

General Terms and Conditions for the Licensing and Maintenance of Standard Software of msgGillardon AG (as of 06/2020)

1. Scope of the Terms and Conditions

1 These General Terms and Conditions shall apply to the licensing of standard software as well as to the maintenance services for standard software (hereinafter referred to as "contract software") of msgGillardon AG (hereinafter referred to as "msgGillardon").

2 The licensing and maintenance of the contract software shall be subject to the following provisions. The license conditions for open source components of the contract software may vary (see clause 2 paragraph 6 of the General Terms and Conditions). With respect to consultancy and development services that are provided by msgGillardon to the customer, the General Terms and Conditions for Consultancy and Development Services of msgGillardon apply.

3 Conflicting General Terms and Conditions of the customer shall not form an integral part of the contract, even if msgGillardon should carry out any such a contract without previously expressly opposing such terms and conditions.

4 Individual agreements intended to deviate from any provision of these General Terms and Conditions must be concluded in writing for them to become effective. This also applies to any amendment or annulment of this written form requirement.

5 The provisions of a contract have priority over any conflicting provisions of these General Terms and Conditions.

2. Subject of a Contract for the Licensing of Standard Software

1 msgGillardon shall supply the standard software identified and specified in the contract, including the related released documentation, for the customer's own use and for the remuneration agreed in the contract.

2 The functional scope of the contract software is specified in the program description included in msgGillardon' quotation ("product description").

3 The subject of a contract based on these General Terms and Conditions does not include any training for the customer, installation or customization of the contract software or migration of the customer's archive data. These services can be additionally agreed with msgGillardon in separate contracts for an equivalent remuneration.

4 msgGillardon shall deliver to the customer, on data carriers, the contract software in an executable form (object code). The subject of any such contract does not include the supply of the source code of the contract software.

5 Together with the contract software, msgGillardon will hand over to the customer the user documentation in German released by msgGillardon, in an electronic, printable form on a suitable data carrier.

6 The contract software may contain open source components. Any such components will be mentioned in the product description. The corresponding open source licence conditions will have priority for said components. msgGillardon will make said conditions available to the customer at <http://www.msg-gillardon.de/open-source/>. Regardless of any liability and warranty restrictions specified in said licence conditions, msgGillardon's liability and warranty for material defects or defects of title for the contract software to the customer follow the conditions named in clause 11 to 14 of these General Terms and Conditions.

3. Maintenance of the Contract Software

1 Upon conclusion of a maintenance contract, msgGillardon shall carry out the following software maintenance services throughout the period of this maintenance contract:

a) msgGillardon shall make the necessary changes or modifications to the contract software, which may become necessary due to changes in relevant statutory provisions of the Federal Republic of Germany, by the development and provision of an update for the software within its programming and organizational capabilities.

b) msgGillardon shall investigate any defects in the contract software reported by the customer in writing and, if possible, indicate to the customer how to eliminate or handle the consequences of such a defect. msgGillardon shall eliminate defects in the contract software as promptly as possible. Where the cause of defect was found not to lie in the contract software supplied by msgGillardon, then all costs arising from the ensuing work that led to the clarification of the problem will be charged to the customer in accordance with the currently valid price list of msgGillardon.

c) msgGillardon' contract software is subject to continuous development. Any improvements made within msgGillardon' product policy shall be incorporated into the contract software.

d) Within the scope of the fees for the maintenance of contract software agreed in the contract, msgGillardon shall deliver to the

customer updates to the contract software, as described in paragraphs a) to c) above. The updates shall be supplied as soon as possible after their release.

2 msgGillardon shall provide by telephone to the customer's staff responsible for the contract software, qualified technical advice relating to the areas of application and the solution of problems with the use of the contract software. customers may call Monday to Friday between 09:00 and 17:00 CET (with the exception of public holidays in the respective locations of msgGillardon). The customer shall notify msgGillardon in writing of the names of the persons responsible for the contract software.

