

# General Terms and Conditions for Software

issued by the Association of the Austrian Electrical and Electronics Industries (FEEL)



## 1 Scope

1.1 These general terms and conditions for Software apply to legal transactions between companies, namely for the delivery and licensing of software. Software for the purposes of these terms and conditions are computer programs distributed by the licensor as standard products or individually developed or adapted for the licensee within the meaning of [Section 40a of the Austrian Copyright Act](#) (§ 40a URHG) for use on, for the operation or for the control of electrotechnical and/or electronic equipment and systems, including the documentation provided for this purpose in accordance with item 5.

1.2 The scope of services and associated software services and any additional services must be defined in an individual contract. The present terms and conditions also apply to these software services and additional services.

## 2 Granting of rights

2.1 Unless otherwise agreed in an individual contract, the licensee is granted the non-transferable and non-exclusive right to use the software in accordance with the contractual specification, including any existing device and software certificates ("Certificate of Licence"), at the agreed installation location or as per the agreed number of workstations or users. If hardware is also supplied, use is only permitted on this hardware, unless otherwise agreed in an individual contract.

For stand-alone software, use is only permitted on the hardware which has been defined in the contract, including any existing device and software certificates ("Certificate of Licence") in terms of type, number and installation location. Any use on hardware other than that defined in the contract, including any existing device and software certificates ("Certificate of Licence"), on a differing number of workstations or for a differing number of users is subject to a separate written agreement.

2.2 All other rights to the software are retained by the licensor. Unless otherwise agreed in an individual contract, without the prior written consent of the licensor and notwithstanding the provisions of [Section 40d of the Austrian Copyright Act](#), the licensee is therefore in particular not authorised to reproduce or modify the software, to make it available to third parties or to use it on hardware other than that defined in the contract.

## 3 Conclusion, amendment and interpretation of the contract

3.1 In case of doubt, any offers made by the licensor are deemed to be non-binding. The contract regarding the delivery and licensing of the software, including the associated software services to be agreed in an individual contract, is considered concluded when the licensor has confirmed the order in writing after receipt of the licensee's order or has performed the first partial delivery.

3.2 All documents relating to the offer and project may not be reproduced or made available to third parties without the consent of the licensor. They may be reclaimed at any time and must be returned to the licensor without delay if no contract is concluded between the licensor and the licensee for the order at hand.

3.3 Subsequent amendments and additions to the contract for the delivery and licensing of the software including these terms and conditions, in particular any amendment to the following formal requirements, its termination and all other unilateral declarations of intent provided for in the contract or these terms and conditions or in connection therewith must be made in writing to be valid. Any provisions deviating from these terms and conditions are deemed to have been agreed in an individual contract if the licensor expressly agrees to them.

3.4 Unless otherwise agreed, each party will bear its own costs associated with the drafting, execution and termination of the contract.

3.5 For the purposes of interpreting the contract, it is expressly assumed – in the absence of an express agreement to the contrary in individual cases – that the licensor is an independent contractual partner and that the licensor or its owners, partners, employees, consultants or subcontractors are not referred to or regarded as agents, assistants, partners, joint ventures or employees of the licensee.

## 4 Obligations of the licensee to cooperate

Subject to an individual contractual provision, the licensee is responsible for

- a) the selection from the software offered by the licensor;
- b) the provision of all information required for the compilation of a specification sheet in the case of customised software;
- c) the use of the software and the results obtained with it;
- d) the import of new versions and updates made available to it.

## 5 Software specifications

5.1 The licensor provides the software specifications in the case of standard software.

5.2 In the case of customised software ordered by the licensee, a specification sheet must be agreed in writing between licensor and licensee.

5.3 Software specifications may include, for example, performance features, documentation on special functions, hardware and software requirements, installation requirements, operating conditions, operation (user manual).

5.4 The licensee is responsible for complying with the software specifications, in particular the conditions of use, as well as for obtaining any official authorisations and complying with any official conditions of approval.

