

General Terms and Conditions for the Licensing and Maintenance of Standard Software of msg systems AG (as of 06/2019)

1. Scope of the Terms and Conditions

1.1 These General Terms and Conditions shall apply to the licensing of standard software as well as to the maintenance services for standard software (hereinafter referred to as "contract software") of msg systems AG (hereinafter referred to as "msg systems").

1.2 The licensing and maintenance of the contract software shall be subject to the following provisions. With respect to consultancy and development services that are provided by msg systems to the customer, the General Terms and Conditions for Consultancy and Development Services of msg systems apply.

1.3 Conflicting General Terms and Conditions of the customer shall not form an integral part of the contract, even if msg systems should carry out any such a contract without previously expressly opposing such terms and conditions.

1.4 Individual agreements intended to deviate from any provision of these General Terms and Conditions must be concluded in writing for them to become effective. This also applies to any amendment or annulment of this written form requirement.

1.5 The provisions of a contract have priority over any conflicting provisions of these General Terms and Conditions.

2. Conclusion of Contract

A contract shall be deemed to be concluded upon the customer's acknowledgement, in writing or by e-mail, of a quotation by msg systems. Purchase orders must be submitted by the customer in writing and may be accepted within two weeks by msg systems; this acceptance is also deemed to be given by either the supply of goods or services or the presentation of an invoice.

3. Subject of a Contract for the Licensing of Standard Software

3.1 msg systems shall supply the standard software identified and specified in the contract, including the related released documentation, for the customer's own use and for the remuneration agreed in the contract.

3.2 The functional scope of the contract software shall exclusively result from the user documentation.

3.3 The subject of a contract based on these General Terms and Conditions does not include any training for the customer, installation or customization of the contract software or migration of the customer's archive data. These services can be additionally agreed with msg systems in separate contracts for an equivalent remuneration.

3.4 msg systems shall deliver the contract software to the customer as provided in the quotation.

3.5 Together with the contract software, msg systems will hand over to the customer the user documentation in German released by msg systems, in an electronic, printable form on a suitable data carrier.

4. Maintenance of the Contract Software

4.1 Upon conclusion of a maintenance contract, msg systems shall carry out the following software maintenance services throughout the period of this maintenance contract:

a) msg systems shall make the necessary changes or modifications to the contract software, which may become necessary due to changes in relevant statutory provisions of the Federal Republic of Germany, by the development and provision of an update for the software within its programming and organizational capabilities.

b) msg systems shall investigate any defects in the contract software reported by the customer in writing and, if possible, indicate to the customer how to eliminate or handle the consequences of such a defect. msg systems shall eliminate defects in the contract software as promptly as possible. Where the cause of defect was found not to lie in the contract software supplied by msg systems, then all costs arising from the ensuing work that led to the clarification of the problem will be charged to the customer in accordance with the currently valid price list of msg systems.

c) As part of its product policy, msg systems continuously develops the contract software. Any improvements made shall be incorporated into the contract software.

d) Within the scope of the fees for the maintenance of contract software agreed in the contract, msg systems shall deliver to the customer updates to the contract software, as described in paragraphs a) to c) above. The updates shall be supplied after their release.

4.2 msg systems shall provide by telephone to the customer's staff responsible for the contract software, qualified technical advice relating to the areas of application and the solution of problems with the use of the contract software. Customers may call Monday to Friday between

09:00 and 17:00 (with the exception of public holidays in the respective locations of msg systems). The customer shall notify msg systems in writing of the names of the persons responsible for the contract software.

4.3 Unless otherwise agreed in the contract, msg systems' obligation to maintain the contract software always relates to the latest program version thereof released by msg systems.

4.4 The scope of the maintenance services does not include any on-site installation and familiarization with any updates, on-site support, training for and troubleshooting of program changes, which may become necessary due to the system environment or because of any unauthorized modification or improper use of the contract software. In addition, any business management consultancy is excluded from the range of maintenance services.

4.5 Should the customer, on the basis of a separate contract, acquire any rights to individually customize the contract software, the maintenance and support services for these extended functions shall be subject to the General Terms and Conditions for Consultancy and Development Services of msg systems.

5. Rights of Use

5.1 msg systems holds the exclusive rights to the contract software written and marketed by msg systems; the contract software is protected by copyright. This legal situation also exists when the contract software written by msg systems was developed at the customer's request or with the collaboration of the customer.

