

## General Terms and Conditions Software leasing (business customers).

### 1 Parties to the agreement

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

### 2 Subject matter of the agreement

- 2.1 The subject matter of the agreement shall be specified in these General Terms and Conditions, the licensing conditions of the manufacturer that take precedence, and the provisions of the 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 furnishing of a guarantee for specific characteristics (condition) shall also require written confirmation by Telekom in order to be valid.
- 2.3 The customer's general terms and conditions shall not become part of the agreement, even if they are attached to requests for proposals, purchase orders, acceptance declarations, etc., and even if no objection is made.

### 3 Agreements and proposals

- 3.1 Contracts and other agreements shall not be binding until confirmed in writing by Telekom.
- 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 Telekom.
- 3.3 All proposals by Telekom shall be subject to change, unless explicitly stated otherwise in the proposal. Telekom reserves the right to deviate slightly from the proposal for technical reasons even after the proposal has been accepted by the customer.

### 4 Services provided by Telekom

- 4.1 Telekom shall grant the customer a temporary right of use for the software listed in the system overview and shall maintain this for the duration of the lease in accordance with Items 4.3 to 4.5. The scope of delivery and service for the software and the released application environment are described in the relevant product specifications 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 Within the scope of maintenance, Telekom shall eliminate defects in the programs and program documentation. When used in accordance with the agreement, the programs must provide the services specified in the Service Specifications.
- 4.3 Within the scope of maintenance, Telekom shall provide the customer with certain new releases of the leased software in order to keep the latter up to date and to prevent faults. For this purpose, Telekom shall provide the customer with updates of the leased software containing modifications and improvements as well as minor functional enhancements and improvements. Furthermore, Telekom shall provide the customer with patches containing corrections to the leased software and other measures to circumvent possible faults.
- 4.4 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.
- 4.5 Telekom shall be entitled to provide the services by subcontracting work to third parties (subcontractors). Telekom shall be liable for any services provided by sub-contractors to the same extent that it is liable for its own actions.
- 4.6 Telekom or subcontractors commissioned by Telekom shall render the services agreed in the Service Specifications in countries within

the European Union, unless otherwise stipulated. Telekom or sub-contractors commissioned by Telekom can also transfer the place of service provision to countries outside the European Union at its own discretion, provided the customer does not suffer any considerable disadvantages as a result.

### 5 Duties and obligations of the customer

- 5.1 Telekom and its agents 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 their 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 Telekom in writing without undue delay if third parties claim that the customer 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 Telekom or exclusively handle such disputes in agreement with Telekom.
- 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 features like calling line identification restriction.
- 5.3 The customer shall ensure that all items and services they are required to contribute are provided to the full extent necessary in good time, in the required scope, and free of charge for Telekom.
- 5.4 The customer shall give Telekom's employees all the 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 to provide support at the place of performance
  - ensure that the employees assigned by Telekom 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 Telekom employees;
  - provide Telekom's employees with the information they need for their work without undue delay;
  - provide Telekom employees with adequate and appropriate work space and resources 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,
  - defects found by the customer must be adequately described by the customer and also be identifiable by Telekom;
  - any defects found must be reported with a notification of defects in the form provided;
  - the documentation required for the rectification of defects must be made available to Telekom;
  - 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 Telekom for any and all damage incurred from the use of such data media and shall indemnify Telekom 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 Telekom shall grant the customer the non-exclusive, non-sublicensable right of use, limited to the term of the agreement, to the software and accompanying documentation or online help on the operating systems described in the agreement for the customer's own internal use.
- 6.2 The customer's rights to use new versions and any corrections to the software correspond to their 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 shall be permitted to the extent required by use of the software for its intended purpose. Additional manuals can be purchased through Telekom if required.
- 6.4 To the extent not expressly permissible according to the German Copyright Act (*Urheberrechtsgesetz*) or by agreement, the customer may neither carry out himself nor have a third party carry out reverse engineering, disassembly, or decompiling of the software.
- 6.5 For every culpable case of enabling third parties to make use of the software and the user manual, of producing an unauthorized copy or of using the software on additional computers contrary to the terms of agreement, the customer shall pay compensation amounting to the level of the purchase price. Compensation for damage shall be set higher or lower if Telekom proves damage was greater or the customer, that it was less. Telekom reserves the right to assert other claims for damages.
- 6.6 The customer shall, upon request, provide Telekom with all information required to assert claims against third parties. In particular, they shall communicate the names and addresses of these third parties and, without delay, the nature and scope of any claims they may have against them arising from the unauthorized provision of the program for use.

