



General Contract Terms and Conditions

SOFTWARE LICENSING AGREEMENT and UPDATE SUBSCRIPTION
VS 4.1/2015-en

1. Scope of the Agreement and Duration

All orders (contracts) and agreements are legally binding only if they are made in writing and have been duly signed by the authorised signatories of Contractor and are binding only to the extent set forth in the order confirmation. The terms and conditions of purchase of Client are herewith expressly excluded for the present legal transaction and the whole business relationship.

2. Performance and Inspection

2.1. The object of an order (contract) can be:

- Obtain licenses for use (of the standard software by the company ROGLER);
- Cooperate in the putting into service of the software;
- Individual programming;
- Maintenance;
- Advice by phone;
- Prepare organisational concepts;
- Other services.

2.2. The individual organisational concepts and software will be prepared depending on the extent and type of the binding information, documents and other means which will be fully provided by Client. This includes sufficient practice-oriented text data and testing possibilities, which Client shall make available in a timely manner, during normal working hours and at their own expense. If Client is working in a production run on a system that has been made available for testing, then Client shall also be responsible for the backup of actual data.

2.3. The basis for the writing of individual programmes is the written specification that Contractor shall prepare against payment of a reasonable consideration on the basis of the documents and information made available to them. The specification shall be examined as for its accuracy and completeness and accepted by Client (i.e. provided with a note of consent by Client). Inaccuracies or incompleteness in the specification must be reported by Client upon or following acceptance, however, by the latest prior to the point in time when Contractor starts to write the programme on the basis of the specification. For any modifications which Client requests after this point in time, Client shall bear the additional costs. As far as and to the extent to which Client themselves describe any services, these shall only become an object of the Agreement if this is done in writing and if and to the extent to which Contractor agrees in writing.

2.4. Individually written software and/or programme adaptations shall be checked by Client within four (4) weeks of

delivery as regards their accuracy or completeness (for which Client shall use the specification and the test data which are mentioned under Clause 2.2. and 2.3.) and Client shall accept such software/programme unless material faults (Clause 2.5) are detected. If Client fails to check and accept the software within four weeks of delivery, the software is deemed to have been accepted. If Client uses the software in a productive system, the software is also deemed to have been accepted.

2.5. Faults, which are deviations from the specification that has been agreed in writing, shall be reported by Client to Contractor immediately and in writing, including a detailed description, and Contractor shall make efforts to repair the faults as quickly as possible. If there are material faults which have been reported in writing, i.e. faults that prevent the starting or continuation of production runs, a new acceptance according to Clause 2.4 shall be made once the fault has been repaired.

2.6. If in the course of the work it turns out that the performance of the order (contract) pursuant to the specification is impossible or can only be performed by incurring an unreasonable amount of effort and expense, Contractor shall notify Client immediately. If Client does not amend the specification in a way that performance becomes possible or reasonable, Contractor may refuse to perform the order (contract). If the impossibility or unreasonableness of performance is attributable to a failure on the part of Client or a later change of the specification by Client, Contractor shall be entitled to rescind the order (contract). The related labour and expenditure, costs and charges incurred by Contractor, as well as any disassembly costs, shall be reimbursed by Client.

2.7. Upon ordering the standard software, Client automatically acknowledges the scope of delivery of the software. Integral parts of the license material are: the software and documentation delivered, and any additions or updates (supplied on a data medium).

2.8. Not included in the standard software are: the correct installation of the software on suitable hardware and the entry of master data and system parameterisation.

2.9. The software can only be used after an individual authorised by Client has undergone training. The manual which is included in the scope of delivery and supplied on a data medium cannot replace this training.

3. Prices, Taxes and Charges

3.1. License fees which are due for the standard software consist of a one-time payment and annual fees. The annual fees include the license and maintenance.

3.2. The annual fees will be billed as per 1 January of every year and are payable within eight (8) days without any discount. If the Agreement does not start on 1 January, the annual fees will be billed on a pro-rata basis for the rest of the year and are payable within eight (8) days without any discount. Additional services which are not included in the annual fees will be billed once the service has been rendered. If Client fails to comply with the terms of payment, the company ROGLER shall be entitled to charge a default interest rate of 12 per cent p.a. starting from the due date. The company ROGLER shall be entitled to suspend their maintenance services during a default by Client.

3.3. All prices are given in euros, value added tax excluded. The prices only apply to the present order (contract).

3.4. The costs of travel, daily rates and overnight rates will be charged separately to Client according to the applicable rates and expenditure. Travel time is considered to be working time.