5.2 msg systems grants to the customer a non-exclusive right, for an indefinite period, to use the contract software within the customer's own business activities and for the customer's own commercial purposes. The extent of the uses conveyed, e.g. the maximum number of seats, clients, environments etc., shall be specified in the contract. The use of the installed contract software or any parts thereof for any purposes other than those specified in the contract shall require a separate licensing agreement.

5.3 In the event of a named user constraint, msg systems shall permit the customer to continue to use the contract software, even when the designated user is absent (e.g. on leave or through illness), by his stand-in.

5.4 The use of the contract software for any third party purposes is excluded, including but not limited to the provision of services of a computer centre or for the leasing to any third party. Companies which are directly or indirectly owned or controlled by, or otherwise affiliated with the customer, shall also be regarded as 'third parties'.

The temporary or partial licensing of the contract software for use by any third party, or several third parties, is prohibited, including but not limited to any licensing within any business restructuring and legal succession in accordance with the Reorganization Act [*Umwandlungsgesetz, UmwG*]. In the event of any takeover of the customer in whatever form, msg systems shall be entitled to the subsequent payment of additional royalties by the company taking over, if that company uses the contract software.

5.5 The customer is only authorized to copy the supplied contract software to the extent that is necessary for the use of the contract software as agreed. This also includes the making of the necessary number of backup copies. All copies must show the copyright notice of the original.

5.6 All other rights in the contract software, including but not limited to the right to make copies beyond the aforementioned scope and as well as the right to distribute, lease, translate and modify the contract software, remain with msg systems.

5.7 Decompilation of the contract software is permitted within the scope of the provisions of the German Copyright Act, unless msg system provides the information and/or documentation required to establish the interoperability of the contract software with other programs, upon the customer's written request and within a reasonable period of time.

5.8 The contract software may only be passed on to others after msg systems has given its previous written consent, and this will depend on whether or not the customer has completely given up using the contract software. In addition, the customer shall submit to msg systems a written statement by the new user committing it to comply with and abide by these General Terms and Condition and the limitations of use stipulated in the respective contract with the customer; the passing on of the contract software must not result in any extension to the scope of use thereof.

5.9 Upon the delivery of new versions of or updates to the contract software, the customer receives the right to use them to the same extent that it is entitled to use the original contract software. Where the customer

uses new versions of or updates to the contract software in operative (productive) use that are designed to replace previous versions of the contract software, then the right to use the replaced versions of the contract software will expire. The customer shall ensure that all of the replaced versions of the contract software will not be further used. msg systems may request the customer to return any replaced versions of the contract software and to confirm in writing that no additional copies of the replaced versions of the contract software remain with the customer.

5.10 Upon the introduction of new versions of or updates to the contract software, the customer shall be entitled to use the previous versions of the contract software until it is warranted that the new version operates properly and is free from defects and is also capable of processing data that were created by the previous versions of the contract software.

6. Fees

6.1 The level of fees for the licensing and, if applicable, maintenance of the contract software are specified in the respective contract. Unless it was otherwise specifically agreed in the respective contract, the customer shall be obliged to pay the total price upon delivery of the contract software. The fees specified in the contract are quoted as net prices, to which must be added the currently effective VAT.

6.2 The fees agreed for the maintenance of the contract software are payable one year in advance and fall due at the beginning of each calendar year. Where the contractually agreed use does not commence at the beginning of a calendar year, then the period from the initial use of the software to the end of the calendar year shall be regarded as pro rata period. The proportional fees for this pro rata period shall be paid upon the delivery of the contract software, but in any event not later than the initial productive use of the contract software.

6.3 The customer and msg systems hereby agree that the level of the fees for the supplied contract software was determined by the size of the customer's business enterprise known at the time the contract was concluded, and by the scope of use derived therefrom. The basis of determination is the customer's balance sheet totals at the time of the conclusion of the contract. Should the customer expand its business activities, for example by company acquisitions, or mergers, or in any other way, then msg systems shall be entitled to make any further use of the contract software dependent on the retrospective payment of fees appropriate to the increase in the scope of use. The retrospective fees shall be payable at the time of the increase in the balance sheet total. When the balance sheet total increases due to ordinary business activities, then no obligation of retrospective payment will arise. Insofar as the balance sheet total increases, the level of the retrospective fees payment will be calculated on the basis of the price list valid at the time of that increase.

