

# General Terms and Conditions for Software Licensing

- 1) The Contract shall become effective if the binding order of Customer is accepted by AUCOTEC. Customer shall remain bound by his order for four weeks. After expiry of this term, legal effectiveness of the order shall only lapse if Customer revokes the order in writing. If AUCOTEC has accepted the order within the term of four weeks or before revocation of the order is received, the Contract has become effective. If AUCOTEC has submitted the offer, the Contract shall become effective by statement of acceptance by the recipient of such offer within the acceptance period declared by AUCOTEC.
- 2) General terms and conditions of Customer shall only become an integral part of the Contract, if AUCOTEC agrees in writing. Furthermore, the validity of the General Terms and Conditions of Customer is expressly contradicted. AUCOTEC's General Contract Terms shall also apply to the extent that AUCOTEC grants Customer the right to install the software for test purposes only. In any case, such a right ends 60 days after the software has been handed over to Customer. If Customer does not purchase the software after this test period has expired, he is obliged to remove the Software and its components from other manufacturers e.g. Microsoft -Visio and -SQL Server from the workstations and shall refrain from any further use or exploitation.
- 3) Payment
  - A The agreed price is due for payment upon issuance of the invoice; it is payable net plus value-added tax applicable at the time of performance. Deviating payment conditions shall only be valid upon express agreement in writing. In the event that the period allowed for payment is exceeded, AUCOTEC shall be entitled to charge interest in an amount of not less than 9 % above the respective base interest rate, or higher interest upon provision of evidence. Payment in installments shall only be permitted upon express agreement. If Customer defaults payment of an installment, the total open sum of the order shall be due for payment immediately. Rebates or prompt payment discounts will only be granted upon express agreement. They shall become void in case of judicial or extrajudicial settlement procedures, insolvency or defaults in payment by Customer.
  - B The software products installed, downloaded or otherwise acquired by Licensee under this Contract, including any and all updates, modifications, revisions, copies, documentation and design documents ("Software") are protected by copyright. They are business secrets and confidential information of AUCOTEC or its licensors, who have the sole legal entitlement to the entire Software and retain all rights which have not expressly been granted under this Contract.
  - C All rights to be granted to Licensee under the concluded contract shall remain with AUCOTEC until all open invoices have been paid by Customer in full.
  - D In case of defaults in payment by Customer, AUCOTEC shall have the right to rescind the contract or claim damages upon one reminder without setting any further time limit. If AUCOTEC claims damages, then this compensation shall amount to 20% of the invoiced amount. Customer shall have the right to prove a lower damage. AUCOTEC shall be entitled to claim higher damages upon provision of evidence. Assertion of the reservation of ownership has the consequence that Licensee's entitlement to the continued use of the Software lapses until all open invoices have been paid in full and that he has the obligation to delete any and all program copies he made or to surrender them to AUCOTEC.

- 4) AUCOTEC shall grant Licensee a non-exclusive license to use the Software only:
- in machine-readable, object-encoded form,
  - for internal business processes of the Licensee,
  - for the agreed duration,
  - on the computer hardware and
  - at the location agreed in the Contract.

If no location is expressly agreed, then that town or city shall be considered as contractually agreed location, where the Software is to be delivered. A location is limited to the radius of one kilometer (1000 meters). If Licensee wishes to change the location to a greater extent without transferring the Software to a third party, this requires the prior consent of AUCOTEC. The same shall apply if Licensee wishes to make the Software available for use by a subcontractor or other legally independent service partner. AUCOTEC is entitled to make this consent dependent on the payment of an additional license fee to be determined by AUCOTEC. AUCOTEC licenses the Software in the object-code. Customer is granted the non-exclusive right to use the Software permanently on one machine at a time only, unless multiple utilizations or network applications ensue from the license. Further services relating to the Software, e.g. briefing, installation, customization, maintenance or training shall only be due by AUCOTEC to the extent that they were expressly agreed in a separate agreement.

In case AUCOTEC performs modifications to the Software for Customer, any rights, e.g. proprietary rights and copyrights, created thereby shall remain with AUCOTEC.

