Terms and Condition for Software Transaction

Issued by Association of the Austrian Electrical and Electronics Industry

1. SUBJECT

1.1 Software

These Terms and Conditions for Software Transactions shall govern legal transactions between business enterprises, namely the delivery of software and, mutatis mutandis, the rendering of software services. For the purposes of these terms and conditions, software shall mean standard programs or programs which are specifically developed or adapted for the needs of a Licensee according to Section 40a of the Copyright Act and for the operation or control of electrical and/or electronic equipment or systems, including all relevant documentation furnished for this software (see section 3 below).

1.2 The Licensee shall have the non-transferrable and non-exclusive right to use the software at the agreed location in compliance with the contracted specifications. If the software is delivered together with hardware, the right of use is restricted to the delivered hardware. If the software is delivered without hardware, the right of use is restricted to the contracted type, quantity and location of the hardware. Use on hardware other than that specified in the contract or at multiple workstations is only permitted under separate written agreement and shall require the payment additional royalties.

1.3 All other rights in respect of the software shall be reserved to the Licensor. Notwithstanding the provisions of Section 40d of the Copyright Act, the Licensee shall in particular not be entitled to copy or modify the software or make it available to third parties or to use it on hardware other than the hardware contractually specified.

1.4 Additional supplies and services included but not limited to the services listed below shall be covered by separate agreement and invoiced at the Licensor's prevailing prices:

- duplication, translation or generation of the software as well as services under 4.4. below;

- data media provided by the Licensor to the extent they are not part of the hardware supplied by it;

- diagnosis and elimination of faults due to incorrect use, operation or handling of the software or any other circumstances not within the liability of the Licensor;

- support in introducing and/or implementing the software and the training of users, unless covered by the contract;

- software updates.

2. OBLIGATIONS OF THE LICENSEE

The Licensee shall be responsible for:

2.1 selecting the software from the Licensor's offer;

2.2 provision of all information required for the creation of specifications for the development of the software prior to the conclusion of the contract;

2.3 using the software and the results obtained from its use;

2.4 safeguarding all rights reserved to the Licensor (such as industrial property rights and copyrights including the right to copyright notice) in respect of the software and safeguarding the confidentiality in respect of the Licensor's industrial and business secrets also on the part of the Licensee's employees or persons employed by it to perform any contractual obligation incumbent upon it, and/or on the part of third parties; this obligation shall also apply in cases where the software has been modified or combined with other programs. This obligation shall survive the termination or expiry of the contract.

3. SOFTWARE SPECIFICATIONS

3.1 The Licensor shall provide the specifications for standard software in writing. It shall have the right to modify the software specifications for new versions.

3.2 The specifications for software ordered by the Licensor shall be agreed upon in writing between the Licensor and the Licensee. Software specifications can include, for example, performance characteristics, documents about special functions, hardware and software requirements, installation requirements, operating conditions and operating instructions (user's manual).

4. DELIVERY, RISK AND ACCEPTANCE

4.1 The Licensor shall provide the Licensee with machine-readable software. It is entitled to supply the software version that is valid at the time of delivery.

4.2 Unless a delivery date has been agreed upon, the Licensor shall schedule delivery in accordance with the prevailing delivery times and notify the Licensee of the delivery date.

4.3 The Licensee shall bear the cost and risk of shipment of software and data media.

4.4 If software in the possession of the Licensee is damaged or inadvertently erased in whole or in part, the Licensor shall replace it to the extent said software is available and the Licensor can be reasonably expected to do so, and shall charge the Licensee reasonable prices for production and handling as well as shipment and for the data media supplied.

4.5 If formal acceptance by the Licensee has been agreed, the software shall be made available to the Licensee free of charge for use during a test period. Unless otherwise agreed, the test period shall commence at the time the software is announced to be functional and shall last for one week.

4.6. The software shall be deemed accepted after the end of the test period when:

4.6.1 the Licensee acknowledges conformity with the contractual specifications, or

4.6.2 the Licensee fails to give notice of major defects within the test period, or

4.6.3 the Licensee uses the software after the test period.

