

General Terms and Conditions Software lease.

1 Parties to the agreement

The agreement is concluded between T-Systems International GmbH (hereinafter referred to as T-Systems), Hahnstraße 43d, 60528 Frankfurt am Main, Germany (registered with Frankfurt am Main Local Court HRB 55933) and the customer.

2 Subject matter of the agreement

2.1 The subject matter of the agreement is specified in these General Terms and Conditions, the prevailing licensing terms of the manufacturer and the relevant Service Specifications and Price Lists. These set forth the terms governing the lease of software.

2.2 Diverging provisions shall be made in writing. The provision of a guarantee for specific characteristics (condition) shall require written confirmation by T-Systems in order to be valid.

2.3 The customer's general terms and conditions shall not become a part of the agreement, even if they are attached to requests for proposals, orders, acceptance declarations, etc. and if no objection is made.

3 Agreements and proposals

3.1 The conclusion of agreements and other arrangements shall require written confirmation by T-Systems in order to be binding.

3.2 Dates or deadlines for the delivery of goods and the performance of services stipulated in agreements shall be binding only if they were designated as such in writing by T-Systems.

3.3 All offers by T-Systems are subject to change, unless explicitly stated otherwise in the offer. T-Systems reserves the right to deviate slightly from the offer for technical reasons even after the offer has been accepted by the customer.

4 Services provided by T-Systems

4.1 T-Systems shall grant the customer a right to use the software specified in the system overview for a limited period of time and maintain that software during the term of the lease relationship pursuant to Items 4.3 to 4.5. The scope of software goods and services as well as the authorized application environment are described in the relevant product description and additionally in the user manual. The product description and user manual shall, as a rule, be written in the language of the manufacturer.

4.2 The software shall be delivered as an object code in machine-readable form on a suitable data medium.

4.3 The maintenance services provided by T-Systems shall also include the elimination of defects in the programs and the program documentation. When used in accordance with the agreement, the programs must provide the services specified in the Service Specifications.

4.4 As part of the maintenance services, T-Systems shall provide the customer with certain new versions of the leased software in order to keep the latter up to date and prevent problems. For this purpose, T-Systems shall provide the customer with updates of the leased software containing technical modifications and improvements as well as minor functional enhancements and improvements. Also for this purpose, T-Systems shall provide the customer with patches containing corrections to the maintenance software and other measures to work around possible faults.

4.5 The scope of maintenance shall not include the provision of upgrades involving major functional enhancements or any changes required by law that can be made only by partially or completely reprogramming the leased software.

4.6 T-Systems shall be entitled to provide the services by subcontracting work to third parties (subcontractors). T-Systems shall be liable for services provided by subcontractors to the same extent that it is liable for its own actions.

4.7 T-Systems or subcontractors engaged by T-Systems shall provide the services agreed in the Service Specifications in countries of the European Union, unless stipulated otherwise. T-Systems or subcontractors engaged by T-Systems may relocate the place of performance to countries outside the European Union at their free discretion insofar as no material disadvantages result therefrom to the customer.

5 The customer's duties and obligations

5.1 T-Systems and its vicarious agents [*Erfüllungsgehilfen*] shall be indemnified against all claims by third parties that are based on the illegal use of the software and the services connected therewith by the customer or with the customer's consent, or which arise, in particular, from litigation involving data protection, copyright, or other laws in conjunction with the use of the software. The customer shall notify T-Systems in writing without undue delay if third parties claim that it has violated their rights. The customer shall not recognize any violation of rights claimed by third parties and either have any and all disputes handled by T-Systems or handle such disputes only in agreement with T-Systems.

5.2 Copyright notices, serial numbers and any other features that serve to identify the program may under no circumstances be removed or modified. The same applies to preventing such features from being displayed on screen.

5.3 The customer shall ensure that all items and services it is required to contribute are provided in good time, in the required scope, and free of charge for T-Systems.