- 5) Licensee will use the Software only in the contractual extent, which shall include installation, loading and running the program as well as making a copy for data backup purposes. As for the rest, Licensee shall have the obligation to perform a data backup in a generally practicable scope, but not less than once daily. The data backup shall cover the entire software system and the regular backup of master and transaction data and has to be carried out according to the principles of proper data processing and has to be stored separately for at least 3 months.
- 6) In the event that the Software is equipped with a Software protection module (dongle), Licensee shall always keep it in safe custody, refrain from applying any work-around program and immediately report loss of the dongle to AUCOTEC. Faults of the dongle will be adjusted by exchange free of charge under the warranty, destruction will also be remedied by exchange, but against reimbursement of costs according to pricelist; loss of the dongle will only be settled by purchase of a new copy of the Software according to the price list valid on request. If additional or higher-quality dongles are required as a result of the redistribution of licenses requested by Licensee, e.g. on different servers, these will be invoiced to Licensee as additional services in accordance with the valid price list. If a dongle is included with the equipment, Licensee will use the Software only in connection with this dongle.
- 7) If Licensee intends to use the Software in a wider extent than agreed (excess utilization), i.e. on two or more machines, he will have the obligation to conclude a contractual agreement to this effect with AUCOTEC before.
- 8) Functional scope and conditions of use of the hard and software relating to the Software are reflected in the contractually agreed scope of services or supplied operating instructions. Supplied software from other manufacturers such as Visio and SQL Server may only be used in connection with the contractual software and not in violation of the license conditions of the manufacturer such as Microsoft. The period of time for using products from other manufacturers may differ from that of AUCOTEC products. Especially for VISIO 365 (subscription), the right of use only exists as long as there is a maintenance contract with AUCOTEC.
- 9) Unless otherwise agreed in writing, reproduction of the Software is not allowed. Generating a backup copy of the Software shall be exempted; the same shall apply if and as far as reproduction is required for the contractual utilization of the Software.
- Licensee has the duty to prevent unauthorized access of third parties to the Software as well as the documentation.
- 10) Translating, editing, re-arranging and other re-processing of the Software by Customer or Licensee shall only be permitted upon written approval by AUCOTEC, unless exceptions have been expressly arranged in these Terms and Conditions.

- 11) Shipment or transmission of the Software and the appertaining services shall be performed at customer's risk and costs.
- 12) In the event that Licensee exceeds the granted use rights without prior agreement with AUCOTEC, he shall pay, as contractual fine/license price for each copy used in excess and/or for each excess participant, an amount equivalent to 150% of the remuneration for the relevant scope of utilization according to the price list valid at the point of time when AUCOTEC discovered the excess utilization. Claims for damages in excess of this by AUCOTEC shall remain unaffected. This contractual penalty provision shall also apply accordingly in the event that Customer violates Sec. 10 of these General Terms and Conditions. AUCOTEC's right to demand from Customer to refrain from unauthorized use remains unaffected in any case.
- 13) Licensee will install the Software immediately upon receipt, examine it for functional capacity and report any occurring defects to AUCOTEC without delay. Not later than upon expiry of seven working days after receipt of the Software, it shall be deemed approved by Licensee, unless Licensee has reported defects which could be identified until that time to AUCOTEC in writing. Defects which are not detectable within the framework of a due examination have to be reported to AUCOTEC in writing within seven working days after their discovery. After expiry of this time limit, the Software shall be deemed approved even in consideration of such a defect.

Licensee shall procure and install in good time additional software required for utilization of the Software (operating system in the prescribed version, data base software, etc.) at his own cost and in the appropriate, released version. Sec. 8 of these General Terms and Conditions shall remain unaffected.

- 14) Licensee has the duty to appoint only qualified employees to the utilization of the Software and to keep records on the utilization of the Software and any particular incidents occurring in a suitable manner. To the extent that AUCOTEC is performing work directly on the premises of Licensee, Licensee will provide, free of charge, adequate rooms, equipment, software, documentation including examples for faults and data material, if applicable, as well as test data, computer time and staff to provide information in time and to an extent deemed suitable by AUCOTEC.