4. Delivery Date

4.1. Contractor shall make efforts to comply as strictly as possible with the agreed time of performance (completion).

4.2. The planned dates of performance can only be complied with if Client fully performs all necessary work and provides all necessary documents, including especially the specification accepted by Client pursuant to Clause 2.3., by the dates named by Contractor and if Client complies with their obligation to cooperate as necessary. Delays in deliveries and increases in costs which are caused by late changes or incorrect, incomplete details and information and documents made available shall not be within the responsibility of Contractor and cannot lead to a delay in performance by Contractor. Additional costs resulting therefrom shall be borne by Client.

4.3. Force Majeure, labour disputes, natural disaster and closed traffic, as well as other circumstances not within the control of Contractor, shall release Contractor from the delivery commitment and allow them to agree a new date of delivery.

4.4. In the event of orders (contracts) which encompass several units or programmes, Contractor shall be entitled to carry out partial deliveries and render partial accounts.

5. Payment

5.1. The accounts rendered by Contractor, inclusive of value added tax, are payable by the latest within eight (8) days of receipt of the invoice without any discount and free of expense. Partial invoices are subject to the terms of payment agreed for the whole order (contract).

5.2. Regarding orders (contracts) which encompass several units (e.g. software and/or trainings, implementation by partial steps), Contractor shall be entitled to render accounts after delivery of every unit or service.

5.3. Compliance with the agreed terms of payment is an essential condition for performance of the delivery and of the Agreement by Contractor. Non-compliance with the agreed payments shall entitle Contractor to stop the current work and rescind the Agreement. All costs thus incurred, as well as any loss of profit, shall be borne by Client. In the event of a default in payment, a default interest rate of 12 per cent p.a. will be charged.

5.4. Client shall not be entitled to withhold payments because of incompleteness of the overall delivery, guarantee or warranty claims or fault-finding.

5.5. Client shall not be entitled to offset claims against claims by Contractor.

6. Copyrights and Use

6.1. Contractor continues to hold all rights, especially all copyrights in the agreed products and services (programmes, documentations, etc.). Client is solely granted the right to use the software during the term of the Agreement after payment of the agreed consideration (license) and solely for their own purposes and for the hardware specified in the Agreement, and within the framework of the number of licenses acquired for simultaneous use on several workstations/work places.

6.2. The present Agreement only provides for the acquisition of a license for the use of a work. Any use, duplication or dissemination by Client that is not in line with the Agreement is expressly excluded and prohibited. By cooperating in the production of the software, Client does not acquire any rights beyond the use laid down in this Agreement.

6.3. Client shall be permitted to make copies for archiving and data backup purposes on the condition that the software does not contain an explicit prohibition by Licensor or third parties and provided that any and all copyright or ownership notices are fully transferred into such copies without any changes.

6.4. In the event that it becomes necessary to disclose interfaces to ensure the interoperability of the software, Client shall request this from Contractor against reimbursement of costs. If Contractor fails to comply with this request and the software is decompiled pursuant to copyright laws, the results may only serve to produce interoperability.

6.5. Client shall not be entitled to transfer rights to third parties or to grant rights of use to third parties.

6.6. Client agrees that they will not make available originals or complete or partial copies of the license material to third parties without express written consent by Contractor. This shall also apply in the event of a complete or partial disposal or dissolution of the enterprise of Client.

6.7. If Client violates the provisions concerning their right to use the software, Contractor shall be entitled to terminate this Agreement immediately.

7. Termination

7.1. Unless agreed otherwise, this Agreement shall exist until 31 December of every year and is automatically renewed for another year unless notice of termination is given by 30 September of the year.

7.2. Upon the expiry or termination of the Agreement, regardless of the cause or point in time, Client shall return the original license material and all copies and partial copies and delete them completely from the equipment.

7.3. Order cancellations by Client require the written consent of Contractor. If Contractor agrees to a cancellation, Contractor may, in addition to payment of the services rendered and costs already incurred, impose a cancellation fee amounting to 30 per

cent of the unsettled order value (contract value) of the overall project.

7.4. If an agreed period of delivery is exceeded solely through the fault of Contractor, Client shall be entitled to rescind the respective order (contract) by registered letter if essential parts of the agreed delivery are not performed within a reasonable, additional period of time granted and no fault is attributable to Client.

8. Update Subscription and Maintenance

8.1. Contractor agrees to carry out updates containing bug fixing and/or new features for the standard software that they have made available as Licensor.

8.2. Contractor agrees to carry out the maintenance of the software that they have made available as Licensor pursuant to the terms of this Agreement.