5.4 The customer shall give T-Systems employees all support they require for their work at the customer's location. As part of this support, the customer shall

- ensure that a qualified employee is available for support at the place of performance;
- ensure that the employees assigned by T-Systems are granted free access to the relevant computer and software at the agreed time;
- ensure that items provided by the customer comply with work safety regulations for the benefit of T-Systems employees;
- provide T-Systems employees in good time with the information that they need for their activities;
- provide T-Systems employees with adequate and appropriate work space, including tools and materials, where they are required to work at the customer's premises to fulfill the agreement.

5.5 In order for the leased software to be properly maintained,

- the defects identified by the customer must be adequately described by the customer and also be identifiable by T-Systems;
- detected defects must be reported in the specified form via a defect report;
- the documentation required for defect clearance must be made available to T-Systems;
- the customer must not have altered or tampered with the software;
- the software must be operated under proper conditions in accordance with the documentation.

5.6 Data media provided by the customer must be flawless both technically and in terms of content. If this is not the case, the customer shall compensate T-Systems for any and all damage arising from the use of such data media and shall indemnify T-Systems and hold it harmless from any claims by third parties.

5.7 If the customer does not contribute to the services to the extent necessary or not in good time or in the agreed manner, the customer shall bear any consequences resulting therefrom (such as delays, added cost).

6 Rights of use

- 6.1 T-Systems shall grant the customer a non-exclusive right, which is limited to the term of the agreement and cannot be sublicensed, to use the software and accompanying documentation or online help for its own internal use on the operating systems described in the agreement.
- 6.2 The customer's rights to use the new versions and any corrections to the software correspond to its rights to use the previous version of the software. With regard to the rights of use, the rights to the new versions and other corrections shall replace the rights to the previous versions and other corrections following a reasonable transition period – which usually does not exceed one month.
- 6.3 The customer may create a full copy of the software for backup purposes. The customer shall mark this copy as a backup copy and provide it with the copyright notice of the original data carrier. Beyond this, the customer shall have no right to copy the software. Partial reproduction of the written materials for internal purposes is permitted to the extent required by use of the software for its intended purpose. Additional manuals can be obtained through T-Systems if required.
- 6.4 To the extent not expressly permissible according to the Copyright Act [*Urheberrechtsgesetz – UrhG*] or by agreement, the customer may neither carry out itself nor have a third party carry out reverse engineering, disassembly or decompiling of the software.
- 6.5 For every culpable case of the software and the user manual being used by third parties, of producing an unauthorized copy or of using the software on additional computers contrary to the terms of the agreement, the customer shall pay compensation for damages in the amount of the purchase price. The damage compensation shall be higher or lower if T-Systems proves that the loss suffered was greater or the customer, that it was less. T-Systems reserves the right to assert other claims for damages.
- 6.6 The customer shall, upon request, provide T-Systems with all information required to assert claims against third parties, in particular, it shall inform T-Systems of their names and address and, without undue delay, of the nature and scope of any claims it has against these third parties arising from the unauthorized provision of the program.

7 Terms of payment

- 7.1 T-Systems shall have the right to adjust its prices to general list prices every calendar year. A price increase of more than 5 % shall be agreed in writing by the parties. If they are unable to reach an agreement, the two parties shall be entitled to extraordinary termination of the agreement with effect from the date for which a price increase was demanded.
- 7.2 Compensation and ancillary costs are, in principle, net prices plus any applicable statutory taxes and duties.
- 7.3 Starting on the day on which the leased software is initially provided ready for operation, the agreed compensation shall be paid on a monthly, quarterly or yearly basis for the rest of the billing period on a pro rata basis. Thereafter, compensation shall be paid in advance.
- 7.4 The amount due shall be paid to the account indicated on the bill. It shall be credited to the account within ten days after receipt of the bill. In the event that the customer furnishes a SEPA direct debit mandate, T-Systems shall not debit the agreed account with the billed amount until the seventh day following receipt of the invoice and the SEPA Pre-notification.
- 7.5 The customer may only offset undisputed counterclaims or counterclaims that have become res judicata. The customer shall only be entitled to assert a right of retention for counterclaims arising from this agreement.
- 7.6 For any direct debit not honored or returned, the customer shall reimburse T-Systems for the costs it incurred to the extent that the customer was responsible for the event giving rise to the costs.

