

## **A. General License Terms and Conditions**

### **1. Scope of application**

- 1.1 The following License Terms and Conditions ("License Terms and Conditions") apply to all MESSRING GmbH ("MESSRING") contracts with enterprises within the meaning of § 14 BGB [German Civil Code], as well as legal entities and special-purpose entities governed by public law (together called "Customers") in relation to the temporary or permanent provision of software.
- 1.2 Customers' terms and conditions which differ from these License Terms and Conditions do not form part of the contractual content even if MESSRING does not reject such deviating terms and conditions or effects performance unconditionally.
- 1.3 These License Terms and Conditions supplement MESSRING's quotation or project contract. If MESSRING's quotation or project contract should contain provisions which differ from these License Terms and Conditions those provisions will have priority over the License Terms and Conditions.

### **2. Subject matter**

- 2.1 The subject matter of these License Terms and Conditions is the grant of rights to use the contract software more particularly described below (the "Software") in accordance with the provisions of these License Terms and Conditions on the part of MESSRING as Licensor to the Customer as Licensee.
- 2.2 The characteristics of the Software, especially its nature, quantity, quality, functionality, compatibility interoperability and other features, are exclusively determined by the product description in MESSRING's documentation. MESSRING is not liable for any further characteristics of the Software or for its suitability for any usage that has not been agreed. The Customer may not infer such a liability from other depictions of the Software in public statements or advertising unless further characteristics have been expressly confirmed by the Parties in writing.
- 2.3 Warranties require express written confirmation by MESSRING.

### **3. Provision of Software**

- 3.1 MESSRING may opt to provide Software in machine-readable form either by making the Software available for download from the MESSRING portal, by supplying the Software on a data medium or preinstalled on a system or IT infrastructure.
- 3.2 The Customer will receive the documentation as an electronic document in English or German together with a copy of the Software user manual as an electronic document in English/German. According to the statutory rules respectively applicable the Customer will receive the aforementioned documentation in its national language(s).
- 3.3 The place of performance for the handover of the Software is MESSRING's headquarters.
- 3.4 The Customer bears all costs and risks in connection with such handover.
- 3.5 The Customer is responsible for providing a system environment in accordance with the requirements in the product description.
- 3.6 Depending upon the agreement entered into, the Software will either be installed by MESSRING or handed over to the Customer for it to install itself. The Customer must inform MESSRING of the respective Software installation sites and of any subsequent changes.

### **4. Rights of use over the Software**

- 4.1 Unless expressly agreed by the Parties to the contrary, all rights to the Software, especially copyright, are held exclusively by MESSRING or its licensors.
- 4.2 MESSRING grants the Customer a simple and non-transferable right to use the Software without any territorial restrictions pursuant to the terms of their contractual agreements.
- 4.3 Where the Software is purchased the right of use is for an unlimited period of time but where the Software is leased it is limited to the contractually agreed period.
- 4.4 Unless agreed to the contrary, the Customer may only use the Software itself for its own internal business purposes.
- 4.5 All other rights, especially the right of distribution, including the leasing, translating, processing, arrangement of the Software and making it available to the public, are exclusively retained by MESSRING. Computer center operation for entities other than associated companies or use of the Software to train persons who are not staff of the Customer or of its associated companies is only permitted with the prior written consent of MESSRING.
- 4.6 The right to reproduce the Software is limited to (i) installation for the aforementioned purposes on a system or IT infrastructure held directly by the Customer, (ii) reproduction essential to the loading, displaying, running, transferring and storing of the Software pursuant to § 69c Nos. 1 and 2 UrhG [German Copyright Act] and (iii) the right to create a back-up copy of the Software on the part of a person authorized under § 69 d (2) UrhG. The Customer may take state-of-the-art data protection measures and make essential back-up copies of the Software for that purpose. A back-up copy on a portable data medium must be marked as such and display the original data medium copyright notice unless this should be technically unreasonable. The Customer must not alter or remove MESSRING's copyright notices.
- 4.7 Where the Customer runs the Software on systems or IT infrastructure in the possession of a third party or allows same to be so run (outsourcing) this will only be permitted with the prior written consent of MESSRING.
- 4.8 The right to process the Software is confined to preserving or restoring the agreed functionality.
- 4.9 The right to decompile the Software is only permissible in accordance with the terms of § 69e (1) Nos. 1 to 3 and § 69e (2) Nos. 1 to 3 UrhG. Before decompiling the Software the Customer must give MESSRING an opportunity to make available within a reasonable period of time the information and documents needed to achieve interoperability. Only after the deadline has expired without result will the Customer be entitled to decompile under § 69e UrhG. A third party may only be contracted in this connection if that third party gives MESSRING a written undertaking to abide by the present License Terms and Conditions.
- 4.10 If the Customer uses the Software for an associated company the Customer will be responsible vis-à-vis MESSRING for compliance with the agreed rights of use by that associated company.
- 4.11 The Customer may only transfer the Software to a third party in the event of a purchase of Software and only on the following terms: (I) The transfer must be done on a consistently permanent basis. A temporary or partial transfer to a third party or a transfer to multiple third parties is not permissible. (II) The Customer must have completely and absolutely relinquished its own use of the Software and passed all copies of the Software to the third party or permanently deleted them. (III) The third party must have given MESSRING a written undertaking to comply with these License Terms and Conditions. (IV) The Customer must immediately give MESSRING written notice of the transfer of the Software to the third party and of its name and address.