3 Unless otherwise agreed in the contract, msgGillardon' obligation to maintain the contract software always relates to the latest program version thereof released by msgGillardon.

4 msgGillardon offers the customer 10% discount on all seminars for general financial applications, as described in the msgGillardon' seminar brochure "*Themen und Termine*" (Topics and Dates) throughout the term of the software maintenance contract. This does not apply to in-house seminars.

5 The scope of the maintenance services does not include any on-site installation and familiarization with any updates, on-site support, training for and troubleshooting of program changes, which may become necessary due to the system environment or because of any unauthorized modification or improper use of the contract software. In addition, any business management consultancy is excluded from the range of maintenance services.

6 Should the customer, on the basis of a separate contract, acquire any rights to individual adaptations of the contract software, the maintenance and support services for these extended functions shall be subject to the General Terms and Conditions for Consultancy and Development Services of msgGillardon. Notwithstanding the foregoing, the parties may agree, that these General Terms and Conditions shall apply to the maintenance and support services for these extended functions.

4. Rights of Use

1 msgGillardon holds the exclusive rights to the contract software written and marketed by msgGillardon; the contract software is protected by copyright. This legal situation also exists when the contract software written by msgGillardon was developed at the customer's request or with the collaboration of the customer.

2 msgGillardon grants to the customer a non-exclusive right, for an indefinite period, to use the contract software within the customer's own business activities and for the customer's own commercial purposes. The extent of the granted rights of use, e.g. the maximum number of users, clients etc., shall be specified in the contract on the basis of assessment in the customer's business operations (e.g. balance sheet total, number of employees, number of calculations, or else) and shall be limited to this extent regardless of the customer's technical possibilities. If the basis of the assessment is not regulated in the contract, the customer's balance sheet total at the time of conclusion of the contract shall be the relevant assessment basis.

3 In the event of a named user constraint, msgGillardon shall permit the customer to continue to use the contract software, even when the designated user is absent (e.g. on leave or through illness), by his stand-in.

4 The use of the contract software for any third party purposes is excluded, including but not limited to the provision of services of a computer centre or for the leasing to any third party. Companies which are directly or indirectly owned or controlled by, or otherwise affiliated with the customer, shall also be regarded as 'third parties'.

5 The customer is only authorized to copy the supplied contract software to the extent that is necessary for the use of the contract software as agreed. This also includes the making of the necessary number of backup copies. All copies must show the copyright notice of the original.

6 All other rights in the contract software, including but not limited to the right to make copies beyond the aforementioned scope and as well as the right to distribute, lease, translate and modify the contract software, remain with msgGillardon.

7 Decompilation of the contract software is permitted within the scope of the provisions of the German Copyright Act, unless msgGillardon provides the information and/or documentation required to establish the interoperability of the contract software with other programs, upon the customer's written request and within a reasonable period of time.

8 The contract software may only be passed on to others after msgGillardon has given its previous written consent, and this will depend on whether or not the customer has completely given up using the

contract software. In addition, the customer shall submit to msgGillardon a written statement by the new user committing it to comply with and abide by these General Terms and Condition and the limitations of use stipulated in the respective contract with the customer; the passing on of the contract software must not result in any extension to the scope of use thereof.

9 Upon the delivery of new versions of or updates to the contract software, the customer receives the right to use them to the same extent that it is entitled to use the original contract software. Where the customer uses new versions of or updates to the contract software in operative (productive) use that are designed to replace previous versions of the contract software, then the right to use the replaced versions of the contract software will expire. The customer shall ensure that all of the replaced versions of the contract software will not be further used. msgGillardon may request the customer to return any replaced versions of the contract software and to confirm in writing that no additional copies of the replaced versions of the contract software remain with the customer.

10 Upon the introduction of new versions of or updates to the contract software, the customer shall be entitled to use the previous versions of the contract software until it is warranted that the new version operates properly and is free from defects and is also capable of processing data that were created by the previous versions of the contract software.