## 6 Delivery, acceptance and transfer of risk

6.1 Unless otherwise agreed in an individual contract, the licensor delivers the software to the licensee in a machine-readable form. This is done either in the form of a delivery or handover of a physical data medium or by making it available in electronic form (e.g. as a download). The licensor is entitled to supply the version current at the time of delivery.

6.2 If no delivery date is agreed, the licensor will notify the licensee of the delivery date.

6.3 The licensee bears the risk of shipping software and data media or making software available electronically.

6.4 Unless otherwise agreed in an individual contract, the licensor is not responsible for the proper functioning of the transmission method or for the installation or for any tests and the integration of the software into the existing hardware and software environment of the licensee.

6.5 If unforeseeable circumstances or circumstances beyond the control of the parties, such as all cases of force majeure, occur which prevent compliance with the agreed time of delivery, such period is extended in any case by the duration of the hindrance; these include, in particular, natural disasters, armed conflicts and terrorist attacks, cyberattacks, the outbreak and spread of major diseases, epidemics, pandemics, interventions and bans

by the authorities, energy and raw material shortages, labour disputes, embargoes and sanctions, non-compliance with which may expose the licensor to a penalty or other disadvantages, transport and customs clearance delays, delivery stops and delivery problems, transport damage, the loss of a major supplier that is difficult to replace and other problems in the supply chain. Circumstances such as those mentioned above also entitle the licensor to extend the time of delivery if they occur at its suppliers and/or subcontractors. If the hindrance lasts longer than 6 months, the licensor is entitled to withdraw from the contract with respect to the parts of the contract that have not yet been performed or have not yet begun to be performed after the failed attempt at amicable settlement in accordance with item 12.8.

6.6 If an acceptance procedure has been agreed and unless otherwise agreed in an individual contract, the software is available to the licensee for use free of charge during a test period. The test period begins with the delivery of the software or with the provision of the software in electronic form in accordance with item 6.1 and lasts for one week, unless otherwise agreed in an individual contract.

6.7 Unless otherwise agreed in an individual contract, the software is deemed to have been accepted at the end of the test period if

- a) the licensee confirms compliance with the contractual specifications;
- b) the licensee does not give written notice of significant defects within the test period, or
- c) the licensee uses the software within the scope of its business operations after the end of the test period.

6.8 The existence of minor defects does not prevent acceptance, unless otherwise agreed in an individual contract. Any such defects are to be treated in accordance with the provisions on warranty.

6.9 The transfer of risk is effected upon acceptance. If no acceptance has been agreed, the risk is transferred to the licensee at the time of delivery or handover of a physical data medium or by provision in electronic form.

## 7 Warranty

7.1 For software, the licensor guarantees compliance with the specifications valid at the time of conclusion of the contract and agreed in an individual contract, provided that the software is used in accordance with the applicable installation requirements and under the applicable conditions of use. No warranty claims can be derived nor any liability established from information in catalogues, brochures, advertising material and written or verbal statements not included in the contract.

7.2 Unless otherwise agreed in an individual contract, the statutory warranty period commences at the time of the transfer of risk pursuant to item 6. The statute of limitations commences immediately at the end of the warranty period.

7.3 Unless otherwise agreed in an individual contract, the burden of proof that the defect already existed at the time of handover is based on the applicable statutory warranty provisions.

7.4 Unless otherwise agreed in an individual contract, the assertion of warranty claims is subject to the immediate inspection or testing of the software upon delivery and an immediate notification of defects in writing to the licensor. In this notification, the licensee has to state the deviation from the specification; the user steps that led to the defect; and the error message displayed by the software in detail to the best of its ability.

