

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.

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:

"Generating" means the generating of data carriers with executable software for a specific operating system platform. The complete version number of the Software comprises of a maximum of three digits separated by dots. The first and second digit identify the Version and the third digit identifies the Release.

"License" means a software license relating to one or more workstations for one or more operating system platforms within a firmly defined field of application by Licensee (group of companies, division, department and the like). The License Repository deposited with the respective License Server identifies the legitimate workstation, quantity, scope of performance and expiry date (for lease and test versions) of the licensed Software. The License Repository further contains data relating to the platform license and the person in charge of the license.

"License Repository" means the database of the License Server in accordance with the product certificate.

"License Server" means a program linked to a host which enables the administration of the licenses recorded in the product certificate.

"Release" means a technically enhanced Version with or without substantial expansion of functionality which primarily serves the purposes of debugging. Such changes usually do not cause any changes in the software manual.

"Software" means the computer programs of Licensor which shall be licensed to Licensee subject to the terms of the License Agreement as specified in the product certificate.

"Update" means the supply of a newer/up to date Release.

"Upgrade" shall mean the supply of a newer/up to date Version.

"Version" means Software of a specific generation. New Versions comprise an expansion of the technical as well as of the functional level. Normally, changes in the functionality result in changes to the software manual.

3. Protection Against Unauthorized Use

The Software is protected against unauthorized use. This may include protection against unauthorized copying and/or unauthorized installation and/or other means of unauthorized use of the Software. The use of the Software shall always be conducted in compliance with the terms of the license issued by Licensor relating to the Software. If a password, license key or other device is necessary to enable Licensee to make proper use of the software ("Key"), such Key shall be made available by Licensor to Licensee.

II. Grant of License

1. Rights of Licensee

(a) Right to Use

Upon conclusion of the License Agreement and payment of the agreed compensation, Licensee acquires a non-exclusive right to use the Software on the contractual quantity of workstations according to the product certificate which right may be unlimited or limited in time (e.g. for lease and test versions). The Software is delivered to Licensee in machine readable form only.

(b) 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 and data carriers delivered by Licensor to Licensee relating to the Software.

2. Reservations

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

(a) Copyrights, Editing Rights, Duplication Rights and Exploitation Rights

All copyrights, editing rights, duplication rights and exploitation rights as well as all other rights relating to the Software remain with Licensor unless expressly granted to Licensee pursuant to the License Agreement.

(b) 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] (and all other mandatory rights of Licensee under applicable law).

(c) Transfer and Resale

In the event that the License Agreement is concluded in the form of a software lease, 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 the event that the License Agreement is concluded in the form of a perpetual license, Licensee shall only be entitled to transfer its rights under the license to a third party, whether by resale or free of charge, in its entirety and with the consequence of a complete and final cessation of its own use or rights in the Software.

In neither of the above cases shall Licensee allow any third party to use the Software partly or temporarily, whether for compensation or free of charge.

The total transfer of rights by Licensee to a third party shall be subject to the written consent of Licensor which consent shall be given if (i) the Licensee confirms to Licensor in writing that it has transferred all original data carriers of the Software to the third party and has destroyed all other copies of the Software, and (ii) the third party has given its written consent to Licensor to accept and acknowledge all terms and conditions of the License Agreement.

In any of the aforementioned cases, Licensor shall not be obliged to enter into software service agreements with any third party (e.g. a transferee of Licensee) or to make support and upgrade services available to any third party.

3. Scope of Delivery

(a) Program

Licensee shall receive the Software in its up to date version in machine readable form whereby such delivery shall be effected by supply of one (1) copy of the Software on a data carrier regardless of the quantity of licenses.

(b) Manual

The manual relating to the Software is completely stored in electronic form on the data carrier delivered to Licensee and, hence, accessible to each user of the Software without limitation. If Licensee requires a printed version of the manual, Licensor is prepared to supply the same at cost price.

