate.

Release: Technically improved version without or without major functionality enhancements which primarily serves to fix defects. The changes do not generally leads to an amendment of the technical documentation.

Software Alternative: Fixed release for an error that only occurs under certain circumstances, e.g. with specific operating systems.

Update: Delivery of a more recent/current release.

Upgrade: Delivery of a more recent/current version.

Version: Software of a specified generation. New versions contain an amendment of the technical as well as of the functional level. The amended functionality generally leads to changes in the technical documentation.

Version Number: The complete version number of the product is made up of a max. of four digits, separated by points. The first and second digits denote the version number; the third, the release number and the fourth, the build number.

3. Protection against Unauthorized Use

The software is protected against unauthorized use. In order to make the product functional, a password is required which will be indicated to Licensee by Licensor. The copy protection may also be effected by other means.

II. Grant of License

1. Rights of Licensee

1.1. Right to Use

Upon conclusion of the License Agreement, Licensee acquires 60 days right to use the installed software product. Upon payment of the agreed compensation when buying a license, Licensee acquires a non-exclusive, unlimited right to use the software or upon conclusion of a Subscription License Agreement (lease), limited right to use the software on the contractual quantity of software products according to the product certificate. The software is delivered to Licensee in machine readable form only.

1.2. General Scope

The right to use the software comprises the right to create back-up copies of the software to the extent necessary. Moreover, Licensee acquires physical ownership of all manuals, data carriers and copy protection mechanisms delivered by Licensor to Licensee relating to the software.

2. Reservations and Exploitation Rights

2.1. Copyrights, Editing Rights, Duplication Rights

Licensee acknowledges and agrees that the software is subject to copyrights. Licensee expressly acknowledges all such copyrights and other intellectual property rights of Licensor and third parties relating to the software.

All copyrights, editing rights, duplication rights and exploitation rights as well as all other rights relating to the software remain with Licensor.

2.2. Source Codes

In particular, Licensee does not acquire any rights in and to the source codes of the software. As a result, Licensee is not permitted to engage in any reverse engineering or decompilation or any other editing or change of the software save for Licensee’s rights following from § 69e UrhG [Copyright Act].

2.3. Transfer and Resale

Licensee shall not be entitled to transfer its rights to use the software to any third party without the prior written consent of Licensor, whether with or without compensation and whether for a fixed or indefinite period. In any of the aforementioned cases, Licensor shall not be obliged to enter into software

service agreements with any third party or to make support and upgrade services available to any third party.

3. Scope of Delivery

3.1. Program

Licensee shall receive the software in its up to date version in machine readable form as download in the Licensor's customer area, re-gardless of the quantity of licenses.

3.2. Manual

The manual is available as an Online Help in full electronic form or as a download in the Licensor's customer area and, hence, accessible to each user of the software without limitation.

3.3. License Key

Licensee shall receive from Licensor one or more passwords after the License Agreement becomes effective (if applicable, after expiry of the test period). Said passwords shall enable Licensee to commence operation of the program for the agreed period of time specified in the product certificate.

4. Other Services

The scope of additionally agreed upon services (e.g. support services) shall be taken from the product certificate. Licensor shall not be obliged to provide additional services to Licensee—including, without limitation, expansions of functionalities, ad-justments to specific hardware which is not supported by the current version of the software, installation, support, mainte-nance, training—unless expressly agreed in writing between Licen-sor and Licensee. As regards the possibility of receiving the re-spective services from Licensor, Licensee shall refer to Licensor's current price list.

5. Dates

Dates of delivery or installation shall always be understood as being without obligation unless expressly stated otherwise by Licensor.

III. License Fees

1. Amount

The amount of the "License Fee" shall be the amount stated in the purchase contract.

2. Maturity Date

The License Fee shall be due for payment upon delivery of the product certificate and provisional passwords. The final (indefinite) passwords shall be delivered by Licensor to Licensee upon receipt of full payment of the License Fee.

3. Service Fees

The amount and due dates of payments to be effected by Licensee to Licensor for any agreed services shall be taken from the product certificate.

IV. Licensee's Obligations

1. Protection of Licensor's Rights

Licensee undertakes to honor all rights of Licensor in and to the software at all times and, in particular

- a) to operate a maximum of one License Server per product certificate; the quantity of installed licenses as well as the scope of such licenses shall be taken from the License Repository;
- b) not to make available any copies of the software to third parties or enable third parties to create copies of the software;
- c) not to make any other modifications or interferences in violation of the intellectual property rights of Licensor.