7.5 Any rectification of defects requires that

- a) a defect subject to warranty is present, i.e. that there is a reproducible deviation from the agreed specifications that impairs the function of the software and
- b) the licensee has installed any new versions and updates made available to it free of charge within the warranty period and
- c) the licensor receives from the licensee all documents and information necessary for the rectification of defects and
- d) the licensor is granted access to the hardware and software during the normal working hours of the licensor.

7.6 In the case of a defect covered by the warranty, the licensor may, at its own discretion, initially improve or replace the software. If this is not possible or involves disproportionate costs and effort, licensee and licensor may agree on a reduction in price.

7.7 For improved or replaced parts of the delivery or service, the warranty period commences anew, but in any case ends no later than 6 months after the end of the original warranty period.

7.8 If the Software is created by the licensor on the basis of drawings, models or other specifications of the licensee, the liability of the licensor extends only to the execution in accordance with the conditions.

7.9 Unless otherwise agreed in an individual contract, the licensor assumes no warranty

- a) for third-party software that is not part of the contract; or
- b) for the compatibility of the software with other software programmes in use or planned or modified by the licensee; or
- c) for merely short-term, software-typical interruptions or malfunctions.

7.10 The following leads to an immediate expiry of the warranty

- a) improper handling by the licensee or other authorised users, or
- b) usage errors by the licensee or other authorised users, or
- c) use of the software by the licensee or other authorised users in breach of the licence, or
- d) use by third parties without the prior written consent of the licensor, or
- e) modifications to the software made by the licensee itself or by third parties without the prior written consent of the licensor, or
- f) modifications to the hardware or hardware configuration originally defined for the software installation by the licensee or third parties.

7.11 Should the software fail to comply with the specifications agreed in the individual contract in a functionally disruptive manner while the warranty is still valid and should the licensor be unable to achieve compliance with the specifications within a reasonable period of time despite sustained efforts, either party to the contract may terminate the contract for the software in question with immediate effect and demand reimbursement of the services or payments received.

7.12 Defects in individual programmes do not entitle the licensee to terminate the contract with regard to the remaining programmes.

7.13 Unless otherwise agreed in an individual contract, further claims arising from defects in the software, with the exception of the claims listed in this item 7, are excluded.

