

TERMS AND CONDITIONS

of Technische Informationssysteme GmbH ("TIG") for supply of software under a subscription (as of January 1st 2019)

A. Scope

1. These Terms and Conditions of TIG (the "Conditions") shall apply to the supply of software and the grant of licence by TIG under a subscription.
2. Unless agreed to contrary, the following sections of the "General Terms and Conditions of Technische Informationssysteme GmbH for project work, delivery and installation of software, maintenance and delivery of hardware" (the "T&C"), as amended from time to time, shall apply:
 - a. I.H. (Customer Responsibilities);
 - b. I.I. (Insurance);
 - c. I.J. (Liability);
 - d. I.L. (Confidentiality).
3. General Terms and Conditions or forms of Customer shall by no means be accepted or become part of an order. All orders are subject exclusively to the present Conditions.

B. Definitions

For the purpose of these Conditions the following definitions shall apply:

1. Software – programs, routines and sub-routines including all respective documentation, offered by TIG or any third-party licensor under a subscription for specific application fields;
2. Subscription – supply of Software based upon software rental;
3. Base-Module – a version of the Software including basic functionalities and required for the use and application of Add-On-Modules;
4. Add-On-Module – a functional supplement to the Software, requiring a Base-Module for its intended application and use;
5. Failure – all malfunctions of the Software that lead to a restriction of the intended application of the Software;
6. Hardware – all devices necessary for the use of the Software;
7. Release – new development stage of the Software;
8. Hotfix (Patch) – cause-related rectification of a defect and/or failure of the Software which significantly impairs the intended use of the software;
9. Term – the period of time as defined in Section G.;
10. Open Source Software – the term "Open Source Software" (OSS) has the meaning defined and published by the Open Source Initiative ("OSI") at <http://www.opensource.org>.

C. Scope of Supply

1. TIG shall supply Customer with Software according to the current release status within the scope of the respective Subscription. Any Subscription of an Add-On-Module requires Subscription of a Base-Module.
2. Supply of Software includes all Releases, Hotfixes and Patches issued by TIG within the respective term.
3. Customer shall provide and commission all Hardware required for the use of the Software.

D. Contract Formation & Contract Documents

1. The contract documents are complementary and what is required by one shall be as binding as if required by all. In the case of conflict between terms of the contract documents, the following order of precedence shall apply:
 - The individual agreement entered into by and between TIG and Customer (project contract signed by the parties or order confirmation issued by TIG);
 - These Conditions;
 - The provisions of the T&C as stated in section A.2.
2. Quotations issued by TIG shall constitute an invitation for an offer by Customer, always subject to change. Position prices quoted are fixed for the applicable fixed price period.

E. Fees and Payment Conditions

1. Amount and due date of fees for Subscriptions shall be subject to the parties' agreement.
2. All fees for a Subscription shall be paid in advance for the respective Term. If a subscription is renewed, the relevant fee will be invoiced 6 weeks prior to the start of the renewal term.
3. Unless otherwise agreed to the contrary, in event of renewal of a Subscription, subscription fees are subject to adjustment based upon the annual indexation of the Austrian Collective Agreement for Employees of Companies in the Automatic Data Processing and Information Technology Services Sector.
4. Unless otherwise agreed to the contrary, payments are to be made within 14 days from receipt of the invoice by interbank payment without any kind of deduction and free of transaction charges to the designated bank account of TIG in the currency specified in the invoice. No cheque or bill of exchange will be considered as fulfilment of the payment obligation.
5. From the due date interest in the legal amount shall accrue subject to applicable law. If Customer is in default with a payment at the beginning of the renewal period, TIG – without prejudice to any further rights and remedies available hereunder or at law - reserves the right to technically prevent the further use of the Software within the respective Subscription, until full payment of the balance due; such prevention of use shall not extend the Term in question.
6. Customer may invoke set-off or exercise a pledge or right to retain only, if its claims have been accepted by TIG in writing or have been adjudicated by court.