### **5. Right of inspection for MESSRING**

- 5.1 Upon request and provided that it has a justified interest in doing so MESSRING is entitled to inspect, either itself or by using a third party, whether the Customer is using the Software properly and complying with the terms of the contract; the Customer shall use its best endeavors to assist MESSRING in carrying out such inspections.

- 5.2 Inspections will generally be carried out by way of information voluntarily provided by the Customer using a tool made available by MESSRING. MESSRING is entitled to carry out inspections remotely if the Customer does not provide information voluntarily, if it delivers inconclusive results and if there are objective reasons to believe that an infringement is being committed by the Customer. Following further enquiries MESSRING will also be entitled to carry out inspections on the Customer's premises if a remote-access inspection should prove impossible. When inspections are carried out the Customer must cooperate to a reasonable extent with MESSRING or any third party authorized by MESSRING and especially allow on-site access to the Software and IT infrastructure or system.
- 5.3 Whenever inspections are carried out MESSRING must safeguard the Customer's trade secrets and as far as possible prevent the Customer's business operations being hampered.
- 5.4 Where an inspection confirms that the Software is being used in accordance with the contract MESSRING will bear the costs associated with the inspection. If the inspection should prove that use of the Software exceeds the contractual use the Customer will bear the reasonable cost of the inspection. MESSRING will also be entitled to claim compensation from the Customer for that excess use.
- 5.5 Any use of the Software which exceeds the contract terms must be notified to MESSRING in advance in writing. This requires a separate agreement with MESSRING.

### **6. Remuneration**

- 6.1 The remuneration for the grant of rights of use over the Software under clause 4 (royalties) is determined in the quotation or project contract. Unless agreed to the contrary herein the remuneration is determined according to the MESSRING price list current for the time being.
- 6.2 In the event of a Software purchase the royalties will be a one-off payment whilst in the case of leased Software they will be a recurrent charge.
- 6.3 MESSRING may adjust recurrent royalty charges by a maximum of 5% per annum on giving three months' prior notice to the beginning of a new calendar year. In the event of royalties being adjusted the Customer will have a special right of termination with a notice period of two weeks. If the Customer should fail to terminate the underlying contract within two weeks of receiving the adjustment notice the royalty adjustment will be deemed agreed.