11. The licence conditions for open source components of the contract software may vary from the usage conditions named herein (see clause 2 paragraph 6 of these General Terms and Conditions).

5. Additional purchase

1. Any use of the contract software or the respective part of the contract software which exceeds the contractual agreed scope or which is for other purposes than those specified in the contract, shall be notified in writing to msgGillardon in advance. It requires a separate contract between customer and msgGillardon regarding the additional scope and/ or purpose of use (additional purchase).

2. customer shall inform msgGillardon on the basis of the basis of assessment about the additionally required scope of use or the additional or deviating purpose; the relevant reporting date is the time of the extension or change of the scope of use. If customer does not inform msgGillardon and msgGillardon has reason to believe that the requirement for an additional purchase may be fulfilled, msgGillardon is entitled to verify the customer's actual use of the contract software; msgGillardon may exercise this right to verification itself or through a neutral third party, who is bound by professional secrecy or otherwise is legally obliged to maintain confidentiality. customer shall support msgGillardon or assigned third parties in the verification process comprehensively. If it becomes apparent in a verification or otherwise that customer has used the contract software outside the contractual agreed scope, msgGillardon and customer will conclude a contract for additional purchase retrospectively at the time of overuse. msgGillardon reserves the right to claim delay, damages and compensation of necessary, reasonable expenses for the verification.

3. In the event of conclusion of a separate contract due to the additional purchase, customer is not entitled to consideration of any discounts or other advantages.

4. If the scope of use of the customer increases, the fees agreed for the maintenance of the contract software shall be adjusted accordingly. The amount of the adjustment of the fee agreed for the maintenance of the contract software shall be calculated on the basis of the current price list at the time of overuse, taking into account the basis of assessment.

6. Fees

1 The level of fees for the licensing and, if applicable, maintenance of the contract software are specified in the respective contract and in case of an additional purchase additionally in the respective separate contract. Unless it was otherwise specifically agreed in the respective contract, the customer shall be obliged to pay the total price upon delivery of the contract software. The fees specified in the contract are quoted as net prices, to which must be added the currently effective VAT.

2 The fees agreed for the maintenance of the contract software amounts to at least EUR 40 per month and are payable one year in advance and fall due at the beginning of each calendar year. Where the contractually agreed use does not commence at the beginning of a calendar year, then the period from the initial use of the software to the end of the calendar year shall be regarded as pro rata period. The proportional fees for this pro rata period shall be paid upon the delivery of the contract software, but in any event not later than the initial productive use of the contract software.

3 The customer and msgGillardon hereby agree that the level of the fees for the supplied contract software was determined by the basis of assessment in the customer's business operations agreed upon at the time the contract was concluded, and by the scope of use derived therefrom. This applies accordingly for each separate contract based on

an additional purchase. The statutory claim under Section 32 paragraph 1 sentence 3 German Copyright Act [*Urhebergesetz, UrhG*] remains unaffected by the agreed fees.

5 msgGillardon shall be entitled to adjust, on an annual basis, the level of the maintenance fees for the contract software, in line with any changed costs of materials and personnel. msgGillardon will inform the customer in writing of any such adjustment, three months prior to it coming into force. The customer shall be entitled to terminate the contract software maintenance contract to the time of commencement of the fee adjustment requested by msgGillardon, if the level of adjustment exceeds an average price increase of 5% p.a. since the last increase.

7. Reservation of Rights

msgGillardon shall retain the title in and rights to the contract software until all fees have been fully paid.

8. Terms of Payment

1 The customer reimburses msgGillardon' contract software in accordance with the contractual agreements and where applicable, the payment plan agreed in the contract.

2 Invoices issued by msgGillardon shall be due and payable within ten (10) days from the date of the invoice, without any deductions.

3 In the event that the customer defaults on any payment, msgGillardon shall be entitled to charge default interest in accordance with the statutory provisions. msgGillardon reserves the right to claim higher damages for delays on an individual basis.

