

# General Terms and Conditions for Software Licenses of CENIT AG for an Unlimited Period of Time

- Version: July 2018 –

## 1 Object of the License

- 1.1 The object of the license shall be the Software developed and produced by CENIT AG (CENIT), plus the pertinent program documentation, supplied to the customer on the basis of the *General Terms and Conditions for Deliveries and Services* of CENIT for an unlimited period of time (perpetual license). The exact designation of the supplied software is stated on the program certificate that is attached to CENIT's confirmation of the order (hereinafter the "Software"). With regard to software of other manufacturers ("Third-party Software") that is supplied separately, the license conditions of the respective manufacturer shall apply.
- 1.2 Unless otherwise provided in the program certificate, the customer will receive the Software exclusively in object code format via download from the Internet for installation by the customer on the customer's system.
- 1.3 The Software and the program documentation supplied with the same are protected by copyright. In relation to the customer, all rights to the Software shall be due exclusively to CENIT, even to the extent that the Software has been developed according to instructions from the customer or with the customer's assistance. The customer shall be granted a non-exclusive, and non-transferable - except in accordance with the provisions in no. 2.5 - right to use the Software for an unlimited period of time, on the basis of the provisions of these *General Terms and Conditions for Software Licenses*. The customer has no claim to the surrender of the source codes and development documentation of the Software.

## 2. Scope of the License

- 2.1 The license entitles the customer to use the Software for its own operational purposes according to the description in the program documentation that has been delivered with the Software:
  - through such number of authorized users as is set forth in the program certificate, whereby only the authority to use as such, not, however, actual use matters ("Named User License"); or
  - through the maximum permissible number, as set forth in the program certificate, of users concurrently accessing the Software ("Concurrent User License"); or
  - through the maximum permissible number, as set forth in the program certificate, of licensed working stations whereby the authority to use is bound to the working stations and not to the users ("Node Locked License").

Use shall mean the loading, displaying, running, transferring, and storing of the Software for purposes of its execution and the processing of the existing data on the customer's system where the Software is installed.

- 2.2 The customer is entitled to make a backup copy of the Software, which must be identified with a copy of the original label (including the copyright reference). The backup copy may be used only in the event of an impairment or loss of the original copy of the Software provided by CENIT. With regard to the use of the backup copy, the customer is likewise subject to these *General Terms and Conditions for Software Licenses*. Additionally, the customer is not entitled to reproduce the Software or the program documentation, or any parts thereof, beyond the permissible use according to no. 2.1 without the prior written consent of CENIT.
- 2.3 The customer shall not be entitled to use the Software outside its operation or for purposes other than its own operational purposes or to enable third parties that do not belong to the customer's operation to use the Software or make the Software temporarily or permanently – subject to no. 2.5 below – available to third parties. Third parties within the meaning of this provision shall include the branch establishments and associated companies of the customer, unless expressly otherwise agreed.
- 2.4 Without the consent of CENIT, the customer shall not be entitled to adjust, modify, or otherwise amend the Software, to connect the Software to other programs in a manner other than via the interfaces provided for this purpose, to decompile it to another display format, to remove, circumvent, or modify security codes, if any, or features serving the identification of the Software, or to remove information, as contained in the Software and program documentation, about the authorship, copyrights, or other property rights of CENIT. The provisions of §§ 69 d para. 3 and 69 e UrhG (German Copyright Act) shall remain unaffected.
- 2.5 The customer is entitled to transfer the Software as a whole, together with the license, to a subsequent acquirer on a permanent basis according to these *General Terms and Conditions for Software Licenses*, provided that the customer does not retain any copies of the Software and the pertinent program documentation, not even in parts, and refrains from any further use of the Software. In case of company, package or volume licenses the right to transfer is limited to the transfer of the entire license to one single subsequent acquirer; a splitting and transfer of parts of the license to one or more subsequent acquirers requires the prior written consent of CENIT, which may be attached to the payment of an additional reasonable license fee. The subsequent acquirer must agree to be obligated vis-à-vis CENIT to adherence to these *General Terms and Conditions for Software License*, the provisions relating to the scope of the license in this no.2 in particular. Therefore, the subsequent acquirer's right of use shall not begin until the receipt by CENIT of a copy – signed by the customer and the subsequent acquirer – of the program certificate and these *General Terms and Conditions for Software Licenses*; in this context, the complete name and/or company name as well as business address of the subsequent acquirer must be stated. In addition, the customer must confirm to CENIT in writing that it has deleted or otherwise rendered unusable all of its remaining copies of the Software and related program documentation. Any costs and expenses incurred by CENIT for the transfer of the license shall be borne by the customer.