### **7. Terms of payment, Offsetting**

- 7.1 Unless agreed to the contrary in the quotation or project contract MESSRING will invoice royalties on a monthly basis.
- 7.2 Invoices are payable net within fourteen (14) days of the invoice date. If the Customer should fall into arrears with its payments the outstanding amount will bear interest in accordance with statute. MESSRING reserves the right to bring further claims.
- 7.3 All amounts are net sums, plus statutory value added tax. MESSRING will show the rate of tax and amount of value added tax separately on the invoice.
- 7.4 MESSRING has the technical facility to enable individual systems supplied to be shut down by remote access so that the Customer is no longer able to use them. If during a period of arrears MESSRING should make a written demand for payment from the Customer, e.g. by post, email or fax, whilst setting a payment deadline and giving notice that a shutdown will occur if payment should not be made then MESSRING will have the right to close the system down from the time that the deadline expires without result until such time as payment is made in full.
- 7.5 The offsetting of claims by the Customer against payments due to MESSRING and the exercise of a right of retention are ruled out unless the Customer's claim or reciprocal right is not denied or is established as final and absolute. Offsetting or the exercise of a right of retention is equally possible if the Customer's claim and MESSRING's claim are legally based on a relationship of mutuality.

### **8. Customer's duty of collaboration; Duty to carry out inspections and raise complaints**

- 8.1 The Customer is responsible for the provision and operation of the necessary IT infrastructure for use of the Software according to MESSRING's guidelines.
- 8.2 The Customer must cooperate in the performance of the contract to the requisite extent free of charge. The Customer must, in particular, provide skilled staff, access to premises, IT infrastructure, data and telecommunication equipment.
- 8.3 The Customer must name a contact person for MESSRING with his or her email address and ensure the availability of that contact person. The contact person must be in a position to make binding statements on behalf of the Customer, take decisions and provide information.
- 8.4 The Customer must inspect the Software after it is handed over before it is used in operations. § 377 HGB [German Commercial Code] applies.
- 8.5 The Customer must take reasonable technical and organizational measures to cover the eventuality of a Software malfunction in whole or in part (including regular data back-ups, error diagnosis and checking of results).

### **9. Warranty**

- 9.1 The Customer must find out about the Software functions and technical requirements. The Customer bears the risk of ensuring that the Software meets its requirements. MESSRING will advise the Customer prior to conclusion of the contract based on a separate agreement.
- 9.2 MESSRING warrants that the Software corresponds to the product description in MESSRING's documentation.
- 9.3 No warranty claims can be derived from a purely insignificant deviation from the agreed condition or in the event of a purely insignificant impairment of usability. In the event of a transfer of updates, upgrades or new versions of the Software any warranty claims will be confined to the new features of the updates, upgrades or new versions compared to the previous version.
- 9.4 Should the Customer require rectification on account of a defect MESSRING will have the right to choose between a repair, a replacement or an alternative service. If, after an initial deadline has elapsed without result, the Customer should set a further reasonable deadline for MESSRING and this too elapses without result, or if a reasonable number of attempts at a repair, a replacement or an alternative service should be made without result then the Customer may in accordance with the law choose whether to rescind the contract or demand a reduction and claim damages or reimbursement for any costs. Rectification may also take the form of handing over or installing a new version of the program or a work-around.
- 9.5 Complaints of defects must be made in writing by way of a comprehensible account of the error symptoms. Complaints of defects should allow the defect to be replicated.
- 9.6 The limitation period for warranty claims is 12 months.
- 9.7 Claims in damages are subject to the restrictions in clause 12.
- 9.8 Where the defect exists in a third-party product, especially in third-party software, and the third party is not acting as MESSRING's agent the Customer's warranty claims will be initially limited to the assignment of MESSRING's warranty claims against the third party as sub-supplier. Should the Customer be unable to assert its warranty claims against the third party outside court proceedings MESSRING's subsidiary liability will not be prejudiced.