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- 7.14 Maintenance work (e.g. fault diagnosis and rectification, servicing, etc.) that is not covered by the rectification of defects, as well as the assumption of the respective costs, must be agreed separately.
- 7.15 The provisions in items 7.1 to 7.14 also apply mutatis mutandis to any liability for defects based on other legal grounds.
- 7.16 Unless otherwise agreed, a statutory updating obligation pursuant to Directive (EU) 2019/771 for goods with digital elements and for digital services is excluded.
- 8 Cybersecurity**
- 8.1 The contracting parties undertake to protect their information technology (IT), such as hardware, software, IT systems, networks, Internet-enabled applications, cloud applications used by them, common IT interfaces, as well as all information and data contained therein from IT security incidents by means of appropriate and suitable technical and organisational measures. An "IT security incident" is understood to mean any loss or unauthorised deletion, destruction, modification, disclosure, unauthorised access to or unauthorised control of IT infrastructure, as well as any other unauthorised direct or indirect impact on a party's infrastructure.
- 8.2 The licensee is solely responsible for the design, implementation and upkeep of a state-of-the-art security concept that protects its information technology when software is supplied by the licensor. Such a concept includes the installation of updates as soon as they are available to the licensee following the licensor's installation instructions and using the latest product versions, following security instructions, installing patches and carrying out related measures.
- 8.3 If a contracting party becomes aware of a possible IT security incident and the possibility cannot be excluded that the security of the IT infrastructure of the other contracting party is or could be compromised as a result, the contracting party concerned has to notify the other contracting party of the IT security incident in a timely manner. Such notification must describe the possible cause and nature of the IT security incident and contain appropriate information on the reasonably expected effects on the IT infrastructure of the other party, to the extent that a reasonable assessment of the facts is already possible at this stage. A subsequent assessment or changes to an existing assessment must be notified to the other party accordingly. This notification is subject to confidentiality.
- 8.4 The contracting party affected by an IT security incident is in any case obliged to take appropriate and proportionate measures with regard to the severity of the IT security incident in order to avert or – if this is not possible – limit the effects on the IT infrastructure of the other contracting party.
- 9 Commercial property rights and copyright**
- 9.1 The licensor will support the licensee in the legal defence against all claims based on the fact that software used in accordance with the contract infringes commercial property rights or copyright under Austrian law. The licensee will notify the licensor immediately in writing if such claims are asserted against it and, in the event of litigation, inform the licensor thereof in order to give it the opportunity to intervene in the proceedings.
- 9.2 If claims are asserted based on the infringement of property rights for which the licensor is responsible, the licensor is entitled to modify or replace the software or obtain a right of use at its own expense. If this should not be possible with reasonable effort, the licensee must return the original and all copies of the software, including any documents provided, without delay at the licensor's request against reimbursement of the payment. This is deemed to be the final settlement of all claims of the licensee relating to the infringement of commercial property rights and copyright, to the exclusion of any further obligation of the licensor.
- 9.3 The licensor reserves the right to audit the authorised use of the software itself or through commissioned third parties ("subcontractors"), subject to giving 14 days' written notice of the audit. The licensee is required to cooperate in the audit and to grant the licensor or its subcontractors sufficient access to information related to the use of the software (e.g. server, commercial records, etc.). Any payment shortfall must be made within 14 days of a written request for payment. For any cancellation options, see item 12. The assumption of costs for the audit is to be agreed separately. Unless otherwise agreed in an individual contract, the audit costs are to be borne by the licensee if the audit reveals material breaches of contract or material licence infringements by the licensee.
- 9.4 The licensee ensures through technical or other measures that the software does not fall under the same OSS licence conditions as any open source software it uses.
- 9.5 For software for which the licensor only possesses a derived right of use (third-party software), the terms of use agreed between the licensor and its licensor apply additionally and with priority over the present terms, to the extent that they affect the licensee (e.g. End User Licence Agreement). The licensor informs the licensee of these and makes them available to the licensee on request.
- 9.6 The licensee is responsible for protecting all rights of the licensor (e.g. industrial property rights, copyright including the right to a copyright notice) to the software and for protecting the licensor's rights to confidentiality of trade and business secrets, including by employees and vicarious agents of the licensee or third parties; this also applies if the software has been modified or combined with other programmes. This obligation remains in force even after termination of the contract.
- 10 Liability**
- 10.1 Unless otherwise agreed, the licensor is only liable for damages if intent or gross negligence can be proven and within the scope of statutory provisions. Unless otherwise agreed, the licensor's total liability for gross negligence is limited to the overall net price.
- 10.2 Unless otherwise agreed in an individual contract, liability for slight negligence, with the exception of personal injury, as well as compensation for consequential damage, pure financial loss, indirect damage, loss of production, financing costs, costs for substitute energy, loss of energy, data or information, loss of profit, unrealised savings, loss of interest and damage from third-party claims against the licensee are excluded.
