

1 APPLICABILITY

1.1 These General Terms and Conditions of ICC Solutions GmbH (hereinafter referred to as “**ICC**”) apply to all contracts on the basis of which ICC grants its customers (hereinafter referred to as “**Licensee(s)**”) rights to use Software and/or provides Software on a temporary or permanent basis, and/or to Support and Maintenance Agreements.

1.2 These General Terms and Conditions only apply if the Licensee is a merchant.

1.3 Any General Terms and Conditions of the Licensee do not even apply if the Licensee refers to them in its standard order form or otherwise in connection with its order, i.e. not even if ICC does not explicitly objects to them.

1.4 The Licensee is aware of the fact that the Products are not designed for use in high security areas, such as nuclear engineering, air traffic control, weapons safety systems, life saving systems or systems of any other kind in which faulty functioning can lead to personal injuries, deaths, environmental damages or mass destruction. ICC is exempt from any liability for damages resulting from the use of the Products in these areas is excluded.

2 RULE OF PRECEDENCE

The contractual agreements precede each other under the following rule:

- a) Individual changes and/or supplements of the agreement after contract execution,
- b) The agreement including all its exhibits,
- c) Supplementing General Terms and Conditions,
- d) These General Terms and Conditions,
- e) Standards and norms,
- f) Statutory provisions.

The regulations listed first precede those listed thereafter in the event of controversies. In case of agreements in a time sequence, the more recent one has priority over the older one.

3 SUBJECT MATTER

3.1 ICC grants the Licensee non-exclusive rights to use the software described by ICC in the offer, including the data contained therein (hereinafter referred to as “**Software**”), and in the documentation to the Software (hereinafter overall referred to as “**Products**”) exclusively under these General Terms and Conditions as well as the agreements of the parties to the extent they deviate from these General Terms and Conditions.

3.2 The rights to use the Software exclusively refer to the object code. They do not refer to the Source Code.

3.3 Employees of ICC are not authorised to give guarantees about the quality of the Products. If they give them nevertheless, such guarantees are only effective if they are confirmed in writing by the management of ICC.

3.4 The responsibility for the selection of the Products, of the computers for their operation and the connection with other software programs concurrently used exclusively lies with the Licensee.

3.5 ICC will render to the Licensee support and maintenance services according to Number 8 of these General Terms and Conditions.

4 REALISATION OF THE LICENSE AGREEMENT

Any offers made by ICC are legally non-binding. Unless otherwise regulated in writing, the agreement comes into effect only when ICC confirms the order of the Products to the Licensee. Such a confirmation can expressly occur through the despatch of the Products ordered or through the transmission of access data which enable the use of the Products.

5 ICC GRANTS RIGHTS TO USE

ICC grants the Licensee non-exclusive, non-transferrable rights to use the Products exclusively according to the following stipulations:

5.1 SCOPE OF THE RIGHTS TO USE AS REGARDS SUBJECT MATTER

ICC offers the Licensee different user-dependent license models as described in Number 5.1.1, one capacity-dependent model as described in Number 5.1.2 and a non-commercial license model as described in Number 5.1.2a. ICC grants the Licensee, in case of a user- or capacity-dependent or non-commercial license model, the non-exclusive right to copy the Software only to the extent necessary for loading, displaying, running, transmitting or saving and to the extent required for processing own data for the purposes of the Licensee (hereinafter referred to as “**specified use**”). The type of license pertinently agreed upon results from the agreement between ICC and the Licensee. If the agreement does not contain any information on the license model selected, a license is deemed agreed upon according to Number 5.1.1.1 for a named user (Named User License) for the Licensee.

5.1.1 User-Dependent License. In case of a User-Dependent License, the rights to use the Products are granted for the pertinent maximum number of users for whom the Licensee has acquired the licenses. This user-dependent license may be granted by ICC alternatively in the following variations:

5.1.1.1 License for designated users (Named User License). As regards the Named User License, the Licensee and/or one or several of his users designated in its enterprise or in its organisation is/are granted the right to use the Products as directed.

5.1.1.2 Concurrent User or Floating License (Mehrplatzlizenz). With regard to the concurrent user license, the Licensee is granted the right to use the Products simultaneously as directed by a pre-arranged number of non-designated users in its enterprise or its organisation.