- 9.9 Modifications or enhancements to the Software undertaken by the Customer itself or with the help of a third party will result in the Customer's warranty claims lapsing unless the Customer can prove that the modification or enhancement was not the cause of the defect.
- 9.10 MESSRING will not be liable for defects originating from improper use and operating conditions or the use of unsuitable IT infrastructure on the part of the Customer.
- 9.11 MESSRING may refuse rectification until such time as the Customer pays MESSRING the agreed remuneration less the element corresponding to the economic significance of the defect.
- 9.12 MESSRING warrants that the Software is free of any third-party rights preventing its contractual use. Standard retention of title is excluded herefrom.
- 9.13 If such rights are held by third parties and they duly assert same MESSRING shall defend the Software from those asserted rights at its own expense. The Customer shall promptly inform MESSRING in writing of the assertion of third-party rights and grant MESSRING all powers and authority necessary to defend the Software from the rights asserted.
- 9.14 In the event of a defect in title MESSRING will be entitled, as it may choose, (i) to take lawful measures to eliminate third-party rights impairing the contractual use of the Software, or (ii) to eliminate their assertion, or (iii) to modify or replace the Software in such a way that it no longer infringes third-party rights provided however that the proper functionality of the Software is not substantially prejudiced thereby. MESSRING shall reimburse the Customer for the essential costs of legal action incurred as a result hereof.

#### 10. User support

Support for the Customer and its staff when using the Software or in overcoming problems which are not due to defects does not form part of the contractual content. MESSRING will provide user support on the basis of a separate agreement.

#### 11. Operating conditions

Special rules on operating conditions and proper use of the Software are to be found in MESSRING's separate operating conditions.

#### 12. Limits on liability

- 12.1 In all instances of contractual and non-contractual liability the following provisions have exclusive application to MESSRING's liability:
- 12.1.1 Where MESSRING, its statutory representatives, employees or agents commit a breach of duty with intent or gross negligence, particularly under the contractual relationship, or commit a tortious act with intent or gross negligence MESSRING will be liable for the Customer's resultant loss in accordance with statutory provisions.
- 12.1.2 Where MESSRING, its statutory representatives, employees or agents commit a breach of duty purely due to simple carelessness the Customer's claims in damages against MESSRING of any kind and on any grounds whatsoever, especially for breach of duty under the contractual relationship or in tort, will be precluded. This does not apply to a simple careless breach of a material contractual obligation. In such an eventuality liability will be limited to foreseeable loss typical of the contract. A material contractual obligation in this sense means one the proper fulfillment of which constitutes a condition sine qua non and on the fulfillment of which the Customer regularly relies and is entitled to rely.
- 12.1.3 MESSRING will be liable for loss or damage due to the absence of warranted characteristics up to the amount covered by the purpose of the warranty and discernible by MESSRING when the warranty was given.
- 12.1.4 MESSRING will only be liable for loss of data up to the amount that would be due for the recovery of data properly and regularly backed up.
- 12.2 The limit on liability in clause 12.1 does not apply (i) to liability for culpable loss of life, personal injury or damage to health, (ii) to liability for fraudulent concealment of a defect, (iii) to liability for breach of a warranty of condition, or (iv) to mandatory liability under the product liability law applicable.
- 12.3 The statutory rules on burden of proof are not prejudiced by the above provisions.

#### 13. Confidentiality

- 13.1 The Parties undertake to treat as confidential for an unlimited period of time all confidential information on the other Party acquired under or in connection with performance of the contract.
- 13.2 Confidential information for the purposes of this clause 13 means information in verbal, written, graphic, machine-readable or any other form which is expressly identified as such or would be considered confidential in the circumstances or according to its content irrespective of whether or not it is eligible for intellectual property protection and/or protected as such, including the present agreement itself.
- 13.3 The recipient Party may only use confidential information in the manner and to the extent required for business purposes, may only make it available to members of staff involved in the collaboration between the Parties and only to the extent directly necessary for the performance of the specific tasks of those members of staff, and disclose same to third parties with the prior consent of the disclosing Party given in text form, which consent must not be arbitrarily denied. The disclosing Party may make its consent conditional upon the third parties giving a written undertaking to be bound by the same duty of confidentiality as under this agreement and may also require evidence of that undertaking to be adduced.
- 13.4 The Parties undertake not to copy confidential information or wholly or partially deduce same in any other way, disclose it, or directly or indirectly exploit same in whole or in part in any form for economic or intellectual property purposes.
- 13.5 The Parties give an undertaking that they will not, by observing, studying, deconstructing or testing a product or object, acquire the confidential information embodied therein (Reserve Engineering), even if the product or object is in its lawful possession and is not covered by any duty to restrict the acquisition of confidential information. The application of § 3(1) No. 2 of the German Protection of Trade Secrets Act is expressly excluded.
- 13.6 The permissible duplication of confidential information on the other Party must incorporate all indications and references to its confidential nature.
- 13.7 The above provisions in clauses 13.1 to 13.6 do not apply to information which (I) is developed independently by the recipient Party, (II) becomes public knowledge without any breach of contract by the recipient Party, (III) is lawfully received from a third party without there being any duty of confidentiality, (IV) was known to the recipient Party without any restrictions at the time of disclosure or (V) is exempted from the above provisions with the written consent of the disclosing Party.
- 13.8 The Parties are agreed that all confidential information according to this agreement remains the property of the particular disclosing Party concerned.
- 13.9 Existing agreements between the Parties or statutory rules on protection of confidential information remain unaffected in so far as they exceed the content of these License Terms and Conditions and provide protection for confidential information that at the very least is just as comprehensive.

