

ILC GmbH

Licensing of Software – Terms and Conditions

§ 1 Subject Matter and Agreement content

1.
The subject matter of this Agreement is the licensing of the Software described in the License Certificate (Exhibit) and the grant of the rights of use of the Software pursuant to § 2.

2.
The performance of the contract is exclusively subject to the provisions of the Licensing Agreement and the following Terms and Conditions for Licensing of Software. Deviating contract terms of Customer (e.g. terms of delivery, terms of payment) do not form part of the contract, including cases in which ILC does not expressly object to them.

3.
Modifications and amendments of this Agreement must be in writing, unless otherwise provided in the following terms and conditions; the same applies to a waiver of the mandatory written form requirement.

4.
Representations in evaluation programs, functional specifications, product descriptions and the like do not constitute a guarantee. Such guarantees require the express written confirmation of ILC.

5.
The terms and conditions on hand apply to further purchase orders of Customer in their valid version at that time also not expressly indicated hereon.

§ 2 Rights in the Software

1.
As between the parties, ILC reserves all rights in the Software. ILC grants Customer the perpetual and non-exclusive rights pursuant to par. 2 through 5.

2.
Any further reproduction of the Software is not permissible, except for backup purposes as set forth by statutory provisions. To the extent that is technically feasible, the copyright notice for the original Software shall be attached to any backup copies.

3.
Translation, alterations, arrangement and any other adaptations of the Software by Customer (as far as not required for the intended use of the Software or the removal of defects, as set forth in the applicable statutory provisions, and provided that ILC fails to comply with its contractual duty to remedy the defect within a reasonable time) are not permitted.

4.
All other usages of the Software which are relevant with respect to copyrights are not permissible. Data centre services and other online services for third parties are prohibited. Any use by or on behalf of Customer's affiliates requires express written consent in the License Certificate. The sale and distribution of the software is not permitted.

5.
The Software shall not be turned over to third parties unless the prior written consent of ILC has been obtained. The consent will be granted when prior to the transfer to a third party, Customer submits a written statement from such third party in which the third party agrees to accept the ILC Terms and Conditions for Licensing of Software and Terms of Confidentiality, and provided that Customer relinquishes its own legal position. The third party is not entitled to any contractual or other legal claims against ILC. The rights of use granted under the License Certificate may not be split. After the transfer, Customer shall assure ILC in writing that Customer no longer possesses the Software or any copies thereof, and that Customer shall refrain from using any backup copies it may have.

6.
Customer is supplied with the Software and the following related material:

- machine-readable program;
- electronic manual

Customer may not claim the surrender of the source codes.

7.
ILC reserves all rights in all work results which ILC delivers to Customer with respect to the accomplishment of the Agreement, the same applies when the work results were produced in collaboration with Customer or due to the Customer's suggestion. Customer is granted the perpetual and non-exclusive rights to use and change the results for its internal operations in conjunction with the contractual granted usage rights for the Software. In Case the work results are independent of the Software, Customer shall only use and change them for its internal operations on a perpetual basis. The sale and distribution is not permitted.

8.
Any extension of the rights of use requires a separate written agreement. ILC may verify the scope of use at any time using a License Manager. If ILC establishes that Customer is using the Software beyond the contractual scope, ILC has the right to invoice the balance between the compensation paid and the compensation for the actual scope of use. ILC reserves the right to any further reaching claims it may have.

9.
The software referred to in Exhibit *Third Party Software* is subject to the terms and conditions of the *Third Party Software* manufacturers or suppliers, respectively, which shall be made available for inspection by Customer at any time; alternatively, ILC may also provide Customer the web address from which the terms and conditions may be obtained.

§ 3 License costs and payment

1.
The license costs for supplying the Software and the grant of the rights set forth in § 2 in conjunction with the License Certificate are subject to the License Certificate (Exhibit).

2.
The compensation is subject to the statutory value added tax that is valid at that time. Travel and allowable expenses shall be added if they apply. Travel times are considered as

working hours. Invoices shall be due for payment within fourteen (14) days after their receipt and delivery of the Software with no deduction.