### **3 Term of the License**

- 3.1 The license shall commence on the date specified in the program certificate and shall be granted for an unlimited period of time (perpetual license). The right to give notice of the ordinary termination of the license is excluded for both parties.
- 3.2 The right of an extraordinary termination of the license for good cause remains unaffected. Good cause for extraordinary termination by CENIT is deemed to exist in particular in the event of a culpable and significant breach by the customer of the provisions in no. 2 above. In the event of such a termination, the customer has no claim to the reimbursement of the fees paid for the license. The rights of CENIT to assert claims for damages shall remain unaffected.
- 3.3 Upon termination of the license, the customer's right to use the supplied Software expires. The customer must delete the copies installed on its systems as well as any and all copies of the Software stored on separate data storage media, and must destroy the program documentation provided by CENIT. The customer must affirm the complete deletion or destruction vis-à-vis CENIT in writing and, upon request by CENIT, must furnish corresponding evidence in a suitable form.

### **4 License Fees**

- 4.1 The license fees for the use of the Software depend on the agreed scope of use and result from the program certificate of CENIT. Unless agreed otherwise, the license fee consists of a one-time charge ("Primary License Charge – PLC") payable at the beginning of the contract.
- 4.2 If the customer wishes to receive regular maintenance services with regard to the Software, CENIT will offer the conclusion of a maintenance agreement on the basis of the *General Terms and Conditions for the Maintenance of Software* of CENIT. The maintenance agreement may be concluded together with the license agreement only; in the case of a conclusion of the maintenance agreement at a later date, the purchase of licenses for the then current versions of the licensed Software is required. For the maintenance of the Software, an annual fee ("Annual Maintenance Charge – AMC") shall be payable, the amount of which results from the program certificate of CENIT. The AMC shall be due first at the beginning of the agreement and subsequently at the beginning of each respective new contractual year. Timely payment of the AMC is a prerequisite for the performance of the maintenance services in the respective contractual year.
- 4.3 The customer is obligated to inform CENIT without undue delay of any changes in the scope of use, in particular regarding the number of Named User or Concurrent User or licensed working stations (in the case of a Node Locked License) according to no. 2.1. CENIT is entitled at any time to verify the current scope of use and to install systems automatically measuring the scope of use. In the event of changes in the scope of use that affect the fees payable for the use and/or maintenance of the Software, the customer shall be obligated with effect from the time of the change to pay to CENIT the additional license fees and/or increased annual maintenance fees based on the valid price list current at that time.

## **5 Right to Audit, Self-Audit**

- 5.1 The customer shall keep full and accurate records that allow clear judgement on whether the customer is using the Software in accordance with the provisions of these *General Terms and Conditions for Software Licenses*. CENIT has the right to determine compliance with the license conditions by the customer through selfdisclosure of the customer or to perform an on-site review by an independent auditor. CENIT shall appoint for this purpose an independent auditor, subject to a confidentiality obligation.
- 5.2 The on-site review by an independent auditor will be notified at least thirty (30) days in advance and will take place during normal business hours of the customer in a manner that does not interfere unreasonably with the normal activities of the customer. The customer must provide the independent auditor immediately with all and any information available that he may reasonably request in support of the review, as well as granting immediate access to the systems on which the Software is running.
- 5.3 Alternatively, CENIT may ask the customer to fill in the self-audit questionnaire of CENIT with respect to the Software used by the customer and to return said questionnaire to CENIT within two (2) weeks of receipt. CENIT, however, reserves the right to initiate a review process by an independent auditor, as described in no. 5.2 above.
- 5.4 If the audit or self-audit reveals any unlicensed use, the customer is obligated to pay the arrears in license and maintenance fees with effect from the beginning of such unlicensed use on the basis of the price lists of CENIT valid at the time of the subsequent payment request. When calculating the licensing and maintenance fees in arrears, any discount agreed upon between CENIT and the customer separately in the license agreement shall not apply. In addition to the overdue licensing and maintenance fees, the customer is obligated to pay interest at the statutory rate that shall apply retroactively from the date of beginning of such unlicensed use. CENIT bears the cost of the audit, unless a deviation of five (5)% or more is revealed; otherwise the customer must reimburse the costs incurred by the audit to CENIT, including the cost of the commissioned auditor.

## **6 Other Provisions**

- 6.1 These *General Terms and Conditions for Software Licenses* shall also apply to later versions (Updates) and extensions (Upgrades) of the Software that CENIT supplies to the customer separately or within the framework of a maintenance agreement (see No. 4.2), unless otherwise agreed at the time of the supply of the respective later version or extension.
- 6.2 To the extent that these *General Terms and Conditions for Software Licenses* do not contain any separate or deviating provisions, the *General Terms and Conditions for Deliveries and Services* of CENIT shall additionally apply to the supply and use of the Software.