8.3. The maintenance obligation of Contractor shall consist of keeping the software in an operable condition or restoring such condition. This does not include malfunction occurring because of wrong operation by the user or changes effected by the user in the programme code. Preventive maintenance shall be performed according to the schedule of Contractor, which will be adapted to the specific needs of the individual programmes. The maintenance services by Contractor are limited to the standard of the software modules that they have provided as Licensor.

8.4. The following items will be charged separately: • Inspection or maintenance of extraneous software • Modifications to software which is not contained in the standard of ROGLER software • Maintenance work because of Force Majeure, defects in the periphery provided by Client, and repeated operating errors; power supply failures, or malfunctions because of climate impact • General overhaul, as well as upgrades of the software are also not covered by this Agreement. Work listed in this paragraph shall be paid for separately by Client according to the current hourly service rates.

8.5. Maintenance standby of Contractor shall be during working days, Monday to Friday, during normal business hours. Travel time is considered to be working time.

8.6. Client shall be responsible for making available backup data volumes and for making data backups, as well as for security measures to protect the stored data from destruction or abuse, and shall be further responsible for the availability of backup data. Client grants Contractor at all times unrestricted access to the equipment and makes available sufficient space to perform the maintenance work. Client further undertakes to supply error descriptions (logs).

8.7. The maintenance and update subscription fees are included in the regular fees. Contractor agrees to notify Client of price increases in writing at least three (3) months prior to the expiry of the Agreement.

9. Warranty, Modifications

9.1. Notices of defect are only valid if they refer to reproducible faults and if asserted within four (4) weeks of delivery of the agreed product or service, or with individual software within the deadlines and pursuant to Clauses 2.3. and 2.4. In case of justified complaints, such faults shall be repaired within a reasonable period of time and Client shall enable Contractor to take all measures necessary for the examination and repair of the faults.

9.2. Corrections and additions which up to the delivery of the agreed product or service become necessary because of organisational or programming errors for which Contractor is responsible shall be performed by Contractor without costs.

9.3. Support, fault diagnosis and the repair of faults and malfunctions for which Client is responsible, as well as other corrections, modifications and additions, shall be carried out by Contractor against payment of a reasonable fee. This shall also apply to the repair of faults if programme modifications, additions or other interventions are made by Client themselves or by third parties.

9.4. Contractor further does not give any warranty for faults, malfunctions or damage which are attributable to improper handling, changed operating system components, interfaces and parameters, the use of unsuitable organisational means and data volumes, as far as such are prescribed, abnormal operating conditions (especially deviations from the installation and storage conditions), as well as transport damage.

9.5. Contractor does not give any warranty for programmes which are modified later by Client's own programmers or third parties.

9.6. As far as the object of the order (contract) is a modification of or addition to existing programmes, the warranty shall apply to the modification or addition. This does not revive the warranty on the original programme.

10. Liability

Contractor shall be liable for damage within the framework of the law provided that intention or gross negligence on their part can be proven. Liability for slight negligence shall be excluded.

11. Obligation of Support and Loyalty

11.1. Client undertakes to support the activities of Contractor that are necessary for performance. Client shall especially meet, free of charge, all requirements within their enterprise that are necessary for performance. Working space shall be accessible during business hours and the necessary work equipment shall be made available. Test data and other information shall be made available in a timely manner.

11.2. The parties to the Agreement undertake to show mutual loyalty. They will refrain from enticing away and hiring employees from the other party to the Agreement, who worked on the implementation of the orders (contracts), including through third parties, for the term of the Agreement and 12 months following the end of the Agreement. The violating party to the Agreement shall be liable to pay lump-sum damages amounting to an annual salary of the employee.

12. Data Protection and Secrecy, Copyright Notices

12.1. Client shall not modify or remove markings, ownership details and copyright notices of Contractor from the programme. This also applies to all accompanying material.

12.2. As far as Contractor processes personal data during their work on the respective software, they shall comply with applicable data protection laws and take security measures as required or agree such with Client.

13. Miscellaneous

If individual terms of this Agreement are or become ineffective, this fact shall not affect the remainder of the Agreement. The parties to the Agreement shall search in the spirit of partnership for a term which comes as close as possible to the purpose of the ineffective term.

14. Final Provisions

Unless agreed otherwise, the legal provisions applicable to full merchants solely under the Austrian law shall apply (excluding the UN Sales Convention; CISG), even if an order (contract) is carried out abroad. It is agreed that any possible disputes shall be settled exclusively by the locally competent court having subject matter jurisdiction at the registered office of Contractor. Regarding the sale to consumers within the meaning of the Consumer Protection Act, the above terms shall only apply as far as not provided otherwise by mandatory provisions of the Consumer Protection Act.