6.4 Should the customer's scope of use increase in accordance with the foregoing paragraph 3, then the fees for the maintenance of the contract software will be accordingly adjusted. The level of the maintenance fee adjustment will be calculated on the basis of the price list valid at the time of the increase in the balance sheet total.

6.5 msg systems shall be entitled to adjust, on an annual basis, the level of the maintenance fees for the contract software, in line with any changed costs of materials and personnel. msg systems will inform the customer in writing of any such adjustment, three months prior to it coming into force. The customer shall be entitled to terminate the contract software maintenance contract to the time of commencement of the fee adjustment requested by msg systems, if the level of adjustment exceeds an average price increase of 10% p.a. since the last increase.

7. Reservation of Rights

msg systems shall retain the title in and rights to the contract software until all fees have been fully paid.

8. Terms of Payment

8.1 The customer reimburses msg systems' contract software in accordance with the contractual agreements and where applicable, the payment plan agreed in the contract.

8.2 Invoices issued by msg systems shall be due and payable within ten (10) days from the date of the invoice, without any deductions.

8.3 In the event that the customer defaults on any payment, msg systems shall be entitled to charge default interest in accordance with the statutory provisions. msg systems reserves the right to claim higher damages for delays on an individual basis.

8.4 The customer shall only be entitled to offset any amounts due to msg systems, if the counterclaims are undisputed or legally effective. The customer is not entitled to assign any claims against msg systems to any third party. Section 354 of the German Commercial Code [*Handelsgesetzbuch, HGB*] shall remain unaffected.

9. Customer's Obligation to Cooperate

9.1 The cooperation obligations of the customer described below in this section 9 as well as additional cooperation obligations of the customer

possibly specified in the offer or contract are main performance obligations of the customer. The customer shall ensure that all of the necessary cooperation services to be contributed in the carrying out of the work shall be performed in due time, in the required quality and scope agreed upon by the contracting parties and at no cost to msg systems.

9.2 With regard to msg systems' deliveries, the customer shall assume the duties of inspection and notification of any defects in accordance with Section 377 of the German Commercial Code.

9.3 The customer must notify msg systems immediately of any defects, by specifying the circumstances under which the defect occurred, the consequences and possible causes of the defect. The customer shall provide all documentation and information available, which msg systems may require for the diagnosis and rectification of the defect, and, in so far as it is necessary, grant access to the rooms, machines and contract software, at least during normal office hours.

9.4 The customer agrees to provide msg systems with all the documents and information necessary for the provision of the services in a timely manner.

9.5 The customer shall, to the best of its ability, support msg systems in the search for the cause of the problem.

9.6 The customer shall ensure that, throughout the period that the maintenance services are being carried out, a qualified employee is available to assist msg systems and sufficient computer time is provided.

9.7 The customer is obliged to carry out, generate and check data backups on a regular basis. The data backup shall include the entire software system and the regular backup of master and transaction data and must be carried out in compliance with the principles of proper data processing.

9.8 Upon receipt of a new version of or update to the contract software from msg systems, the customer shall itself immediately install this software for testing purposes. The customer shall test the contract software to the best of its ability, prior to using it in production. Should msg systems advise the customer, at short notice by telephone hotline, of information required for maintenance purposes on how to remedy and avoid any defects, then the customer shall carry out such an instruction immediately.

9.9 Where it is so required for new versions of the contract software, the customer shall provide in good time, ready for use and at its own cost any customization of the hardware and software environments, including but not limited to new versions or updates of the operating system or any other third-party software required by the contract software.

9.10 If the customer provides or has to provide software for the provision of services by msg systems, it shall ensure that the rights necessary for the provision of services by msg systems exist.

9.11 If the customer does not meet the obligation to cooperate, not in time or not in the agreed manner, the resulting consequences (e.g. delays, additional costs) are borne by the customer.

10. Term and Termination of Software Maintenance Contracts

10.1 The contract for the maintenance of the contract software is concluded for an indefinite period of time. The contract may be terminated by either party by the giving of three (3) months prior notice, to take effect at the end of a calendar year, but at the earliest two (2) years after the beginning of the customer's obligation to pay.

10.2 The right of extraordinary termination for an important reason shall remain unaffected. An important reason exists, including but not limited to, when the customer defaults on its payment for more than one month.

10.3 Any notice of termination must be given in writing.

11. Material Defects

11.1 msg systems shall warrant that the contract software complies with the user documentation and that it contains no defects.