## **7 Terms of payment**

- 7.1 Telekom shall have the right to adjust its prices to general list prices every calendar year. A price increase of more than 5 percent shall be agreed in writing by the parties. If they are unable to reach an agreement, both parties to the contract may terminate the agreement without notice with effect from the date for which a price increase was demanded.
- 7.2 Remuneration and ancillary costs shall, in principle, be net charges plus any applicable statutory taxes and duties.
- 7.3 Starting on the day on which the software is initially provided ready for operation, the agreed remuneration shall be payable monthly, quarterly, or annually on a pro rata basis for the remainder of the accounting period. Afterwards, the remuneration shall be paid in advance.
- 7.4 The amount due shall be paid into the account indicated on the bill. It must be credited to the account specified no later than on the thirtieth day after receipt of the bill. In the event that the customer furnishes a SEPA direct debit mandate, Telekom shall not debit the agreed account with the billed amount until the seventh day following receipt of the bill and the SEPA pre-notification.
- 7.5 The customer may only offset undisputed or legally enforceable claims. The customer shall be entitled to assert a right of retention only for counterclaims arising from this agreement.
- 7.6 For any direct debit not honored or returned, the customer shall reimburse Telekom for the costs incurred to the extent that the customer was responsible for the event giving rise to the costs.

## **8 Objections**

Any objections to the charges of Telekom must be lodged in writing with Telekom immediately after receipt of the bill. Telekom must receive objections within eight weeks of receipt of the bill. If the customer fails to raise the objections in time the bill shall be deemed accepted; Telekom 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 may have in the event of objections raised after the deadline.

## **9 Amendments to the legal terms and conditions, service specifications, and charges**

If Telekom intends to amend the legal terms and conditions, service specifications, and charges, the customer shall be informed of these amendments in text form (e.g., by letter or email) at least six weeks before they become effective. The amendments shall be constituent parts of the agreement from the date of coming into effect subject to the following conditions set out below in Items (a) to (c):

- a. Telekom has the right to make unilateral amendments to legal terms and conditions, service specifications, and prices that are in the customer's favor.
- b. In the event of price increases, amendments to legal terms and conditions that are to the detriment of the customer, and amendments to service specifications that are not merely of minor importance, the customer has the right to terminate the agreement without notice on the date when the amendments announced in text form take effect. The customer's right of termination shall be expressly referred to in the notification about the amendments.
- c. Irrespective of these stipulations, Telekom shall, in the event of an increase in statutory value-added tax, be entitled and, in the event of a decrease, be obligated to adjust the value-added tax accordingly at the time when the new rate starts to apply. Such amendment does not give the customer the right to terminate the agreement.

## **10 Default**

### **10.1 Default in payment by the customer**

If the customer defaults in the payment of a substantial part of the charges, Telekom shall be entitled to terminate the agreement without notice. Telekom reserves the right to assert any other legal claims arising from a default in payment.

### **10.2 Default in acceptance by the customer**

If, for reasons attributable to the customer, Telekom is unable to perform the contractually agreed services despite unsuccessfully granting an additional period of time, it may – without prejudice to its rights arising from default – withdraw from the agreement and demand, instead of performance, not only compensation in the form of a single lump-sum payment that falls due immediately and amounts to twelve times the monthly charge, but also reimbursement of its expenses for services already rendered. The payment shall be higher or lower if Telekom proves that the loss suffered was greater or the customer, that it was less.

## **11 Warranty**

Defects shall be remedied, at Telekom's discretion, by providing a new software version or by eliminating errors. Until such time that an amended version is provided, Telekom shall provide a temporary solution for circumventing the defect, if Telekom can be reasonably expected to do so at a reasonable cost. Irrespective of the degree to which it is at fault, Telekom shall not be liable for compensation (§ 536 BGB) arising from defects present at the time the agreement is concluded.

