

**General Terms and Conditions for Software Licenses of  
CENIT AG  
for a Definite Period of Time**

- as of September 2012 –

**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 a definite period of time (time 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 right to use the Software, which is limited in time, according to 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 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 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.

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

- 3.1 The license shall commence on the date specified in the program certificate by CENIT and shall be granted for the minimum term specified in the program certificate. After expiration of the minimum term, the license will be automatically renewed for successive one-year periods provided that it is not terminated in writing by either of the contractual parties subject to three months' written notice, with effect at the end of the minimum term or any extension period. During the minimum term or an extension period, the right to give notice of 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 Yearly License Charge paid for the current contractual year at the time of termination of 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 yearly license charge ("Yearly License Charge – YLC") payable for the first time at the beginning of the license and subsequently in advance at the

beginning of each respective new contractual year, which also includes the maintenance of the Software according to CENIT's *General Terms and Conditions for the Maintenance of Software*. Timely payment of the YLC is a prerequisite for the renewal of the license and the performance of maintenance services in the respective contractual year.

- 4.2 CENIT shall be entitled to adjust the YLC subject to three months' prior notice with effect as of the beginning of any contractual year after the minimum term specified in the program certificate, in order to compensate increases in costs and/or in the context of the general increase in the license fees for the CENIT Software. If the increase exceeds 3%, of the last paid YLC, the customer is entitled to terminate the license subject to one month's notice in writing with effect as of the beginning of the next contractual year. If the customer does not give notice of termination, the price adjustment will be effective from the beginning of the next contractual year. CENIT will inform the customer of this consequence at the announcement of the adjustment.
- 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 maintenance of the Software, the customer shall be obligated, with effect from the time of the change, to pay to CENIT the increased license 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 self-disclosure 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 unlicensed use on the basis of the price lists of CENIT valid at the time of the subsequent payment request; 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 for use during the term of the license, 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.