

# TERMS AND CONDITIONS FOR SOFTWARE LICENCES

INDEX-Werke GmbH & Co. KG Hahn & Tessky

## **Note on applicability**

Illustrations in this publication may deviate from the product supplied. Errors and omissions due to technical progress expected.

## **A word on copyright**

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## 1. Subject of agreement

- 1.1. INDEX shall supply the software to the customer for use in accordance with the agreement. The Software shall be provided to the customer in object code.
- 1.2. User documentation in form of instructions for use to be printed and online help shall be provided to the customer together with the software; the delivery of further documentation, e.g. manuals, shall require a separate agreement.
- 1.3. INDEX shall be entitled but not obliged to make updates of the software, which may be offered for purchase to the customer.

## 2. Right of use

- 2.1. The customer shall be granted a non-exclusive, transferable right of use, unrestricted as to either locality or time, to the software and user documentation for use in accordance with the agreement.
- 2.2. The customer shall be entitled to make a copy for back-up purposes, which is to be marked as such.
- 2.3. In case of transfer to a third party, the latter must agree to accept the terms and conditions for use as laid down in this Section 2 as binding. Transfer shall only be possible in total (including the hardware dongle) and not in parts. The customer must either hand over to the third party all software copies including the back-up copy, if any, or he must destroy all copies which are not handed over to the third party and, on request, confirm in writing to INDEX that he has handed over or destroyed all copies. The customer's right to use the software shall expire with the transfer. The customer is obliged to inform INDEX in writing about the name and the complete address of the third party. The customer shall not be entitled to allow a third party to use the software for a certain period of time for pecuniary reward (e.g. rent or lease it).

The customer shall not be entitled to give the software away to a third party if there are justified reasons to believe that the latter may violate the terms of the agreement, in particular as far as the creation of illegal reproductions is concerned.

- 2.4. Copyright notes, serial numbers as well as any other labels used to identify the software of INDEX or a third party must not be modified or removed by the customer.

## 3. Expiry of the right of use

Using the software in accordance with the agreement as laid down in Section 2 is conditional for the right of use. The right of use shall expire automatically and without the necessity of a formal notice if the customer violates the terms and conditions for use under this agreement. In this case, the customer shall be obliged to return the software and all copies thereof or to delete the software together with all copies and to confirm the deletion in writing.

The right of use shall also expire if the customer does not meet his financial obligations under the agreement.

#### **4. Protection against malicious programs**

INDEX uses current protection programs. All the same, the customer shall also be obliged to check the software for malicious programs by means of current protection programs before using it on his systems. In the same way, the customer shall be obliged to check any data or programs for malicious programs before making them available to INDEX.

#### **5. Customer's rights in case of deficiencies**

- 5.1. The software is free from deficiencies if it corresponds to the agreed properties. The agreed properties of the software are those contained in the current user documentation at the date of delivery. Minor deviations from the agreed properties shall not constitute any claims for defect of quality.
- 5.2. Any claims of the customer because of a defect of the software are conditional on the fact that the software is checked immediately upon receipt and that the defect is reported immediately after having been discovered. Any notice of defects should include a description of the defects with as many details as possible. Upon request, the customer shall provide to INDEX, as far as this is possible and reasonable, any documentation and information that INDEX needs in order to evaluate and remedy the defect.
- 5.3. The customer shall give INDEX the opportunity to examine the notices of defect. If a notice of defect turns out to be unjustified, the customer shall be obliged to reimburse INDEX for the expenses incurred for the examination.
- 5.4. In case of defects, INDEX shall be obliged to either remedy the defect or to redeliver the software (subsequent performance), at INDEX's option. If subsequent performance fails, is unacceptable or refused, the customer shall be entitled to reduce the price, terminate the contract or claim damages in accordance with Section 6.
- 5.5. If not explicitly agreed otherwise, INDEX shall be obliged to provide the software to the customer free from any industrial property rights and copyrights of a third party within Germany ("property rights"). If a third party raises justified claims because of the infringement of property rights by the software supplied by INDEX and used by the customer in accordance with the agreement, INDEX shall be liable as follows: INDEX, at its option and at its costs, shall either procure a right of use for the software supplied or modify the software in such a way that it does not violate the property right any more or replace it with a software by which no property rights are violated. If INDEX cannot reasonably achieve either of the two options, the customer shall have the rights laid down in Paragraph 5.4, clause 2.