3.

If Customer is in default with its payments, ILC may claim interest on payments in the amount provided in statutory provisions. ILC may also stop the further accomplishment of the contractual services, until Customer complies with his payment obligation. ILC shall advise Customer thereof prior to suspending supplies and services. Customer shall not offset claims, unless its counter-claims are undisputed or have become *res judicata*. Customer shall assign claims against ILC only with the prior agreement of ILC.

4.

In case Customer is entitled to use the Software prior to receipt of full payment, ILC reserves the right to revoke the rights granted, in case of a default in payment of more than 6 weeks or if Customer finally refuses to make payments or becomes insolvent. If the rights are revoked, Customer shall promptly delete or return the Software and any copies thereof and upon request of ILC, confirm the deletion and return in writing.

§ 4 Technical Requirements; System Environment; Product Prerequisites and Product Specifics

1.

The technical conditions for the proper functioning of the Software are governed by the Exhibits *Technical conditions* and *Third-Party Software*. It is Customer's duty to set up and maintain these technical conditions on its own expense. The Software is always configured for the system environment of Customer in each individual case. Customer may order these services – depending on the volume- within the scope of an Installation or Project Agreement. ILC expressly advises Customer that changes in the system environment (also with respect to changes in the *Third-Party Software*) may adversely affect or impede the functionality of the Software. ILC is willing to restore the functionality under a separate agreement for compensation on a time and materials basis, provided that the technical conditions are met. The same applies to the ongoing development of the system environment (e.g., in connection with the maintenance of third party software).

2.

Error analysis and removal shall be performed via telephone or E-Mail and - if agreed upon between ILC and Customer - via remote data transmission. In this case Customer shall be responsible at its own expense, for setting up and maintaining a remote data transmission facility in accordance with Exhibit *remote data transmission* for the entire agreement period including the limitation period for material defects and defects of title. Customer shall assume the telecommunication charges. ILC will only use this remote data transmission after prior agreement with Customer; furthermore the regulations of §9 with respect to data protection shall apply. Customer may terminate the remote data transmission at any time; risk and responsibility for the termination and emerging additional costs bears Customer. In case the agreed upon access via remote data transmission is not available ILC will perform error analysis and removal if required at the customer site. These on-site services will be invoiced separately at the ILC rates that are valid at that time.

3.

In addition, ILC warns Customer that remote access according to par. 2 may create a gap within the data security of the Customer's system. ILC will take reasonable state of the art safety precautions.

§ 5 Contact Persons and duty to Co-operate

1.

The complexity and individuality of the Software requires extensive co-operation between Customer and ILC. Customer shall contribute to the implementation of the project services free of charge by rendering, in particular, the services set forth in par. 2 through par. 6.

2.

Customer shall appoint a contact person and his deputy. These persons are responsible for all issues in connection with the performance of this Agreement and act as qualified system administrators. In order to ensure trouble-free and due performance of this Agreement, the system administrators are required to attend the relevant training courses offered by ILC; non-attendance may result in significant additional expenses in connection with operator errors or the processing of error messages, respectively, which are actually attributable to operator errors or insufficient knowledge of the Software or its applications. The contact persons co-ordinate all measures which are necessary on Customer site for error analysis and error removal. They are available to ILC for questions and provide relevant information not only with respect to ILC software but also regarding relevant operating systems, net-works, EDI-components, integrated CAD- and PDM-Systems and other soft- and hardware or system environments. They are the only individuals authorized to issue error messages to ILC.

3.

Without being requested to do so, Customer shall provide ILC with any necessary information for the performance of the contractual services in a timely manner. This duty also covers the provision of Customer data of sufficient quality and quantity - test or operative data depending on the requirement - that ILC requires for the performance of this Agreement. The data carriers and data formats shall be harmonized.

4.

Customer shall ensure that ILC is always granted access to all facilities during regular business hours, as well as access to the hardware and software existing at the Customer's site, to the system administration and to the Customer's data, to the extent required for the execution of the Services. ILC shall comply with the house regulations of Customer. To the extent the rendering of the Services is impaired or delayed due to this compliance (e.g., due to security regulations or company-wide holidays) the Customer is responsible for the impairment or delay.