F. Licence Grant

1. Upon each Subscription, TIG grants to Customer the non-exclusive, non-sublicensable, non-transferable, worldwide right to use the Software, including all releases provided under the Subscription, during the term in accordance with the applicable Software Documentation and the provisions of this Section F.
2. The licence grant set out above shall be subject to the full payment of the balance due.
3. The license granted for each Subscription to a Base-Module enables usage of the Software by one user. The use of the Software is not bound to a specific device or a certain workstation. Each additional Subscription to a basic module grants simultaneous use of the Software by one further user for all machines connected; usage of the Software on a machine console or a corresponding production monitor does not affect the licence grant.
4. The right to use the Software shall exclusively apply for the machine specified for the respective Subscription. Use or application of the Software for any machine other than the specified, is not admissible.
5. Notwithstanding the foregoing, any rights in the Software shall remain with TIG or a third-party licensor. To the extent Software includes Open Source Software ("OSS"), the conditions of use underlying the OSS (the "OSS-Conditions") shall apply. TIG shall notify Customer of the fact that OSS and OSS-Conditions exist and make such OSS-Conditions accessible to Customer or, if required according to the OSS-Conditions, provide Customer with such OSS-Conditions.
6. At TIG's request, Customer shall furnish TIG with a document signed by Customer's authorized representative verifying Customer's usage of the software.

G. Term & Termination

1. Term for each Subscription shall be one year.
2. If a Subscription is purchased within the Term of an earlier Subscription, this subsequent Subscription shall remain in effect until expiry of the term of the earlier Subscription. The annual fee for the additionally purchased Subscription shall only be invoiced on a pro rata for the actual term.
3. The customer is entitled to terminate a Subscription in writing at the end of the respective term by giving 3 months' notice. If a notice of termination is not given in due time, the Subscription shall continue to be effective for another year. Subsequent extension shall not constitute an indefinite term.
4. Subject to a 4 months' notice period, TIG shall be entitled to terminate Customer's Subscriptions at the end of the relevant term. If TIG does not terminate all Subscriptions, Customer shall be entitled to terminate remaining Subscriptions in accordance with para 3.
5. If a Subscription for a Base-Module is terminated, corresponding Subscriptions for Add-On-Modules shall also be deemed terminated.
6. Notwithstanding the foregoing, either party may terminate the respective contract with immediate effect for cause attributable to the other party. In case of termination for cause by Customer, TIG shall reimburse the fees on a pro rata basis corresponding to the remaining Term.

H. Warranty

1. TIG warrants that the Software conforms to the functionalities specified in the respective program documentation, provided that the Software is used in accordance with the applicable installation requirements and under the applicable conditions of use.
2. TIG warrants that the Software is free from third-party property rights which may restrict or exclude the agreed use of the Software.
3. Failures of the Software shall be exclusively remedied by Hotfixes and Releases within the scope of supply. Any further warranty claims as well as all other claims arising from or in connection with Failures of the Software are expressly excluded.

I. Applicable Law

These Conditions shall be governed by and construed in accordance with the laws of the state where TIG has its registered office to the exclusion of the provisions of the United Nations Convention on Contracts for the International Sale of Goods.

J. Dispute Resolution

1. Subject to the paragraph below, all disputes, disagreements or any claim arising out of or in connection with a contract formed hereunder including any issue regarding its existence or validity shall be referred to the competent court where TIG has its registered office; independent thereof, TIG may also take proceedings against Customer in the courts of any country in which Customer has assets or in any other court of competent jurisdiction.
2. If, however, Customer's principal place of business is outside the European Union (EU) or the European Free Trade Association (EFTA), all disputes arising out of or in connection with a sales contract formed hereunder or related to its violation, termination or nullity shall be – to the exclusion of recourse to ordinary courts of law – finally settled under the Rules of Arbitration and Conciliation of the International Arbitral Centre of the Austrian Federal Economic Chamber in Vienna (Vienna Rules) by three arbitrators appointed in accordance with the said rules. The place of the arbitration shall be Vienna.

K. Severability

The contract concluded subject to these Conditions shall remain effective, even if any term or other provision thereof is determined by a court of competent jurisdiction to be invalid, illegal or incapable of being enforced by any rule of law or public policy, all other terms, provisions and conditions of the contract shall nevertheless remain in full force and effect. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, it is also the intention of the parties that in lieu of each clause or provision that is illegal, invalid or unenforceable, there be added as a part of the respective contract a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.