2. Contractual Penalty

2.1. Amount

For each unauthorized installation of the software which has become possible due to a violation of Licensee's obligations under clause IV. 1. (1) to (3), Licensee undertakes to pay to Licensor a contractual penalty equivalent to twice the amount of a full License Fee as stated in the current respective price list.

2.2. Liability for Third Parties

Licensee hereby assumes the vicarious liability for all persons within its area of activities (vicarious agents, employees, free-lancers) as well as for organizational deficiencies. The onus of proof that it has taken all reasonably necessary organizational measures to elimi-nate the possibility to create unauthorized copies of the software as well as to prevent the transfer of copies of the software and/or the Keys by third parties within the area of activities of Licensee in the best possible manner remains with Licensee.

2.3. Disclosure Information

Upon request Licensee must inform Licensor of the quantity and places of installation of all installations of the software with Licensee, Licensee's vicarious agents and subcontractors and to provide Licensor with its statutory declaration as to the correct-ness of such information provided.

2.4. Additional Damages

Licensor reserves the right to claim additional and/or specific damages

3. Termination of License Agreement

In case of a violation of Licensee's obligations under clause IV. 1., Licensor shall be entitled to terminate the License Agreement with immediate effect and without substitution. In such event, Licensee shall immediately cease to use or allow the use of the

software and shall uninstall and destroy all copies of the software and provide Licensor with a statutory declaration confirming that this has been done.

4. Limitation of Liability in Case of Manipulations

Licensor does not assume any liability whatsoever for software which has been installed with Licensee or third parties in violation of the obligations under clause IV. 1 or for software which has been manipulated.

V. Liability/Warranty

1. Warranty of Title

Licensor warrants to Licensee that the software including its accessories is free from any rights of third parties. To the extent that products of a third party form part of the software, Licensor is authorized to grant to Licensee the rights to use such software subject to the terms and conditions of the License Agreement.

2. Liability for Defects

2.1. Principle Warranty

Except if expressly agreed upon, Licensor does not give any warranty relating to the suitability of the software for any specific purpose. Licensor does not warrant any specific characteristics of the software. Licensee understands and accepts that based on the current technical standards, software meant to be guaranteed to be free from any bugs cannot be developed in an economically reasonable manner. The possibility of reasonable technical or legally necessary changes to the software remains reserved. Licensee does not have a right to demand delivery of new versions of the software.

2.2. Warranty

Licensor shall honor its warranty for defects of the software respectively for non-deviations of the software from the program specification for a period of 12 months from delivery of the software. However, this shall not affect the period of limitation for claims based on intention or gross negligence, harms to body, life or health or violations of major contractual obligations.

2.3. Obligations to Examine and Reprimand

Licensee must notify Licensor of any defects of the software within two weeks from the time the defects become noticeable. In case of a violation of the aforesaid obligation to reprimand, the respective defect shall be deemed to be approved by Licensee.

2.4. Liability for Defects after Test Installations

In the event that the software has been installed with Licensee for test purposes and that Licensee has acquired the right to use the software subsequently pursuant to a License Agreement, the parties are in agreement that the software has been sold and transferred in the legal meaning of a "used" item and has been accepted "as tested".

2.5. Limitation of Warranties

In principle, defects and their symptoms shall be described and notified by Licensee in the best possible manner as soon as they occur so that they can be reproduced by Licensor and—as a consequence—be removed. Subsequent to the respective notice of Licensee, such defects shall be removed by Licensor by way of delivery of an update or upgrade respectively delivery of a so-called hotfix or by giving instructions describing how to circumvent the bug. Rescission of the License Agreement respectively lowering of the License Fee is excluded unless and until the bug has not been removed or circumvented within a reasonable period.

3. Hardware Requirements/ Inappropriate Handling

3.1. Application Conditions

Licensor's warranties do not extend to defects which are caused by a failure to comply with the required application conditions (incompatibilities between hardware and/or other software) or by inappropriate handling of the software.

3.2. Adjustments

The software shall be delivered with its current scope of potential applications. Licensee shall be informed of said scope of applications. Licensee is hereby referred to the option of using a test installation. Licensee shall not be entitled to claim that additional functionalities or performance criteria are implemented or adjustment services (e.g. the removal of display anomalies of non-approved graphics cards) be rendered once delivery has been tendered.