11.2 Any claims resulting from any defects shall expire by limitation after twelve (12) months starting with the delivery or, in the case of services which are described in the contract as works services, i.e. success-oriented services, the acceptance of the service.

11.3 The customer must immediately report any defects in writing in such a form that the defect can be reproduced, and by giving appropriate information to identify the defect. The customer shall assist msg systems, in a reasonable manner, in the rectification of any defects.

11.4 msg systems may choose to eliminate defects primarily by remedying the defect (rectification) or by producing new contract software (replacement). The customer shall set reasonable time limits for msg systems' subsequent compliance. If the subsequent delivery of the services to be provided finally fails, despite at least two attempts of subsequent improvement - provided that the subsequent improvement by msg systems is not unreasonable for the customer - per claimed defect, then the customer shall be entitled, at its own discretion, to request a reduction in the level of fees due or - if the statutory requirements are given - withdraw from the contract and claim damages instead of the performance of services, or compensation for costs of ineffective efforts..

11.5 However, the customer shall only be entitled to withdraw from the contract and/or claim damages from msg systems instead of the complete performance of services, or compensation for costs of ineffective efforts, if msg systems has not insignificantly breached any of its obligations.

11.6 Any claims arising from defects shall be excluded, if the customer changes or modifies or otherwise impairs the contract software, unless the customer can prove that the respective changes or modifications were not the cause of the defect.

11.7 msg systems also gives no warranty for any data that have been migrated or inserted into the contract software.

11.8 msg systems may request remuneration of its time and efforts, including but not limited to the cases under paragraphs 6 and 7, so far that it has acted in response to a notice of defect, without the customer being able to provide evidence of any defect in the contract software.

11.9 msg systems is only deemed to be in default upon the service of a warning. All of the customer's warnings and fixed time limits must be made in writing for them to become effective.

11.10 In the event that msg systems has already performed part of the services, the customer may only claim damages in lieu of full performance, if the latter is not interested in the partial performance of the service.

11.11 Unless msg systems has performed the expected services as specified in the contract, the customer shall not be entitled to rescind the contract and/or claim damages instead of the complete range of services or compensation for costs of ineffective efforts, if there is only a minor breach of duty.

11.12 The limitations of liability under clause 14 of these General Terms and Conditions shall apply to any of the customer's claims for damages or compensation for costs of ineffective efforts because of the default.

11.13 Where the customer is entitled to rescind the contract for the licensing of standard software, the customer must agree to be charged for the benefits derived from its use, based on linear depreciation over four (4) years.

11.14 Any other of the customer's warranty claims shall be excluded.

11.15 The provisions of this clause 11 apply accordingly to material defects in the updates to the contract software delivered within the software maintenance services. The right to withdraw from the contract is replaced by right to prematurely, extraordinarily terminate the maintenance contract.

12. Defects of Title

12.1 Unless otherwise specified in this clause 12, clause 11 shall apply accordingly to any defects of title.

12.2 msg systems shall be liable to warrant that there are no rights of any third party conflicting with the transfer of the agreed rights of use to the customer. msg systems shall at its choosing subsequently deliver the services due by providing the customer with a legally correct feasibility of use, by changing or modifying the contract software or substituting it with an equivalent, changed or modified contract software, or by safeguarding the customer against and regulating any third party's claims for intellectual property rights.

12.3 In the event that any third party shall claim intellectual property rights against the customer, the customer shall immediately inform msg systems in writing.

12.4 msg systems is entitled, at its own cost, to defend the customer against the claims of the third party. In such a case, the customer shall support msg systems, to a reasonable extent, in the defence of any claims of the third party and in any legal proceedings and shall refrain from any actions (e.g. acknowledging the claims of the third party) which might prevent msg systems from rejecting the claim. This commitment of the customer shall exist where msg systems shall exempt the customer from the disadvantages and risks of the dispute and adequately safeguard it from such disadvantages and risks.

12.5 msg systems shall be entitled to the right ensuing under paragraph 4, at its own discretion, even after the period of limitation for the warranty of title has expired.

13. Other Defaults in Performance or Breaches of Duty

13.1 Where msg systems fails to perform or properly perform the services due beyond the range of warranty of quality and title, or fails to fulfil any other duties under the contract, then the customer must report this in writing and, also in writing, shall grant msg systems a reasonable period of grace, during which msg systems shall have the opportunity to properly perform the services, or to find a remedy in some other way. If, after the period of grace has lapsed without success, the customer still wishes to withdraw from the contract, e.g. by rescission or termination for an important reason, then it must give notice of these consequences and also fix the time limit in writing. Fixing a time limit will not be required if this is expressly regulated by law.