## **12 Liability**

### **12.1 Telekom shall be fully liable in cases of intent, gross negligence, or the lack of a guaranteed feature.**

12.2 In the event of slight negligence, Telekom shall be fully liable for injury to life, limb, or health. In all other respects, in the event of slight negligence, Telekom shall only be liable insofar as an obligation is breached which is prerequisite to the proper implementation of the agreement, by the breach of which attainment of the purpose of the agreement is compromised and which the customer may routinely expect to be honored (hereinafter referred to as a "cardinal obligation"). In the event of a violation of a cardinal obligation, liability shall be limited to foreseeable damage typical of the agreement. This shall also apply to lost profit and unachieved savings. Liability for any less direct follow-up damage due to defects shall be precluded.

12.3 Telekom shall be liable for the loss of data in the case of slight negligence under the conditions and within the scope of Item 15.2 only

- if the customer has backed up their data in suitable form according to Item 6.4 (h), so that it can be recovered at reasonable cost.
- 12.4 Telekom shall not be liable for any other damage, in particular for data loss caused by incompatibility between the components already present in the customer's PC system and the new or modified software, or for system malfunctions that may result from existing configuration errors or older, interfering drivers that were not completely removed.  
Liability pursuant to the German Product Liability Act (*Produkthaftungsgesetz*) shall remain unaffected.
- 13 Term of the agreement and termination**  
If the contract provides for no specific term, each party may terminate the contract by giving three months' notice, effective from the end of a calendar quarter. Notice of termination must be given in writing.
- 14 Export**  
The customer shall observe, upon their 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 and services.
- 15 Confidentiality**  
The parties to the agreement shall be obligated toward one 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 only be disclosed to third parties not involved in carrying out the order 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 (AktG) are not third parties. The parties to the agreement shall also require their employees and any third parties to accept these obligations. Telekom shall be entitled to disclose confidential information to subcontractors, provided they have been obligated to maintain the necessary confidentiality.
- 16 Force majeure**
- 16.1 Telekom shall not assume liability for occurrences of force majeure that materially aggravate, temporarily hamper, or render impossible the due implementation of the agreement by Telekom. 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, epidemics, pandemics, or other circumstances that are unpredictable, serious and not attributable to the parties 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 accordingly, depending on the duration of the impediment. The same shall apply if Telekom depends on the upstream service of a third party, and this service is delayed as a result of force majeure.
- 16.3 Each party to the agreement shall take all necessary and reasonable action in its power to limit the extent of the damage and consequences of such force majeure. The party affected by force majeure shall in each case immediately notify the other party of the beginning and end of the impediment in writing.
- 16.4 If an event of force majeure continues for more than 30 days, each party may terminate this agreement without any liability or cost if the respective party cannot reasonably be expected to continue to adhere to the agreement. Costs already incurred or services already provided, however, must be paid for by the contracting party.
- 17 Miscellaneous**
- 17.1 Telekom is entitled to provide the services by subcontracting work to third parties (subcontractors). Telekom is liable for any services provided by subcontractors to the same extent that it is liable for its own actions.
- 17.2 If any conditions of the agreement become invalid or if a gap becomes evident, this shall not affect the validity of the remaining conditions. In the place of the invalid provisions or to close the gap, a suitable provision shall be applied that comes as close as possible to what the parties would have intended given the sense and purpose of this agreement.
- 17.3 Frankfurt am Main shall be the place of jurisdiction for all disputes arising from or in connection with this agreement. Any exclusive place of jurisdiction shall have priority.
- 17.4 The customer shall have the right to transfer the rights and obligations under this agreement to a third party only with the prior written consent of Telekom.
- 17.5 Telekom shall have the right to transfer the rights and obligations arising from this agreement to Deutsche Telekom AG, Friedrich-Ebert-Allee 140, 53113 Bonn (registered with Bonn District Court, HRB 6794) or to any other third party without the customer's approval. Until the date of the transfer, the customer shall have the right to terminate the agreement with Telekom without notice in the event of transfer to a third party not specified by name.
- 17.6 The contractual relations shall be subject to German law to the exclusion of the UN Convention on Contracts for the International Sale of Goods.