4. Obligations Regarding Information and Cooperation

Licensee shall give Licensor without undue delay and free of charge all necessary information relating to the operation of the software under the License Agreement as well as to enable Licensor to access and work with all necessary machinery and data and to make use of all necessary data and machine times free of charge for said purpose.

5. Service Agreement

In the event that no service agreement has been concluded, all services rendered by Licensor to Licensee, including the analysis of bugs and the removal of dysfunctions which are not covered by Licensor's warranties or which are caused by incorrect or incomplete description of bugs or such other improper information given by Licensee to Licensor shall be charged by Licensor to Licensee, with a generally applicable rate of EUR 220 plus VAT per problem concerned.

5.1. Service Agreement Offer

Licensor hereby declares its willingness to give extended warranties respectively to provide technical support and to supply new software versions (upgrades) based on a service agreement to be concluded separately. Said offer only extends to Licensee and is not transferable or assignable.

5.2. Entitlement to Upgrades

To the extent that upgrades can be claimed—including claims based on service agreements—, such entitlement only extends to the supply of the respective current version of the software. In particular, it does not extend to any claim to have specific versions of the software advanced or enhanced respectively to support any particular programming language—whether referring to the initial version or any new version of the programming language. Moreover, there shall be no entitlement to any transition between versions of different operating systems.

6. Liability

6.1. Limitation of Liability

Licensor shall only be liable for damages caused in a willful or grossly negligent manner by itself or by its vicarious agents. However, Licensor's liability for guaranteed specifications, for damages arising out of harm to life, body or health as well as for claims based on culpable default and initial impossibility to perform or based on strict product liability law remain unaffected. In addition, liability for the breach of principal contractual obligations by ordinary negligent conduct, which are of particular importance for the achievement of the purposes of the License Agreement, remains unaffected. However, in the latter case, liability is limited according to clause V. 6.2 of these General Terms.

6.2. Maximum Amount of Liability

In case of a violation of principal contractual obligations caused by ordinary negligence, the amount of Licensor's liability shall not exceed a total amount of EUR 1,250,000.00 in relation to any individual License Agreement. Licensor has taken out third party liability insurance for monetary, personnel and property damages in said amount. If and when Licensee considers said amount to be insufficient, Licensor is prepared to take out higher insurance as requested by Licensee at Licensee's cost.

6.3. Consequential Damages

Licensor does not assume and hereby expressly excludes all liability for lost profit, un-achieved savings, damage resulting from claims of third parties, other indirect and direct consequential damages as well as for damages incurred by the loss of data, unless and until proven that such damages are caused by Licensor's or its vicarious agents' gross negligence or willful breach of obligations.

7. Notices

Licensee confirms its knowledge that the creation of daily data backups in long-term cycles, precautionary measures against computer viruses and regular virus checks as well as a diligent testing of the computer programs created using the software is advisable and necessary. In the case of need, consultation on appropriate measures may be given by Licensor at its discretion.

VI. Miscellaneous

1. Compliance with Law

Licensee undertakes to comply with all legal requirements—in particular under the Copyright Act and potential legal restrictions of trade – when using and/or disposing of the software.

2. Ancillary Agreements

Any cancellation, change, termination or amendment of the License Agreement requires the written form to be valid and effective. Oral agreements are invalid including agreements on the waiver of the written form. On behalf of Licensor, only management at the headquarters in Nuremberg shall be authorized to give and receive any such declarations which are binding on Licensor.

3. Restrictions of Set-Off, Assignment and Retention

The assignment and pledging of claims against Licensor shall be invalid without Licensor's express approval. Licensee shall not be entitled to set-off any of its claims against Licensor or claim any right of retention unless such claims or rights are absolute and legally binding on Licensor or beyond controversy.

4. Severability Clause

The invalidity of individual provisions of this agreement shall not affect the invalidity of the agreement as such.

In case of invalidity of one or more provisions, the parties shall agree on a valid substitution clause that comes closest to the invalid provision in terms of its business purpose.

5. Legal Venue

Place of fulfillment and exclusive venue for all disputes arising all of the business relation shall be at the principal office of Licensor.

6. Applicable Law

The governing law of the License Agreement as well as all other legal relations between Licensor and Licensee shall be German law with the exclusion of the United Nations Convention on the International Sale of Goods (CISG).

7. Data Protection

All data processing with respect to the business relation and the customers will be in adherence to the rules of the German Federal Data Protection Act (BDSG).