#### 14. Data protection

- 14.1 The Parties are personally responsible for compliance with the legislation on data protection. Where MESSRING obtains access to the Customer's personal data in the course of performance of the contract the Parties must conclude a job processing agreement.
- 14.2 MESSRING is entitled, whilst respecting data protection and confidentiality, to record and use data produced or processed by the Software or system in aggregated or anonymized form, especially in order to improve services.

#### 15. Ending of the agreement

- 15.1 In all instances where the underlying contractual relationship comes to an end (particularly by rescission, the expiry of the agreed contract term or by way of termination) the Customer will be obliged to stop using the Software and confidential information on the ending of the term of the contract.
- 15.2 The Customer will be required to permanently delete all copies of the Software in every form or return same to MESSRING within one week of the end date unless there should be a statutory requirement to keep them for longer; in that case they must be returned or destroyed at the end of the retention period.
- 15.3 The Customer must, on request, confirm to MESSRING in writing that it and all associated undertakings using the Software have met the requirements of this clause 15.
- 15.4 The Customer does not have any right of retention.

#### B. Special License Terms and Conditions, General Trading Conditions (AGB)

- 16.1 In addition to these General License Terms and Conditions certain Software is also covered by the Special License Terms and Conditions which are to be found at [www.messring.de/](http://www.messring.de/).
- 16.2 Contracts which relate to services other than the provision of Software (e. g. consultancy, maintenance, support, servicing, installation) are also covered by MESSRING's General Trading Conditions for Services (AGB).

#### C. Final provisions

- 17.1 MESSRING's quotation and these License Terms and Conditions contain all of the agreements between the Parties with regard to the subject matter of the contract. There are no verbal or written agreements in existence outside these documents. All agreements concluded between MESSRING and the Customer for the purpose of performing this contract are laid down in writing.
- 17.2 Unless otherwise expressly provided, references to legislation, provisions, documents and schedules apply to the respectively applicable versions of such legislation, provisions, documents and schedules, including any amendments after the contract date. References to particular services or service parameters and service levels also apply in the event of later amendments or additions thereto.
- 17.3 Contractual amendments and additions plus all contractually relevant declarations of intent and notices exercising rights to alter the legal relationship must be made in written form. This also applies to waiver of the requirement of written form. Otherwise text form will suffice.
- 17.4 The schedules and their annexes form an integral part of the contract. In the event of any discrepancy between the provisions in the text of the actual contract and its schedules the provisions in the schedules take priority. The provisions in the schedules and in the text of the actual contract take priority over the content of the annexes if there should be any discrepancy between them. However, mandatory statutory provisions remain unaffected hereby.
- 17.5 The masculine form of names and professional titles and any other designations will, where appropriate, always also encompass the feminine form.
- 17.6 The contract is governed by the laws of the Federal Republic of Germany to the exclusion of the UN Convention on the International Sale of Goods (CISG).
- 17.7 The place of international jurisdiction is the Federal Republic of Germany. The place of local jurisdiction is Munich.

MESSRING GmbH, as of February 2022