5.1.2 Capacity-Dependent License / Runtime or Deployment License (Laufzeitlizenz). In case of the Capacity-Dependent License and/or the Deployment License, ICC grants the Licensee the right to use the Products within the specified use on one (1) computer with a fixed number of CPUs or on a fixed number of servers. If the computer, the CPUs and/or the servers have been clearly designated, the right of use granted is limited to the use on this equipment.

5.1.2a Non-Commercial License. ICC grants a Non-Commercial License free of charge only to those licensees which provide third parties with the private use of free of charge e-mail services. The Non-Commercial License incorporates the right to use the software only to the extent of the free of charge provision of e-mail services for private use only to third parties on the Licensee's servers. Licensee will not grant third parties any possibility and/or right to save or run the software on other servers, CPUs or other technical devices than the Licensee's. ICC will render Support- or Maintenance Services for the Non-Commercial License only in case this is agreed upon separately. Numbers 3.5 and 8 do not apply. Number 7.2 is valid for the Non-Commercial License provided that ICC will become the owner and holder of any rights created by the use of the Software by Licensee. In case by and/or as a result of the use of the software, new markets develop, ICC is entitled to their use and cultivation exclusively. The Non-Commercial License may be terminated by ICC and Licensee at any time with a notice period of 12 months. Then, Number 5.7 applies accordingly with regard to the Licensee's obligations.

5.1.3 Scaleable Rights to use the Products. If ICC has granted the licensee scaleable, namely in their scope restricted rights to use the Products and permitted access to a license pool, a technically possible exceeding of the agreed scaling by the Licensee does not represent an expansion of the granted user-rights to the license pool even if an expanded access should be technically possible.

5.1.4 Backup Copies. The Licensee may make or may have made copies or part-copies of the Products exclusively in the scope necessary for the purpose of data backup and recovery in case of technical problems. Backup copies on movable data carriers must be marked as such and provided with the copyright note of the original data carrier. ICC acquires all rights to these copies provided they have not been transferred according to Number 5. to the Licensee.

5.1.5 De-compiling. The Licensee is not entitled to de-compile from the object code the source code of the Software or parts thereof, or to gain knowledge about the designs or compilation of the Products. The only exception in this context is if knowledge about the source code is absolutely necessary in order to get information on the basis of which the interoperability with other hardware or software can be produced, and if ICC has failed, upon written request, to provide the necessary data and/or information within a reasonable period of time.

5.1.6 The Licensee is not permitted to translate the Products, to process them, to change their arrangement or to make any other modifications unless this is explicitly permitted to him in Number 5.1. of these General Terms and Conditions or if the Licensee depends on such actions in order to use the Software as specified.

5.2 SCOPE OF THE RIGHTS OF USE AS REGARDS TIME

ICC grants the Licensee the rights of use from the contract's execution onward for the future. A due termination is excluded with the exception of the Non-Commercial License. The right to extraordinary termination pursuant to Number 5.7 remains unaffected.

5.3 GEOGRAPHICAL SCOPE OF THE RIGHTS OF USE

Unless nothing else has been agreed upon in writing, ICC grants the Licensee the rights of use exclusively for Germany. It is left to the Licensee's discretion to also use the Products outside Germany. It is the Licensee's sole responsibility to acquire rights of third parties possibly needed for such a use outside Germany.

5.4 EXCEEDING THE RIGHTS OF USE

If the Licensee exceeds the rights of use granted to it with regard to content or time, it is obligated to acquire for this exceedance further licenses at the then current prices. ICC reserves the right in this case to grant such licenses or to instead assert claims for cease and desist, damage compensation and the rights of Number 5.7.

5.5 DOCUMENTATION

For the use of the Software, the Licensee receives the necessary documentation in the German or English language in a machine-readable or printed form. The Licensee is not authorised to copy or process this documentation in total or in part. The Licensee may acquire additional copies of the documentation from ICC at the then current prices. The rights to use the documentation are governed by the rights to use the licensed Products.