4.7 Concerning the legal consequences in sections 5.1 and 8, the time of delivery replaces the time of acceptance if no provisions for formal acceptance have been made.

5. WARRANTY, MAINTENANCE AND MODIFICATIONS

5.1 For software, the Licensor warrants conformity with the specifications valid at the time of the conclusion of the contract, provided that the software is used in accordance with the installation requirements and applicable operating conditions.

The warranty shall comprise
- fault diagnosis and
- the correction of faults and malfunctions

during the warranty period. Unless otherwise agreed, the warranty period shall be six months from the acceptance in accordance with 4.6 or delivery in accordance with 4.7 above.

Fault diagnosis shall be completed upon notification by the Licensee or on the basis of findings by the Licensor. The Licensee shall inform the Licensor of any faults immediately and in detail.

5.2 The Licensee shall bear the burden of proving that the fault existed at the time that the software was handed over.

5.3 In any case, warranty claims shall only be recognised when immediate notice is provided of any faults, and when the software is examined or tested immediately upon receipt.

5.4 The correction of faults, i.e. departures from the valid specifications resulting in malfunctions, shall as a rule be eliminated either by supplying new software or by appropriately adapting the program at the discretion of the Licensor.

5.5 The correction of faults shall be conditional upon the fault being a fault that results in malfunctions, upon the error being reproducible, upon any new versions offered to the Licensee free of charge within the warranty period having been installed, upon the Licensor receiving from the Licensee all documentation and information necessary for eliminating the fault, and upon the Licensor being given access to the hardware and software during its normal working hours.

5.6 The warranty shall not be valid for software modified by the Licensee or third parties without the Licensor's prior written consent, even if the error occurs in a part of the software that was not modified. If it is found during fault diagnosis that the case in question is not covered by the warranty or that the error is not the result of the supplied software, the Licensee shall bear all costs that have been incurred.

5.7 The Licensor does not guarantee that the software functions will meet the Licensee's requirements, that the programs selected by the Licensee will work together or that they will work continuously and without errors, or that all software faults can be corrected.

5.8 If during the warranty period the software fails to conform with the specifications in a way giving rise to malfunctions and if the Licensor

is unable to achieve conformity with the specifications within a reasonable time despite sustained efforts so that the Licensee cannot use the software, either party may withdraw from the contract immediately against return of all goods and consideration.

5.9 Defects in individual programs shall not entitle the Licensee to withdraw from the contract in respect of the other programs.

5.10 Except for claims under 6 below, any other warranty claims shall be precluded.

5.11 If the Licensee does not conclude a software maintenance contract with the Licensor, the Licensor shall bill all maintenance work (e.g. fault diagnosis and correction, updates, etc.) that is not completed in respect of fault correction according to its valid list prices.

6. INDUSTRIAL PROPERTY RIGHTS AND COPYRIGHT

The Licensor shall support the Licensee in defending itself against any claims based on the contention that the software used under the contract infringes an industrial property right or copyright under Austrian law. In the event that such claims are asserted against it, the Licensee shall without delay notify the Licensor and, in the event that legal proceedings are initiated, give it notice of litigation (*Streitverkündigung*) under Section 21 ZPO (Code of Civil Procedure).

In the event that infringement claims are asserted against the Licensor for which the Licensor may be held liable, it may at its own expense modify or replace the software or obtain the right to use it. If this cannot be done at reasonable cost, the Licensee shall immediately return the originals and all copies of the software in question that was provided to it, including any documentation, upon the Licensor's request.

This shall fully and definitively settle all claims on the part of the Licensee with regard to the infringement of industrial property rights or copyrights, and the Licensor shall have no further obligation to it.

7. LIABILITY

The Licensor shall within the limits of the statutory provisions be liable for damages proved to be due to intentional acts of gross negligence. No liability shall be assumed for slight negligence. Compensation for consequential damages and purely financial losses, lost profits, savings not achieved, interest losses, the loss of data, and damages resulting from third-party claims asserted against the Licensee shall be precluded in any case.