5.

Customer shall perform a backup at regular intervals (ILC recommends no less than once a day) and prior to any interference with existing EDP systems (e.g. Installation of new programs or versions). ILC shall notify Customer of any such interference.

6.

Error analysis, processing and removal are only possible, if the appointed system administrators and their deputies deliver qualified error messages, which shall always contain the following information:

- information about the software and hardware environment on the Customer site; status of the installation and respectively changes of the installation/configuration (if they are not known by ILC). This may involve changes of systems which are integrated with the Software or might be called by the Software
- detailed error descriptions with the relevant error codes, and where required the problem files, configuration files, extracts of the job data base and others.

7.

If Customer does not comply with its duty to co-operate in an orderly, proper form and in a timely manner, ILC may invoice the resulting costs or the additional required effort at the rates that are valid at that time.

§ 6 Default in Supplies and Services

1.

ILC is unable to meet the agreed dates, unless Customer complies with any and all of its duty to co-operate. In the event of modifications and extensions and in the event of not sufficient co-operation, the mutually agreed dates may be delayed. In these cases and in other events for which ILC is not responsible (e.g., force majeure, labor unrest, etc.) the dates for supplies and/or services shall be extended by the time of the disruption and by a reasonable period for resumption of the service.

2.

If ILC is in default, Customer shall initially grant a reasonable grace period in written form for the provisioning of supplies and services. Further claims may not be asserted unless this grace period has expired without the default being remedied. If Customer wishes to rescind the agreement upon effectless expiration of the grace period set forth in writing or claim damages in lieu of the Services or a reimbursement of expenses, Customer shall announce this intention in the letter stipulating the grace period.

§ 7 Material Defects and Defects of Title

1.

ILC shall initially perform its warranty obligations for material defects and defects of title by re-performance. In the case of material defects, re-performance shall mean, at the option of ILC, the removal of the defect or the supply of an error-free program version or other error free work results. If the use of the Software, as contemplated in this Agreement, is restricted due to defects of title (e.g., because third parties claim rights in or to the Software), ILC shall discharge its re-performance obligation by securing the use of the Software as contemplated in this Agreement, at the option of ILC, by defending against or settling these rights or by the respective modification of the Software. ILC may, in its discretion, directly handle the dispute against the third party in court or extra-judicially on behalf of Customer. In connection herewith, Customer shall assist ILC free of charge to a reasonable extent.

2.

Customer may rescind this Agreement upon the expiration of a reasonable time limit set by Customer in written form, which allows several attempts of re-performance. Claims for damages and the reimbursement of expenses are governed

by § 8. These are the exclusive remedies in case of material defects and defects of title.

3.

Due performance of warranty obligations by ILC is, in case of material defects, subject to an immediate notice of defect by Customer in writing or by e-mail containing a detailed description of the defect according to §5 par. 6. The report shall be made by the system administrator or his/her deputy. Customer shall co-operate with ILC in the removal of the defect in accordance with § 5. In case of a defect of title, Customer shall immediately notify ILC in writing about the claims to proprietary rights asserted by third parties against Customer and provide ILC all relevant information and data.

4.

ILC shall assist Customer with trouble-shooting, including in such cases in which it has not been determined that the error exists in the supplies and services provided by ILC. If, during the trouble-shooting, it can not be demonstrated that the errors that have occurred are due to the supplies and services provided by ILC, ILC shall invoice Customer for the expenses incurred on a time and materials basis. In connection herewith, ILC draws Customer's attention to the fact that the system administrator must receive the relevant training.

5.

ILC is not obligated to remove material defects and defects of title if the Software has been modified without the consent of ILC, and Customer is unable to show that the material defect or defect of title is not related to this modification. The same applies if Customer makes customizing settings itself after obtaining the prior consent of ILC. In addition, ILC will not discharge any warranty obligations as long as Customer uses the Software in violation of the restrictions of use contained in the License Certificate and in § 2.