15) Defects

- A AUCOTEC shall be exclusively responsible for defects existing upon transfer of the Software during a period of twelve months after complete delivery of the Software according to the following rules:
- B Defects are defined as deviations of the Software from the functionality described in the operating instructions or elsewhere in the Contract, to the extent that these deviations impair suitability of the Software for the customary use as described in the operating instructions. The obligation to provide warranty shall only apply if the defect is significant; in particular, if it has any significant effect on the fitness for use.
- C Licensee shall, if possible in writing, notify AUCOTEC immediately of defects possibly occurring. He will also indicate how the defect manifests itself, what its effects are and under which circumstances it occurs.

AUCOTEC will immediately upon receipt of the notification of defects examine the indicated defect, analyze it and perform rework within an appropriate period of time. AUCOTEC is entitled to perform rework by licensing a modified version of the Software to Licensee, which does not contain the defect any more.

In the event that any reported defects are not attributable to AUCOTEC, Licensee will reimburse the expenditure of time and costs incurred (including travelling costs) at the rates applicable from time to time.

- D Licensee shall provide all necessary documentations and information as well as the Software required by AUCOTEC for the identification of faults and elimination of defects. AUCOTEC is granted free remote access to the involved computers and grant AUCOTEC access to the premises, equipment and Software as well as computing time, if required, at least during regular office hours. Upon AUCOTEC's request, Licensee or a third party assigned by him has to be present free of charge during the maintenance period at the place of maintenance. Licensee shall use his best efforts to support AUCOTEC with the

search for the cause of the malfunction. The transmitting of information and material is at the expense of Licensee.

- E AUCOTEC is entitled to work around any faults possibly occurring, if the fault itself could only be eliminated at unreasonable expense and if run-time and reply-time behavior of the Software are not substantially impaired.

If AUCOTEC does not successfully remedy a defect within an appropriate period and if such remedy also fails within a reasonable grace period set by Licensee, Customer shall be entitled to the statutory warranty claims, i.e. reduction of the remuneration or rescission of the Contract.

- F AUCOTEC shall cease to be under warranty obligation, in case the Software was modified without express prior authorization in writing, unless Licensee proves that the modifications are not related to the fault which occurred and that they do not significantly impede analysis as well as elimination of the fault. This does not imply any approval to such modification by AUCOTEC. Warranty obligations of AUCOTEC shall also not exist in case Licensee uses the Software in any hardware or software environment other than the one envisaged as place of application in the Contract.

- G In the event of the unwinding of the Contract, Customer will allow set-off of the utilization performed. Such set-off will be calculated on the basis of an average useful life of four years.

#### 16) Liability

- A The following liability rules apply to the liability of AUCOTEC as well as to the personal liability of its employees, vicarious agents and assistants - irrespective of the legal basis:

- B AUCOTEC shall only be liable

- Without limitation of the amount of damage for damages caused by intent or gross negligence of the legal representatives or executive staff of AUCOTEC or by severe corporate negligence;
- With limitation to damages which, based on the contractual use of the Contractual Software, are typical and foreseeable;
- for damages caused by negligent violation of cardinal contractual duties; or
- for damages which AUCOTEC or vicarious agents of AUCOTEC caused by slight negligence but without violation of cardinal contractual duties;
- without limitation for damages due to injury of life, body or health of Licensee or his employees which are based on a breach of duty by AUCOTEC.

- C Liability in case of slight negligence (amongst others for remote consequential damages) shall, for each individual damage, be limited to an amount equivalent to the yearly contractual remuneration under the respective contract.

- D Liability for lack of a guaranteed feature, for fraudulent intent and for bodily injury shall remain unaffected in all cases.

- E To the extent that entitlements to compensation for damages due to slight negligence apply vis-à-vis AUCOTEC, its employees, vicarious agents or assistants, these shall become time-barred within one year from the point of time when contractual performance had been due for delivery.