5.6 HANDING OVER AND PASSING PRODUCTS TO THIRD PARTIES

Under no circumstances is the Licensee authorised to hand over the Products, permanently or temporarily, to third parties without the written consent from ICC, in particular it may not rent them out, lease them out or provide them free of charge. The Licensee is only authorised, even with the written consent from ICC, to pass on the Products to third parties (hereinafter referred as “**New User(s)**”) to the extent that it itself fully and finally relinquishes the use of the Products, removes and/or destroys all existent copies of the Products, advises ICC of the name and the address of the New User and if the New User declares its agreement to the validity of these General Terms and Conditions to ICC.

5.7 INFRINGEMENTS BY THE LICENSEE

If the Licensee infringes any of its obligations arising from Number 5. of these General Terms and Conditions, ICC has the right, after an unsuccessful request to comply with the contractual stipulations within a reasonable time period, normally no longer than four weeks, to extraordinarily terminate the agreement. In this case, the Licensee is obligated to fully and finally remove all Products, copies and modifications from all equipment, storage media and all data files, and to return to ICC – to the extent available - the data carriers on which ICC supplied the Products as well as the printed documentation. A repayment, even a part-repayment, of the license fee is excluded in this case.

5.8 PRODUCTS FROM THIRD PARTY PRODUCERS

If the Software contains components, at the execution of which another producer and/or Licensor than ICC is indicated (hereinafter referred to as “**Software Products from Third Party Producer(s)**”), the license conditions of this Third Party Producer apply with priority to the extent that the Licensee receives, at the expiration of the Software Product of the Third Party Producer, the possibility of access to that party’s General Terms and Conditions

6 LICENSEE’S OBLIGATIONS TO COOPERATE

6.1 The Licensee must warrant, through a reasonable procedure and ongoing controls, that the actual number of users, servers and CPUs do not exceed the number of users, servers or CPUs stipulated in the Agreement.

6.2 The Licensee complies with the directions given by ICC for the installation and the operation of the Software.

6.3 The Licensee grants ICC – for the detection and repair of faults – access to the Products to the extent necessary. ICC is authorised to examine whether the Products are used in compliance with the stipulations of this agreement. For this purpose, it may request information from the Licensee about the time period and scope of the Product’s use. Should ICC present actual indications which justify the actual suspicion that the Licensee uses the Software contrary to contract, the Licensee will grant ICC in addition access to its business premises at the customary business hours and without disturbing the operational processes.

6.4 To the extent that the Licensee does not expressly indicate otherwise, ICC may assume that the Licensee has backed up all data with which ICC may come into contact.

7 RIGHTS OF ICC

7.1 ICC reserves the copyright and other industrial property rights in the Products, in particular concerning the versions in object code and source code. This also applies to derivative Products by ICC. The Licensee is not authorised to change or remove any identifications, copyright notes, serial numbers and other characteristics serving to identify the programs. They must be taken over when reworking or copying the Products.

7.2 ICC remains proprietor of all rights in the Products, even if the Licensee has changed them or combined them with its own products or those of a third party. Documentation provided to the Licensee remains the property of ICC.

8 SUPPORT AND MAINTENANCE

With the execution of an agreement, on the basis of which ICC grants to the Licensee rights to use the Software and provides the Software on a temporary or permanent basis, the parties execute a pertinent Support and Maintenance Agreement for the subsequent twelve (12) months, except the parties agreed upon a Non-Commercial License. The scope of performance of such an agreement results from the Performance Specification for Support and Maintenance Program valid at the time of contract execution. The Support and Maintenance Contract automatically extends by a further twelve (12) months if not terminated in writing by one of the parties with a notice period of at least four (4) weeks prior to its expiration.

9 DELIVERY

9.1 As far as ICC gives the Licensee a specific date or a period of time (hereinafter referred to as “**Delivery Details**”), at which or during which it will deliver the Products to the Licensee or make them available for collection, these Delivery Details may be subject to changes and are legally non-binding unless ICC explicitly describes them as fixed.