6.

The limitation period for material defects and defects of title is - except in case of intentional wrongdoing - one (1) year and shall begin to run upon shipment, unless otherwise provided in the Installation Certificate.

7.

In case of defects of third party software or hardware which was provided by ILC in the scope of this agreement, ILC may on its option assign to Customer its claims against the supplier concerning this matter. In this case Customer shall only submit its claims against ILC after the effectless - if needed in court – handling of the dispute against the third party.

§ 8 Liability

1.

ILC shall be liable for any violation of contractual duties, regardless of the legal cause (e.g., fault in the execution of the contract, default, material defect and defect of title, violation of any other duty, or tort) provided, however:

- in case of intentional wrongdoing and in the absence of a guaranteed quality for the full amount.
- in all other cases of gross negligence, for the foreseeable and typical damages limited to the individually agreed upon maximum amount per year for any and all incidents involving damages in connection with the performance of the Agreement; unless

otherwise agreed the liability for any and all incidents involving damages in connection with the performance of the agreement is limited the single license fee;

- in case of ordinary negligence or in case of a breach of a contract duty in a manner endangering the purpose of this Agreement (so called cardinal obligation), for the foreseeable and typical damages limited to the individually agreed upon maximum amount per year for any and all incidents involving damages in connection with the performance of the Agreement; unless otherwise agreed the liability for any and all incidents involving damages in connection with the performance of the agreement is limited the single license fee. Liability for loss of production, interruption of business operations and lost profits, or the loss of interests are excluded.
- No other claims are permissible.

2.
Further claims will be compensated by ILC, as far as ILC has an insurance coverage and receives payments.

3.
The statutory liability for personal injury or product liability remains unaffected.

4.
Except in case of intentional wrongdoing, ILC shall only be liable for the loss of data if Customer has performed system checks and data backups at regular intervals (at least once a day and prior to any interference e.g. installation of new programs or versions) and only if the data may be reproduced from machine-readable data stores within a reasonable time and at a reasonable expense.

§ 9 Confidentiality and data protection

1.
The parties agree to treat any information, records, and data that are disclosed to them in the course of the performance of this agreement as confidential and to deny any third party access, except for the purpose of this Agreement. Customer shall take the appropriate measures to ensure that unauthorized third parties have no access to the Software subject to this Agreement, or to any other ILC materials. The parties shall notify their employees of their duty of confidentiality. ILC may use know-how acquired during the performance of this Agreement for its business activities in particular for the Software development and may further develop gained common technologies and concepts.

2.
ILC will process Customer's data electronically and comply with data protection rules and regulations. However, Customer is responsible for securing personal data prior to the commencement of the contractual services in such a manner that no unintended (not required for the performance of this Agreement) access of ILC is possible. In general, Customer shall be responsible for obtaining the authorizations from its employees, customers, and business associates of Customer and any other affected individuals that may be required under data protection law. Customer shall indemnify and hold ILC harmless from and against any claims that the aforementioned persons may assert against ILC for non-compliance with these duties. This includes also the on site data access or via remote data transmission when a remote data transmission was agreed upon.

3.
The duty of confidentiality shall survive for five (5) years after the termination of this Agreement.

§ 10 Venue and Governing Law; Final Clause

1.
Place of performance is the principal office of ILC. The exclusive venue for all disputes arising from or in connection with this Agreement shall be at the city of the principal office of ILC, if Customer is a merchant of trade or a legal entity, or a special fund under German public law or holds no inland place of venue. This agreement shall be governed by German law, and the UN Convention on the Sale of Goods shall be excluded.

2.
If individual provisions of this Agreement are or become ineffective or in case the agreement is incomplete, the effectiveness of the remaining provisions shall not be affected. If one of the cases stated above appears, the contractual partners shall attempt to resolve or amend these topics in a mutual consent, which will accomplish the intended commercial intention as close as possible in a legally allowed manner. The same paragraph shall apply to any omissions.

3.
In case of discrepancies or interpretation difficulties the German language version of the Agreement shall prevail.