(c) License Key

Licensee shall receive from Licensor the Software Key (in the form of passwords, license keys, license files or any other suitable form) without undue delay after the License Agreement becomes effective (in case of software test arrangements after expiry of the test period). Said Key shall enable Licensee to commence operation of the Software in accordance with the License Agreement for the agreed period as set out 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, adjustments to specific hardware which is not supported by the current version of the Software, installation, support, maintenance, training—unless expressly agreed in writing between Licensor and Licensee. As regards the possibility of receiving the respective services from Licensor, Licensee shall refer to Licensor's price list as updated from time to time.

5. Dates

Dates of delivery or installation which may be mentioned by Licensor to Licensee or which may be noted in any communication between Licensor and Licensee 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" and the "Generation Lump Sum" payable by Licensee to Licensor shall be the amount stated in Licensor's price list as updated from time to time.

2. Maturity Date

The License Fee and the Generation Lump Sum shall be due for payment upon delivery of the Software on data carrier in machine readable form and the (temporary) license Keys (if any) to Licensee. The final license Keys shall be delivered by Licensor to Licensee upon receipt of full payment of the License Fee and Generation Lump Sum.

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 manipulate or modify the Software in any unlawful manner.

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2. Contractual Penalty

(a) Amount

For each unauthorized installation of the Software which has become possible due to a violation of Licensee's obligations under Clause IV. 1. (a) to (c), Licensee undertakes to pay to Licensor a contractual penalty equivalent to twice the amount of a full License Fee as stated in the respective price list of Licensor as updated from time to time for the product concerned.

(b) Liability for Third Parties

Licensee hereby assumes the vicarious liability for all persons within its area of activities (vicarious agents, employees, freelancers, officers and all other agents and representatives) as well as for organizational deficiencies. The onus of proof that it has taken all reasonably necessary organizational measures to eliminate 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.

(c) 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 correctness of such information provided.

(d) 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. (a) to (c) 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 provided that to the extent that products of a third party form part of the Software, this warranty of Licensor is limited to the statement that Licensor is authorized to grant to Licensee the rights to use such Software subject to the terms and conditions of the License Agreement. However, Licensee understands and agrees that such third party will not be bound by this License Agreement in any way.

2. Warranty for Defects

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.

(a) Principle Liability

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 twelve months from delivery of the Software however limited to such defects respectively deviations existing as of the time of delivery. The possibility of technical or legally necessary changes is reserved. Licensee does not have a right to demand delivery of new Versions of the Software pursuant to the License Agreement without a Service Agreement.

(b) 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.

(c) 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".

(d) 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/Upgrade respectively delivery of a so-called patch 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

(a) 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.

(b) 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 or useful 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 in accordance with Licensor's price list as updated from time to time.

(a) 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.

(b) 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

(a) 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 warranties, for contractual principal obligations which are of particular importance for the achievement of the purposes of the License Agreement, as well as for claims based on willful or grossly negligent conduct, for initial impossibility to perform the contract and for product liability remain unaffected.

(b) Maximum Amount of Liability

Save for Licensor's liability for personal injury and death as well as for willful or grossly negligent damaging acts and omissions, the amount of Licensor's liability shall not exceed a total amount of € 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.

(c) Consequential Damages

Licensor does not assume and hereby expressly excludes all liability for lost profit, unachieved 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, counseling 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 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

The invalidity or unenforceability of individual provisions of the License Agreement shall not affect the validity and enforceability of the remaining provisions thereof. In case of such invalidity or unenforceability, Licensor and Licensee shall be obliged to agree on a valid and enforceable provision the economic effect of which comes as close as possible to the invalid or unenforceable provision.

5. Venue

In the event that Licensee is a party capable to enter into a valid agreement on the place of venue for disputes, it is hereby agreed that the exclusive place of jurisdiction for all disputes between Licensor and Licensee out of or in connection with the License Agreement and the entire legal relationship between the parties shall be at the principal office of Licensor. Place of performance of all obligations legally possible to be performed at Licensor's principal office shall be deemed to be at the place of Licensor's principal office.

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).

Nuremberg, August 2007