8. SETTLEMENT AND CONDITIONS OF PAYMENT

8.1 In the event that a one-time royalty is agreed in lieu of or in addition to recurring royalties, this shall be payable as follows unless agreed otherwise:

30% of the total at the time of the conclusion of the contract, and 70% of the price of each software item separately listed in the offer after acceptance of said item under item 4 above has been effected.

8.2 In the event that recurring royalties are agreed, they shall be invoiced and paid once per year in advance unless agreed otherwise. Unless agreed otherwise, the royalties shall be subject to price adjustments to the extent of the percentage minimum salary increase of a worker of activity class ST2 in the collective agreement on account of collective wage adaptation in the automated data processing and information technology services industry. The key date for such price adjustments shall be the day of the first quotation made by the Licensor. Royalties shall be payable from the day of first acceptance under 4 above.

8.3. In the event that insolvency proceedings are initiated against the Licensee, the following alternate payment terms shall apply: Goods and services shall only be provided against advance payment.

9. TAXES AND FEES

All prices and royalties agreed upon shall be exclusive of value added tax, which shall be charged separately.

The Licensee shall pay all fees, taxes or other imposts levied in connection with the transfer of the subject of the contract.

10. RETURN AND DESTRUCTION OF THE SOFTWARE

Upon expiry of the right of use, the Licensee shall at the Licensor's option either return to the Licensor the entire software including any documentation made available with it, or destroy it and furnish definite proof of its destruction.

This shall also apply to software that has been modified or combined with other programs.

11. DURATION AND TERMINATION OF THE CONTRACT

The period for which the right of use is granted shall depend on the contract. Any agreement to the contrary notwithstanding, the right of use shall terminate

- upon expiry of the agreed period of use;

- at the time the software in question ceases to be used on the hardware in respect of which the contract has been concluded, it being understood that such termination of the right to use the software in question shall not affect the royalty payable for it;

- by notice of termination after expiry of any minimum period of use that may have been agreed upon and – unless otherwise agreed – subject to three months notice as of the end of the applicable invoicing period;

- by premature dissolution of the contract for gross breach of contract unless the conditions on which the contract is based are restored within a reasonable period of time stipulated in writing;

- by premature dissolution of the contract on account of insolvency proceedings being initiated against the Licensee or if an application for insolvency proceedings is not granted for insufficiency of assets. This dissolution shall take effect immediately upon notice that the business will not be continued. In the event that the business is continued, the dissolution shall take effect 6 months after the initiation of insolvency proceedings. If the dissolution is necessary to prevent significant damages to the Licensor, it shall take effect immediately.

12. OTHER PROVISIONS

12.1 If the Licensee transgresses its contractual rights or infringes its obligations under 2.4 and 10 above, the Licensor shall be entitled to impose a contract penalty which, depending on whether recurring royalties or a one-time royalty have been agreed upon, shall amount to up to ten times the annual recurring royalty or five times the one-time royalty. This shall have no effect on additional claims for damages.

12.2 The Licensor shall not be held liable in respect of any services that it is unable to render due to circumstances for which it is not responsible. Should said circumstances result in unreasonable hardship for the Licensor, the Licensor may claim compensation from the Licensee.

12.3 If any provisions of these Conditions are or become invalid, such invalidity shall not impair the validity of the remaining provisions. In this event, any invalid provision shall be replaced with a valid provision reflecting the spirit and serving the economic purposes of these Conditions.

12.4 Any ancillary agreements or modifications of these Conditions shall be made in writing.

13. JURISDICTION

Any disputes arising from this contract, including disputes about its existence or non-existence, shall fall under the exclusive jurisdiction of the court at the Licensor's domicile; in Vienna, this shall be the court having jurisdiction over the area designated as Innere Stadt. This contract is subject to Austrian law, under express preclusion of the United Nations Convention on Contracts for the International Sale of Goods.

14. GENERAL TERMS OF DELIVERY

Unless agreed otherwise above, the contractual relationship shall be governed by the current version of the General Terms of Delivery issued by the Association of the Austrian Electrical and Electronics Industry.

Valid from October 2010