4 The customer shall only be entitled to offset any amounts due to msgGillardon, if the counterclaims are undisputed or legally effective. The customer is not entitled to assign any claims against msgGillardon to any third party. Section 354a of the German Commercial Code [*Handelsgesetzbuch, HGB*] shall remain unaffected.

9. Customer's Obligation to Cooperate

1 The cooperation obligations of the customer described below in this clause 9 as well as additional cooperation obligations of the customer possibly specified in the offer or contract are main performance obligations of the customer. The customer shall ensure that all of the necessary cooperation services to be contributed in the carrying out of the work shall be performed in due time, in the required quality and scope agreed upon by the contracting parties and at no cost to msgGillardon.

2 With regard to msgGillardon' deliveries, the customer shall assume the duties of inspection and notification of any defects in accordance with Section 377 of the German Commercial Code.

3 The customer must notify msgGillardon immediately of any defects, by specifying the circumstances under which the defect occurred, the consequences and possible causes of the defect. The customer shall provide all documentation and information available, which msgGillardon may require for the diagnosis and rectification of the defect, and, in so far as it is necessary, grant access to the rooms, machines and contract software, at least during normal office hours.

4 The customer agrees to provide msgGillardon with all the documents and information necessary for the provision of the services in a timely manner.

5 The customer shall, to the best of its ability, support msgGillardon in the search for the cause of the problem.

6 The customer shall ensure that, throughout the period that the maintenance services are being carried out, a qualified employee is available to assist msgGillardon and sufficient computer time is provided.

7 The customer is obliged to carry out, generate and check data backups on a regular basis. The data backup shall include the entire software system and the regular backup of master and transaction data and must be carried out in compliance with the principles of proper data processing.

8 Upon receipt of a new version of or update to the contract software from msgGillardon, the customer shall itself immediately install this software for testing purposes. The customer shall test the contract software to the best of its ability, prior to using it in production. Should msgGillardon advise the customer, at short notice by telephone hotline, of information required for maintenance purposes on how to remedy and avoid any defects, then the customer shall carry out such an instruction immediately.

9 Where it is so required for new versions of the contract software, the customer shall provide in good time, ready for use and at its own cost any customization of the hardware and software environments, including but not limited to new versions or updates of the operating system or any other third-party software required by the contract software.

10 If the customer provides or has to provide software for the provision of services by msgGillardon, it shall ensure that the rights necessary for the provision of services by msgGillardon exist.

11 If the customer does not meet the obligation to cooperate, not in time or not in the agreed manner, the resulting consequences (e.g. delays, additional costs) are borne by the customer.

10. Term and Termination of Software Maintenance Contracts

1 The contract for the maintenance of the contract software is concluded for an indefinite period of time. The contract may be terminated by either party by the giving of three (3) months prior notice, to take effect at the end of a calendar year, but at the earliest two (2) years after the beginning of the customer's obligation to pay.

2 The right of extraordinary termination for an important reason shall remain unaffected. An important reason exists, including but not limited to, when the customer defaults on its payment for more than one month.

3 Any notice of termination must be given in writing.

11. Material Defects

1 msgGillardon shall warrant that the contract software complies with the user documentation and that it contains no defects.

2 Any claims resulting from any defects shall expire by limitation after twelve (12) months starting with the delivery or, in the case of services which are described in the contract as works services, i.e. success-oriented services, the acceptance of the service.

3 The customer must immediately report any defects in writing in such a form that the defect can be reproduced, and by giving appropriate information to identify the defect. The customer shall assist msgGillardon, in a reasonable manner, in the rectification of any defects.

4 msgGillardon may choose to eliminate defects primarily by remedying the defect (rectification) or by producing new contract software (replacement). The customer shall set reasonable time limits for msgGillardon's subsequent compliance. If the subsequent delivery of the services to be provided finally fails, despite at least two attempts of subsequent improvement - provided that the subsequent improvement by msgGillardon is not unreasonable for the customer - per claimed defect, then the customer shall be entitled, at its own discretion, to request a reduction in the level of fees due or - if the statutory requirements are given - withdraw from the contract and claim damages instead of the performance of services, or compensation for costs of ineffective efforts.