9.2 To the extent that the delivery of Products is made on data carriers, transport and packing costs will be invoiced separately and must be borne by the Licensee. The risk of accidental loss passes to the Licensee with the hand-over to the transport company. If the data carriers, on which the Software is stored, and/or the documentation or parts thereof are damaged or destroyed after the risk has passed over, ICC delivers replacements after the return of the damaged and/or destroyed data carriers and/or documents against refund of the copy and despatch costs. To the extent the Products are being supplied electronically, the delivery is deemed done as soon as ICC provides the Products ready for download by ICC in a net and has informed the Licensee about this.

9.3 As long as ICC waits for the co-operation or information from the Licensee or is hindered in its performance through strikes or lock-outs in third parties' operations or in the operation of ICC (but in latter case only if the industrial dispute is lawful), through governmental interference, statutory prohibitions or other circumstances not its fault (force majeure), the delivery and performance times are deemed extended by the duration of the force majeure and by a reasonable start-up time after the force majeure (hereinafter referred to as “**Downtime**”), and if there is no infringement of obligations during the Downtime. ICC immediately advises the Licensee about such hindrances and their anticipated duration. If the force majeure continues uninterruptedly for more than three (3) months, both parties are released from their obligation to perform.

10 LICENSE FEE, PAYMENT

10.1 The extent of the fee as well as the fee for support and maintenance result from the offer or, to the extent that this does not contain any details, from ICC's price list current at the time of the order.

10.2 All fees apply ex works or ex distribution warehouse plus statutory VAT.

10.3 All fees are immediately due for payment without deductions within 30 days after the issue of the invoice.

10.4 The Licensee may only set-off with claims determined final and uncontested.

11 CLAIMS FOR DEFECTS

11.1 ICC gives warranty for the agreed quality of the Products and for the fact that the specified use of the Product by the Licensee as directed does not conflict in Germany with rights of third parties. Insignificant faults are of no concern.

11.2 The Licensee must immediately examine whether the Products show the quality contractually agreed. Obvious faults must be immediately notified by the Licensee to ICC, normally within two (2) weeks from delivery, other faults immediately after they become known. Non-compliance with this time period annuls ICC's liability for defects with regard to these faults.

11.3 The Products are especially designed for the software and hardware components described in the documentation. When using the Products on other software or hardware components than those described in the documentation, there is no defect in the Products if the malfunction of the Products is based on the use of software and hardware components other than those described in the documentation.

11.4 ICC will fulfil subsequently in case of defects of the Products notified in good time. The Licensee is obligated to take over a new software status if the contractual functioning scope remains intact and the take over does not lead to considerable disadvantages. The Licensee is entitled to return Products, the functionality of which does not correspond to the quality agreed, at ICC's cost. ICC will remedy the defect within a reasonable period of time at its own choice or it will supply Licensee replacements for the faulty Products.

11.5 If two attempts of subsequent fulfilment fail, the Licensee may choose, according to statutory provisions, to reduce the remuneration or withdraw from the contract. Damage compensation claims are only due the Licensee according to the regulations of Number 13. of these General Terms and Conditions.

11.6 The Licensee may only derive rights from any other infringements of obligations by ICC if it has objected to these to ICC in writing and has twice granted a subsequent grace period. This does not apply if a remedy does not come into consideration because of the type of infringement of obligation. The limits stipulated in Number 13 apply to damage compensation and refund of expenses.

11.7 The statute of limitation applicable to all warranty claims is one year. It begins with the supply of the Products, with the provision of the Product for collection or with the delivery of the specific code ("License Key") which enables the Licensee to use the Products. In case of intent, gross negligence or malicious withholding of defects by ICC, in case of personal injuries, claims arising from the Product Liability Act or defects in title and in case of guarantees, the statutory limitation periods apply.

11.8 Technical data, specifications and performance specifications in the documentation do not present any commitments. ICC is not responsible at all within the meaning of the assumption of a guarantee.

11.9 As soon as the Licensee exercises a right to withdraw from the contract, the right to use the Product ends. In this case, it must remove the Products, their copies and modifications from all equipment, storage media and all data files, and it must relinquish the data carriers and documentation it has received from ICC as well as all copies and modifications and, upon request, confirm to ICC in writing that it no longer possesses any copies of the Products. The Licensee is obligated to pay a reasonable user fee for the time in which the pertinent Software was in the possession of the Licensee.