8 Objections

Any objections to the amount of the prices of T-Systems shall be lodged with T-Systems immediately after receipt of the bill. T-Systems must receive objections within eight weeks after receipt of the bill. If the customer fails to raise objections in time, the bill shall be deemed accepted; T-Systems shall make specific reference in the bills to the consequences of failing to raise an objection in time. This stipulation shall be without

prejudice to any legal claims the customer has in the case of objections filed after the deadline.

9 Changes in General Terms and Conditions, Service Specifications and prices

T-Systems shall have the right to change the General Terms and Conditions, the Service Specifications or the prices within a suitable notice period, provided that the change is reasonably acceptable to the customer, taking T-Systems' interests into account. The customer shall be notified of the change in writing. If changes are made to the customer's detriment, the customer shall have a special right of termination at the time the change goes into effect. In its change notice, T-Systems shall bring the customer's attention to this special termination right as well as to the fact that the change will go into effect unless the customer exercises its special termination right within the specified period.

10 Default

- 10.1 Default in payment by customer
If the customer defaults on the payment of a more than insignificant part of the charges, T-Systems may terminate the agreement without notice. T-Systems reserves the right to assert any other statutory claims arising from a default in payment.
- 10.2 Default in acceptance by customer
If T-Systems cannot perform the contractually agreed services for reasons attributable to the customer although an additional period [*Nachfrist*] has been granted without result, it shall be entitled – without prejudice to its legal rights arising from default – to rescind the agreement and instead of the service to demand damage compensation as a lump-sum payment that falls due immediately and amounts to twelve times the monthly leasing fee as well as compensation for expenses it has incurred in connection with services already provided. The payment shall be higher or lower if T-Systems proves that the loss suffered was greater or the customer, that it was less.

11 Warranty

Defects shall be remedied, at the election of T-Systems, by providing an update status of software or a workaround. Until such time that an update status is provided, T-Systems shall provide temporary solution for working around the defect, if T-Systems can be reasonably expected to do so at a reasonable cost.

12 Liability

- 12.1 T-Systems shall be liable to the customer
 - a) for any damage caused by willful intent or gross negligence on the part of its legal or vicarious agents,
 - b) in accordance with the Product Liability Act and
 - c) for damages arising from loss of life, bodily injury or damage to health caused by the provider, its legal or vicarious agents.
- 12.2 T-Systems shall not be liable in the event of slight negligence unless a significant contractual obligation has been violated whose fulfillment is a prerequisite for the proper performance of the agreement or the infringement of which jeopardizes the achievement of the purpose of the agreement, and upon whose compliance the customer can normally rely.
This liability for any property or pecuniary damage shall be limited to foreseeable damage that is typical for the agreement. This shall also apply to lost profit and unachieved savings. Liability for any less direct consequential damage shall be precluded.
If a one-time payment is agreed upon, the liability for property damage and pecuniary damage shall be limited to 10 % of the net order volume per damage event, and to 25 % of the net order volume for all damage occurring within a single contract year. If a recurring payment is agreed upon, the liability for property damage and other damage shall be limited to 10 % of the net annual charge per damage event, and to 25 % of the net annual charge for all damage occurring within a single contract year. Further liability can be agreed between the Parties upon conclusion of the agreement for an additional charge. A separately agreed liability amount shall have priority. Liability as stipulated under 12.1 shall remain unaffected by this paragraph. In addition to and with priority, T-Systems liability in the event of slight negligence - irrespective of the legal grounds - shall be limited to EUR 2.5 million. Liability according to 12.1 b) shall remain unaffected by this paragraph.