13.2 The limitations of liability under clause 14 of these General Terms and Conditions shall apply to any of the customer's claims for damages

or compensation for costs of ineffective efforts or because of any other impairments of performance or breaches of duty.

14. Compensation Provisions

14.1 msg systems is liable under the statutory provisions without limitation

- for damage caused intentionally or negligently, due injury to life, body or health;
- due to the lack of warranted characteristics or non-compliance with warranty;
- for damages which are based on an intentional or grossly negligent breach of duty by msg systems.

14.2 msg systems' liability in all cases of contractual and non-contractual liability is limited to the contract-typical foreseeable damages, which are based on a minor negligent breach of essential obligations by msg systems. Essential obligations within the meaning of these provisions are obligations which enable the proper fulfilment of the contract in the first place and the observance whereon the customer may rely.

14.3 In all other cases, msg systems' liability for minor negligence is limited to an amount of EUR 100,000 per contract.

14.4 Subject to the provisions of the Product Liability Act, any strict liability of msg systems shall be excluded.

14.5 msg systems is liable for causing data loss through minor negligence but only for the typical and ordinary damage, which would also have been caused in the case of a proper and regular data backup by the customer with regard to the importance of the data. This limitation does not apply if the data backup was impeded or impossible due to reasons attributable to msg systems.

14.6 The foregoing provisions apply mutatis mutandis to msg systems' liability with regard to the reimbursement of futile expenses.

15. Subcontractors

msg systems may, without the customer's prior approval, use the services of freelancers or any other agents or subcontractors to fulfil its contractual obligations with the customer.

16. Confidentiality

16.1 The contracting parties undertake to keep confidential information and documents of the other contracting party which are obviously confidential or which are designated as confidential by the other contracting party, such as operating secrets and business secrets, and treat them with strict confidentiality. This also applies to offers made by msg systems and contracts concluded between the contracting parties, as well as all information relating to the contract, including any commercial concessions (information and documents referred to in sentence 1 and sentence 2 are referred to hereinafter collectively as "confidential information"). The contracting parties shall also instruct their employees and third parties accordingly, provided that the latter ordinarily come in contact with confidential information, insofar as they have not already been otherwise bound to confidentiality.

16.2 Confidential information may only be used for the purposes of the contract. In addition, said information may neither be recorded, stored, disseminated, duplicated, passed on nor used for own purposes or exploited in any other way.

16.3 Notwithstanding the foregoing provisions, the parties may pass on any confidential information, if (i) the latter was already known to the recipient of the information at the time of the assignment, without any obligation to confidentiality, (ii) the information has already been published, or was published later through no legal or contractual fault of the recipient of the information, (iii) which a party to the contract lawfully receives from a third party without any obligation to confidentiality, (iv) the information has been independently developed by the recipient of the information, or (v) legal provisions or orders of governmental bodies require the disclosure of the information or the other contracting party has agreed to this. The parties will, as far as this is permitted by law, immediately inform each other as soon as they are requested by any authority to disclose confidential information of or about the other party or are subjected to any other official measures by the state.

16.4 msg systems is entitled to include the customer in its list of reference customers, unless otherwise the contract contains a deviating provision in this respect.

17. Data Protection

msg systems and the customer will maintain data confidentiality and comply with data protection requirements in accordance with GDPR (General Data Protection Regulation). During the performance of the order, msg systems and the customer shall only use the services of such agents or subcontractors who have been committed to data confidentiality and compliance with data protection requirements in accordance with GDPR.

18. Transferability of Rights and Responsibilities

The customer shall not be entitled to assign its rights or obligations or delegate its duties under the respective contract to any third party, without the prior written consent of msg systems. § 354a HGB (German Commercial Code) remains unaffected.

19. Final Provisions

19.1 The contract between the customer and msg systems shall be exclusively governed by and construed in accordance with the laws of the Federal Republic of Germany, excluding the United Nations' Convention on Contracts for the International Sale of Goods (CISG).

19.2 The exclusive place of jurisdiction for all and any disputes arising out of or in connection with this contract shall be Munich, Germany, if the customer is a qualified merchant, or a legal entity under public law, or a special fund under public law, or if the customer has no general legal venue in the Federal Republic of Germany.

Ismaning, 06/2019
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