12 SUPPLEMENTARY REGULATIONS FOR INFRINGEMENTS OF THIRD PARTIES' RIGHTS

12.1 Supplementing the regulations under Number 11.4, the parties agree that, in case the Products infringe third parties' copyrights, ICC first grants subsequent fulfilment. For this purpose, ICC provides – at its own choice – the Licensee with a legally flawless possibility to use the Products or substituted or modified equivalent Products.

12.2. In supplement to the regulations under Number 11., the parties agree that ICC will defend the Licensee at its own costs against all claims against the Licensee derived from an alleged infringement of copyrights, which are legally valid in Germany (patents, copyrights, trademarks, etc.), through the Products, and it will refund the Licensee all costs and damage compensation amounts finally imposed, provided the Licensee has informed ICC in writing without delay about the charge of such claims, has given ICC all needed information and has otherwise granted it all reasonable support, and has left it up to ICC to decide whether and how an asserted claim may be averted or settled.

12.3 The Licensee discharges ICC from claims of third parties for reason of alleged infringements of legally valid copyrights (patents, copyrights, trademarks, etc.) through the use of the Products outside Germany, which are being directed against ICC, provided ICC has informed the Licensee in writing without delay about the charge of such claims, has given the Licensee all needed information and has otherwise granted it all reasonable support, and has left it up to the Licensee to decide whether and how an asserted claim may be averted or settled.

13 LIABILITY

13.1 ICC is liable according to the statutory provisions for damages which are caused by intent or gross negligence, for personal injuries, in case there is a lack in quality, for which ICC has accepted a guarantee, and in case of claims arising from the German Product Liability Act (Produkthaftungsgesetz).

13.2 Beyond the liability according to Number 13.1, ICC is only liable for damages for reason of infringement of major contractual obligations (cardinal obligations), i.e. on the merits and on the amount limited to damages which, owing to the contractual agreement, were typical and predictable.

13.3 ICC is at liberty to raise an objection of contributory fault. The Licensee is obligated to make backup copies of its data at reasonable intervals, at least once a day. An infringement of this obligation is deemed a contributory fault of the Licensee in case a damage occurs.

13.4 Damage compensation claims for the loss of stored data are excluded if proper data backups would have prevented the damage, and if the Licensee had been properly instructed in the backup of data.

13.5 Claims arising from Number 13.1 lapse within the statutory limitation periods, for the rest claims from Number 13 lapse within one year from the delivery of the Products or their provision for collection.

14 EXPORT CONDITIONS

The export from Germany is subject to the German Foreign Trade and Payments Laws. As regards the applicable Foreign Trade and Payments Laws, Licensee itself must obtain the needed information. The Licensee is liable to ICC for the orderly compliance with these statutory provisions.

15 SECRECY

The Products are passed on to the Licensee on a confidential basis. The Licensee is responsible that all measures are taken which are needed to ensure the continued warranty of the Products' confidential nature. In particular, the Licensee undertakes not to disclose any information to third parties nor to give third parties access to the Products in any other way, as far as this is not required for the Non-Commercial License. Licensee's employees are not deemed "third parties" as long as and to the extent that they are staying with the Licensee for the contractual use of the Products. The Licensee will only make the Products accessible to the employees to the extent that this is required to exercise the rights of use granted to it. It will instruct all persons whom it has given access to the Products about the rights of the Licensee to use the Products and – as far as the License is not a Non-Commercial License - the obligation of their nondisclosure.

16 REFERENCE

ICC and Licensee are authorised to name the partner as reference to third parties.

17 MISCELLANEOUS CONDITIONS

17.1 The laws of the Federal Republic of Germany apply to the contractual relationship. The application of the UN Sales Convention is excluded by common consent.

17.2 The place of jurisdiction for all disputes arising out of and in connection with the agreement is the business seat of ICC. ICC is, however, entitled to sue the Licensee in any other statutory jurisdiction.

17.3. Changes in and supplements to the contractual relationship are only valid if they are agreed in writing after the execution of the agreement and have been signed by ICC. Declarations in other correspondence only bind ICC to the extent that the Licensee has explicitly accepted them in writing. The cancellation of this written form requirement must also be made in writing.