- 12.3 T-Systems shall only be liable for claims for damages based on a warranty if this is explicitly incorporated in the guarantee. In the case of slight negligence, this liability is subject to the limitations set out under 12.2.
- 12.4 In the event of a loss of data, T-Systems shall be liable only for the necessary cost of recovering the data in cases where the customer has properly backed up the data. In the case of slight negligence on the part of T-Systems, this liability shall apply only if the Customer properly backed up the data immediately prior to the event leading to the data loss.
- 12.5 Items 12.1 through 12.4 shall apply accordingly to claims for the reimbursement of expenses and any other liability claims asserted by the customer against T-Systems.
- 13 Term and termination**
If the agreement provides for no specific contractual term, each party may terminate the agreement by giving three months' notice, effective from the end of a calendar quarter. Notice must be given in writing.
- 14 Export**
The customer shall observe, on its own responsibility, the import and export regulations to be applied to the products or services provided, in particular the regulations of the United States of America. The customer shall pay any customs duties, fees and other charges that are incurred for the cross-border delivery of products and services. The customer shall carry out all legal and administrative procedures in connection with the cross-border delivery of products or services on its own responsibility.
- 15 Confidentiality**
The parties shall be obligated toward each other for an unlimited period of time to treat as confidential any business and trade secrets as well as any details specified as being confidential that become known to them in connection with the performance of the agreement. Information may be divulged to third parties not involved in carrying out the order only with the prior written consent of the other party. Affiliated companies of the parties to the agreement as defined by Section 15 et seq. of the German Stock Corporation Act [*Aktiengesetz - AktG*] are not third parties. The parties to the agreement shall also require their employees and any third parties involved to accept these obligations. T-Systems shall be authorized to pass confidential information on to subcontractors if the latter have undertaken to maintain secrecy in this respect.
- 16 Force majeure**
16.1 T-Systems shall not be liable for occurrences of force majeure that significantly hinder contractual performance or temporarily hamper or render impossible the due performance of the agreement by T-Systems. Force majeure shall be deemed to include all circumstances that are independent of the intention and influence of the parties, such as natural disasters, governmental measures, decisions by authorities, blockades, war and other military conflicts, mobilization, internal unrest, terrorist attacks, strikes, lockouts and other work-related unrest, confiscation, embargoes or other circumstances that are unpredictable, serious and not due to the parties' fault and that occur following the conclusion of this agreement.
- 16.2 If one of the parties is prevented from fulfilling its contractual obligations due to force majeure, this shall not be considered to be a violation of the agreement, and the periods set out in the agreement or on the basis of the agreement shall be extended reasonably, depending on the duration of the impediment. The same shall apply if T-Systems depends on the service of a third party, and this service is delayed as a result of force majeure.
- 16.3 Each party shall undertake all necessary and reasonable actions within its control in order to limit the extent of the consequences which were caused by the force majeure. The party affected by force majeure shall in each case notify the other party in writing of the beginning and end of the impediment without undue delay.
- 17 Miscellaneous**
17.1 T-Systems shall be entitled to provide the services by subcontracting work to third parties (subcontractors). T-Systems shall be liable for services provided by subcontractors to the same extent that it is liable for its own actions.
- 17.2 If any provisions of the agreement are or become invalid or if a lacuna becomes evident, this will not affect the validity of the remaining provisions. In place of the invalid provisions, or to remedy the lacuna, a commensurate provision shall be introduced that comes as close as possible to what the parties may be presumed to have intended according to the spirit and purpose of the agreement.
- 17.3 The place of jurisdiction for all disputes arising from or in connection with this agreement shall be Frankfurt am Main. Any exclusive place of jurisdiction shall have priority.
- 17.4 The customer shall not be entitled to transfer any rights and obligations under this agreement to a third party unless with the prior written consent of T-Systems.
- 17.5 The contractual relations between the parties shall be subject to German law to the exclusion of the UN Convention on Contracts for the International Sale of Goods.