- F AUCOTEC shall not be liable for the replacement of data, unless it causes their destruction by gross negligence or intent. Licensee has to ensure that such data may be reconstructed from data material with reasonable expenditure and effort (backup).

- G AUCOTEC is not liable for violations of FDA conformity. The contract software as an engineering software platform does not have to be FDA-compliant. It is the responsibility of the customer to evaluate the electronic records or signatures created by the contract software and to ensure that they are FDA-compliant.

- H Customer has the obligation to notify AUCOTEC immediately in writing of any damages in the sense of the above liability regulations, so that AUCOTEC is informed as early as possible and is able to possibly reduce the damage together with Customer.

- 17) Customer or Licensee are not entitled to make modifications, adaptations and analyses of the Software. Customer or Licensee shall also not have the right to re-translate the Software into the source code or transfer it into other forms or other programming languages, to adapt or remodel the Software or to reproduce it.
- 18) The assignment of rights and duties under this Contract by Licensee to any third party shall require a reseller agreement with AUCOTEC. In particular, transfers of all or parts of the licenses to other or newly formed companies in the context of spin-offs, acquisitions or similar transactions are not permitted and are not part of this Contract. A license transfer requires a valid maintenance contract of the transferee with AUCOTEC and additionally requires written consent by AUCOTEC. It entails additional transfer fees. A shift of licenses within the existing organization also requires a valid maintenance contract and AUCOTEC's written consent. In any case, Licensee has the obligation to notify AUCOTEC in writing of the name and full address of the new user.
- 19) AUCOTEC is revocably entitled to issue a press release on the conclusion of the Contract with Licensee or on the use of the AUCOTEC-products, with due consideration of the interests of Licensee, unless Licensee has previously objected to this in writing. Licensee agrees to be named as a reference for the use of AUCOTEC products and to be invited as a speaker to AUCOTEC's lecture events. Until further notice, Licensee further agrees that AUCOTEC is entitled to send newsletters, mailings and other information to Licensee's employees, to the extent that such employees, to AUCOTEC's knowledge, currently use their products or have an interest in AUCOTEC's products. In any case, the individual recipients can also register, change or unsubscribe individually at any time. AUCOTEC is entitled to produce a user report on Licensee's use of AUCOTEC products and to make it available to the interested trade press. AUCOTEC will make the user report available to Licensee prior to publication and take appropriate account of Licensee's requests for changes.
- 20) Licensee acknowledges that the Software is subject to export laws. Licensee agrees to comply with all applicable international and national laws applicable to the Software, including the U.S. Export Administration Regulations and restrictions on end users, end use and destination imposed by the U.S. Government and other governments.
- 21) This contract and its conditions do not grant the client any rights that go beyond the end user license agreements of the software supplied by other manufacturers such as Microsoft; these also apply in the relationship between AUCOTEC and the licensee and remain unaffected by these terms and conditions.
- 22) Oral collateral agreements do not exist. Deviating or complementing conditions or amendments of these Terms and Conditions, including this clause regarding the requirement of written form, shall only be valid if agreed in writing. In case of ineffectiveness of a provision in an individual agreement or these Terms and Conditions, the remainder of the Contract shall remain unaffected. Contracting parties undertake to replace any void provision by a legally permissible provision, which comes as close as possible to the former one under economic aspects. The same shall apply mutatis mutandi in the event of a gap in the Contract.
- 23) Customer may only assign claims under this Contract with prior written approval by AUCOTEC. Customer shall only be permitted to perform setoffs against counterclaims or to assert any right of retention, if Customer's counterclaim is undisputed or has been recognized by final declaratory judgment.
- 24) Place of performance shall be the registered office of AUCOTEC.
- 25) If Customer is classified as merchant, the place of jurisdiction for any and all disputes arising from or in connection with this Contract shall be the registered office of AUCOTEC. The Law of the Federal Republic of Germany shall be the applicable law - also for Contracts with foreign customers - with the exception of the UN Convention on Contracts for the International Sale of Goods (CISG).