- 10.3 Unless otherwise agreed in an individual contract, any compensation for damages is excluded in the event of non-compliance with any conditions for installation, implementation and use (such as those contained in operating instructions) or official authorisation conditions.
- 10.4 If contractual penalties have been agreed, any further claims for damages are excluded.
- 10.5 Unless otherwise agreed in an individual contract, the licensor also assumes no liability whatsoever for the cases mentioned in item 7.10 e).
- 10.6 The licensee is liable to the licensor for the breach of the obligations assumed in item 5.4 and indemnifies and holds the licensor harmless.
- 10.7 Unless otherwise agreed, the provisions of item 10 apply to all liability claims of the licensee against the licensor, irrespective of the legal basis and title, and also apply to all employees, subcontractors and suppliers of the licensor.
- 11 Payment**
- 11.1 The amount and payment date of the one-off and/or recurring utilisation fee must be agreed in an individual contract, as must any indexation.
- 11.2 The licensor may send the invoice electronically.
- 11.3 Unless otherwise agreed in an individual contract, all invoices are due for payment no later than 30 days from the invoice date.
- 11.4 Payments are to be made net, without any deductions and free of charge to the licensor's payment processor in the agreed currency. Any acceptance of cheques or bills of exchange will only ever be in lieu of payment. All related interest and expenses (such as collection and discount charges) will be borne by the licensee.
- 11.5 The licensee is not entitled to withhold or offset payments on the basis of warranty claims or other counterclaims. Any rebates, bonuses or other discounts granted are conditional on the licensee making full payment on time.
- 11.6 A payment is recognised as having been made on the day on which the licensor can dispose of it.
- 11.7 If the licensee is in default with an agreed payment or other performance under this or other legal transactions, the licensor may – unless otherwise agreed – without prejudice to its other rights
- postpone the fulfilment of its own obligations until such payment or other performance has been effected and claim a reasonable extension of the delivery period,
  - declare all outstanding claims from this or other legal transactions due and payable and charge the statutory default interest plus VAT on these amounts from the respective due date, unless the licensor provides evidence of additional costs,
  - in the event of qualified insolvency, i.e. after two payment defaults, fulfil this and other legal transactions only against advance payment.
- The licensor is in any case entitled to charge pre-litigation costs, in particular reminder fees and lawyer's fees, in accordance with the applicable statutory provisions.
- 12 Duration and termination of the contract**
- 12.1 The duration of the right of use depends on the individual contractual agreement. The right of use ends – unless otherwise agreed in an individual contract – upon expiry of the agreed period of use or is limited to the period of use of any hardware defined in the contract.
- 12.2 Upon termination of the right of use – for whatever reason – the licensee is required, at the licensor's discretion, to return the entire software, including any documentation provided, to the licensor or to destroy it in a verifiable manner. This also applies to modified software or software linked to other programs.
- 12.3 Irrespective of the return or proof of destruction of the entire software, including the documents provided, and unless otherwise agreed in individual contracts, the licensor is also entitled to block the licensee's and/or user's access to the software immediately after termination of the right of use, provided this is technically possible.
- 12.4 The licensee and the licensor may terminate the contract with immediate effect for good cause. Unless otherwise agreed in an individual contract, good cause for the purposes of the terms and conditions includes in particular
- failure to reach an agreement on acceptance of the specifications due to circumstances not attributable to the licensor;
  - the persistent non-fulfilment of essential contractual obligations. This is in particular the case if the licensor is in default with the provision of services through its own gross negligence and after the expiry of a reasonable grace period set in writing, or if the licensee does not fulfil its obligations to cooperate as listed in item 4 or in the individual contract, despite a written request from the licensor.
- 12.5 The licensor may also terminate the contract with immediate effect for the following important reasons
- if material or repeated minor deviations from the licence conditions have been demonstrably determined in an audit pursuant to item 9.3 or otherwise by the licensor;
  - if the licensee persistently refuses to remedy deviations demonstrably determined by the licensor in an audit pursuant to item 9.3 or otherwise;
  - if the licensee is in default of payment despite having been granted a reasonable grace period.
- 12.6 The legal regulations on contracts for work and labour ("Werkvertrag") remain unaffected in any case. The licensee is in any case liable for all damages (e.g. for downtimes etc.) incurred by the licensor through non-compliance with these obligations.
- 12.7 In the event that insolvency proceedings are opened against the licensee's assets or a motion to initiate insolvency proceedings is rejected for lack of sufficient assets, the licensor is entitled to withdraw from the contract without setting a grace period. If such a rescission is exercised, it will take effect immediately with the decision that the company will not be continued. If the company is continued a cancellation only becomes effective 6 months after the opening of insolvency proceedings or after the rejection of the motion to initiate insolvency proceedings due to lack of assets. In any case, the contract will be cancelled with immediate effect, provided that this does not conflict with the insolvency law to which the licensee is subject or if the cancellation of the contract is essential to prevent serious economic disadvantages for the licensor.
- 12.8 In the event of cancellation for good cause or withdrawal from the contract, any services or partial services already provided are to be invoiced and paid for pursuant to the contract, without prejudice to any claims for damages, including pre-litigation costs. This also applies if the delivery or service has not yet been accepted by the licensee as well as for preparatory work carried out by the licensor. The licensor is also entitled instead to demand the return of software deliveries already made.