5 However, the customer shall only be entitled to withdraw from the contract and/or claim damages from msgGillardon instead of the complete performance of services, or compensation for costs of ineffective efforts, if msgGillardon has not insignificantly breached any of its obligations.

6 Any claims arising from defects shall be excluded, if the customer changes or modifies or otherwise impairs the contract software, unless the customer can prove that the respective changes or modifications were not the cause of the defect.

7 msgGillardon may request remuneration of its time and efforts, so far that it has acted in response to a notice of defect, without the customer being able to provide evidence of any defect in the contract software.

8 msgGillardon is only deemed to be in default upon the service of a warning. All of the customer's warnings and fixed time limits must be made in writing for them to become effective.

9 In the event that msgGillardon has already performed part of the services, the customer may only claim damages in lieu of full performance, if the latter is not interested in the partial performance of the service.

10 Unless msgGillardon has performed the expected services as specified in the contract, the customer shall not be entitled to rescind the contract and/or claim damages instead of the complete range of services or compensation for costs of ineffective efforts, if there is only a minor breach of duty.

11 The limitations of liability under clause 14 of these General Terms and Conditions shall apply to any of the customer's claims for damages or compensation for costs of ineffective efforts because of the default.

12 Where the customer is entitled to rescind the contract for the licensing of standard software, the customer must agree to be charged for the benefits derived from its use, based on linear depreciation over four (4) years.

13 Any other of the customer's warranty claims shall be excluded.

14 The provisions of this clause 11 apply accordingly to material defects in the updates to the contract software delivered within the software maintenance services. The right to withdraw from the contract is replaced by right to prematurely, extraordinary terminate the maintenance contract.

12. Defects of Title

1 Unless otherwise specified in this clause 12, clause 11 shall apply accordingly to any defects of title.

2 msgGillardon shall be liable to warrant that there are no rights of any third party conflicting with the transfer of the agreed rights of use to the customer. msgGillardon shall at its choosing subsequently deliver the services due by providing the customer with a legally correct feasibility of use, by changing or modifying the contract software or substituting it with

an equivalent, changed or modified contract software, or by safeguarding the customer against and regulating any third party's claims for intellectual property rights.

3 In the event that any third party shall claim intellectual property rights against the customer, the customer shall immediately inform msgGillardon in writing.

4 msgGillardon is entitled, at its own cost, to defend the customer against the claims of the third party. In such a case, the customer shall support msgGillardon, to a reasonably extent, in the defence of any claims of the third party and in any legal proceedings and shall refrain from any actions (e.g. acknowledging the claims of the third party) which might prevent msgGillardon from rejecting the claim. This commitment of the customer shall exist where msgGillardon shall exempt the customer from the disadvantages and risks of the dispute and adequately safeguard it from such disadvantages and risks.

5 msgGillardon shall be entitled to the right ensuing under paragraph 4, at its own discretion, even after the period of limitation for the warranty of title has expired.

13. Other Defaults in Performance or Breaches of Duty

1 Where msgGillardon fails to perform or properly perform the services due beyond the range of warranty of quality and title, or fails to fulfil any other duties under the contract, then the customer must report this in writing and, also in writing, shall grant msgGillardon a reasonable period of grace, during which msgGillardon shall have the opportunity to properly perform the services, or to find a remedy in some other way. If, after the period of grace has lapsed without success, the customer still wishes to withdraw from the contract, e.g. by rescission or termination for an important reason, then it must give notice of these consequences and also fix the time limit in writing. Fixing a time limit will not be required if this is expressly regulated by law.

2 The limitations of liability under clause 14 of these General Terms and Conditions shall apply to any of the customer's claims for damages or compensation for costs of ineffective efforts or because of any other impairments of performance or breaches of duty.