**6. Liability of INDEX**

- 6.1. INDEX shall be liable without limitation for personal injuries as well as for deliberate action, gross negligence and lack of warranted properties.
- 6.2. Any liability of INDEX for ordinary negligence, in particular with respect to a breach of the obligations arising from the contractual relationship or tortious acts, shall be excluded unless INDEX has violated essential contractual obligations. In this case, the liability of INDEX shall be restricted to the damage which is typical for the contract and which INDEX had to expect when signing the contract because of the circumstances of which INDEX had knowledge at this time.
- 6.3. A damage of more than 10,000.00 EUR is not typical for the contract and not predictable.
- 6.4. INDEX shall, however, not be liable for damage to property, indirect damage or consequential damage, such as loss of profit, loss of savings, loss of production and loss of use.
- 6.5. Liability under the Product Liability Law is not affected by these restrictions.
- 6.6. Liability for loss of data shall be restricted to the expenses that would typically be required for data recovery if data back-ups had been made on a regular basis and in a way taking account of the potential dangers.
- 6.7. The restrictions of liability shall also apply in favour of the employees, representatives and authorized agents of INDEX.

**7. Limitation period for claims for damages and other causes**

- 7.1. The limitation period for all claims asserted by the customer due to defective software is one year. This shall not apply in case INDEX has fraudulently concealed the defect or has granted an exceptional guarantee.
- 7.2. The limitation period for all claims for damages, which are not caused by defective software, starts from the moment they are registered and is one year; the maximum limitation period for damage claims is five years, independently of the moment of being aware of the damage.
- 7.3. This shall not affect the legal limitation period for claims due to malicious intent or gross negligence by us or our agents, for claims which relate to health effects or bodily harm and for claims asserted under the product liability act.
- 7.4. The limitation period starts always as stated by law.

**8. Price, payment, set-off, retention of title**

- 8.1 All prices are quoted net without the statutory Value Added Tax valid at the time. Payments are to be posted within 10 days after receipt of the invoice, free and without any deductions, to the account of INDEX, the invoice number must be specified for the payment.
- 8.2 The customer shall only be entitled to withhold payments or set them off against any counter-claims as far as his counter-claims are undisputed or final. The right to withhold payments because of defects shall not be affected hereby.
- 8.3 The title to the data media and user documentation supplied by INDEX shall not pass from INDEX to the customer before all payments have been made in full.

**9. Miscellaneous**

- 9.1 Any modifications or additions to these terms and conditions must be made in writing and this shall apply accordingly to this requirement of written form as well (e-mails, as opposed to faxes, shall not suffice in this context).
- 9.2 Should individual provisions of this agreement, in part or in total, be invalid, the remaining provisions shall remain effective. The parties agree to replace any invalid provisions by valid ones in such a way that the economic purpose intended by the agreement is best achieved. This shall apply accordingly to any gap in the agreement or to any impossible provisions.
- 9.3 The law of the Federal Republic of Germany shall apply, the UN convention on contracts for the international sale of goods (CISG) being excluded.
- 9.4 The legal venue for all commercial transactions shall be the registered place of business of INDEX, as well as for all cases where the customer does not have a general legal venue within Germany, or if he has taken residence abroad or lives abroad on a permanent basis after the conclusion of the agreement or if neither the place of residence nor the whereabouts of the customer is known at the date when a suit is filed. INDEX shall also be entitled to take legal action at the customer's place of business.





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