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## 13 Assertion of claims

All claims of the licensee must be asserted before a court within 3 years of the performance of the services, unless mandatory statutory provisions provide for other terms.

## 14 Data protection

14.1 The contracting parties undertake to comply with the provisions and requirements of data protection law, in particular Regulation (EU) 2016/679 ("GDPR") and the Datenschutzgesetz (DSG) [Austrian Data Protection Act], in their up-to-date versions, in the course of the execution of the present legal transaction.

14.2 If, in compliance with the aforementioned provisions, further data protection agreements should become necessary for the execution of the legal transaction, the contracting parties will agree on these separately in writing.

## 15 Compliance with export regulations

15.1 The licensee is obliged to comply with all applicable provisions of sanctions, embargo and (re-)export control law, and in any case those of the European Union, the United States of America and any locally applicable jurisdiction (hereinafter referred to as "Export Law").

15.2 Unless permitted under Export Law or pursuant to applicable government licences or approvals, the licensee may not (i) download, install, access or use the software, documentation and/or services (hereinafter referred to as "Deliverables") from or in a location from which access is prohibited or restricted or subject to approval under Export Laws due to comprehensive sanctions; (ii) grant access to, transfer, (re-)export (including deemed (re-)exports) the Deliverables to any company, person or organisation listed on any (sanctions) list under Export Law or owned or controlled by a listed party; (iii) use the Deliverables for a purpose prohibited under Export Law (e.g. in connection with armaments, nuclear technology or weapons); (iv) facilitate the aforementioned activities for a user of the Deliverables.

15.3 Where required to comply with export regulations, the licensee will provide the licensor immediately upon request with all information about the user(s), the intended use and the place of use of the Deliverables.

15.4 The licensee indemnifies the licensor, its affiliates, suppliers and their respective agents against all claims, fines and costs (including attorneys' fees and expenses) in any way connected with the failure to comply with this item 15 or the (alleged) infringement of Export Law by the licensee or its business partners and undertakes to reimburse all damages and expenses incurred by the licensor in this regard.

## 16 General information

16.1 The licensor must notify the licensee if it utilises the services of subcontractors. If these are affiliated companies of the licensor, no separate notification is required.

16.2 If individual provisions of the contract or of these terms and conditions should be invalid, this will not affect the validity of the remaining provisions. The invalid provision is to be replaced with a valid provision that approximates the intended objective as closely as possible.

16.3 The German-language version will be deemed the authentic version of the terms and conditions and is to be used to interpret the contract.

## 17 Place of jurisdiction and applicable law

The exclusive place of jurisdiction for resolving all disputes arising from the contract – including those regarding its existence or non-existence – is the court with subject matter jurisdiction at the licensor's head office; in Vienna, this is the court located in the district of the Local Court of Innere Stadt. The contract is governed by Austrian law to the exclusion of conflict of law rules. Application of the UNCITRAL UN Convention on Contracts for the International Sale of Goods is excluded.

## 18 Reservation clause

Performance of the contract on the part of the licensor is subject to the reservation that no obstacles exist under national or international (re-)export regulations, in particular no embargoes and/or other sanctions. The licensee acknowledges that the licensor may be obliged under Export Law to restrict or disable the access of the licensee and/or the user(s) to the Deliverables.

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