14. Compensation Provisions

1 msgGillardon is liable under the statutory provisions without limitation

- for damage caused intentionally or negligently, due injury to life, body or health;
- due to the lack of warranted characteristics or non-compliance with warranty;
- for damages which are based on an intentional or grossly negligent breach of duty by msgGillardon.

2 msgGillardon's liability in all cases of contractual and non-contractual liability is limited to the contract-typical foreseeable damages, which are based on a minor negligent breach of essential obligations by msgGillardon. Essential obligations within the meaning of these provisions are obligations which enable the proper fulfilment of the contract in the first place and the observance whereon the customer may rely.

3 In all other cases, msgGillardon's liability for minor negligence is limited to an amount of EUR 100,000 per contract.

4 Subject to the provisions of the Product Liability Act, any strict liability of msgGillardon shall be excluded.

5 msgGillardon is liable for causing data loss through minor negligence but only for the typical and ordinary damage, which would also have been caused in the case of a proper and regular data backup by the customer with regard to the importance of the data. This limitation does not apply if the data backup was impeded or impossible due to reasons attributable to msgGillardon.

6 The foregoing provisions apply mutatis mutandis to msgGillardon's liability with regard to the reimbursement of futile expenses.

15. Subcontractors

msgGillardon may, without the customer's prior approval, use the services of freelancers or any other agents or subcontractors to fulfil its contractual obligations with the customer.

16. Confidentiality

1 The contracting parties undertake to keep confidential information and documents of the other contracting party which are obviously confidential or which are designated as confidential by the other contracting party, such as operating secrets and business secrets, and treat them with strict confidentiality. This also applies to offers made by msgGillardon and contracts concluded between the contracting parties, as well as all information relating to the contract, including any commercial concessions (information and documents referred to in sentence 1 and sentence 2 are referred to hereinafter collectively as

“confidential information”). The contracting parties shall also instruct their employees and third parties accordingly, provided that the latter ordinarily come in contact with confidential information, insofar as they have not already been otherwise bound to confidentiality

2 Confidential information may only be used for the purposes of the contract. In addition, said information may neither be recorded, stored, disseminated, duplicated, passed on nor used for own purposes or exploited in any other way. .

3 Notwithstanding the foregoing provisions, the parties may pass on any confidential information, if (i) the latter was already known to the recipient of the information at the time of the assignment, without any obligation to confidentiality, (ii) the information has already been published, or was published later through no legal or contractual fault of the recipient of the information, (iii) which a party to the contract lawfully receives from a third party without any obligation to confidentiality, (iv) the information has been independently developed by the recipient of the information, or (v) legal provisions or orders of governmental bodies require the disclosure of the information or the other contracting party has agreed to this. The parties will, as far as this is permitted by law, immediately inform each other as soon as they are requested by any authority to disclose confidential information of or about the other party or are subjected to any other official measures by the state.

4 msgGillardon is entitled to include the customer in its list of reference customers, unless otherwise the contract contains a deviating provision in this respect.

17. Data Protection

msgGillardon and the customer will maintain data confidentiality and comply with data protection requirements in accordance with GDPR (General Data Protection Regulation). During the performance of the order, msgGillardon and the customer shall only use the services of such agents or subcontractors who have been committed to data confidentiality and compliance with data protection requirements in accordance with GDPR.

18. Transferability of Rights and Responsibilities

The customer shall not be entitled to assign its rights or obligations or delegate its duties under the respective contract to any third party, without the prior written consent of msgGillardon. Section 354a German Commercial Code remains unaffected.

19. Final Provisions

1 The contract between the customer and msgGillardon shall be exclusively governed by and construed in accordance with the laws of the Federal Republic of Germany, excluding the United Nations' Convention on Contracts for the International Sale of Goods (CISG).

2 The exclusive place of jurisdiction for all and any disputes arising out of or in connection with this contract shall be Karlsruhe, Germany, if the customer is a qualified merchant, or a legal entity under public law, or a special fund under public law, or if the customer has no general legal venue in the Federal Republic of Germany.

Bretten, 06/2020
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