

# **externally General Terms of Business and License Stipulations for the Purchase of Software Products from XOn Software GmbH**

## 1. Subject of the Contract

- 1.1. Subject of the contract is the license of computer programs (including: source codes, Dynamic-Link-Libraries, Shared Libraries, Static Libraries, header files, Executables) from the manufacturer's documentation, user manuals, and all other written documents which serve to explain. ("Product Documentation").
- 1.2. The following definitions are integral components of the subject of the contract:
  - a) "Licensor " is Fa. XOn Software GmbH which is located at 80333 Munich, Germany.
  - b) "Licensee; is the single user of a license or a respective copy of a license.
  - c) Software: source codes, Dynamic-Link-Libraries, Shared Libraries, Static Libraries, Header Files, Executables, manufacturer's documentation, user manuals, as well as all other written documents which serve to explain. ("Product Documentation") will be summarily named "Software".
  - d) License: The software which the licensor monetarily acquires will be defined as the license.
  - e) Software Application Programming Interface (API): The software component-either delivered through the licensor or developed through the licensor and which allows access to the functionality of the license-will be defined as the Software Application Programming. We define software component as noted: Header Files, Makro- and /or script programming interfaces, Components such as COM or ActiveX.
  - f) Software products which are developed through the application of the license for the use of the licensor will be defined as "Software product".
- 1.3. Subject matter of contract is the use of the license which is listed in the order confirmation or the delivery receipt.

## 2. Granting of a License

- 2.1. For the length of the contract, the licensor grants the licensee the nonexclusive and nontransferable rights to use the Software

Application Programming Interface and/or the functionality of a license (summarily called the platform) on one computer and only to one person. Utilization of a copy of a license through several or different people is not allowed unless specifically differently agreed upon.

- 2.2. With the purchase of several copies of a license, the licensee is explicitly authorized to install the license on one computer. The licensee is furthermore authorized under the conditions listed in Paragraph 2.1 to facilitate the transfer or use of the license to the number of people for which the license is approved.
- 2.3. The licensee is also authorized for data protection purposes: (a) to prepare a backup copy of the license or (b) to copy the license onto the hard drive and to store the original copy.
- 2.4. For the distribution of software products which are created with the library of the licensor, the following applies: The licensee is only authorized to distribute the software products which are created with the license and not used as software development tools if the functionality of the license as a means of Software Application Programming Interfaces does not or cannot happen directly or indirectly.

### 3. License Restrictions

- 3.1. The software is the property of the licensor or his sub-contractor. It is copyrighted and is legally protected and subject to penal violations. The licensee may only use it according to the present conditions.
- 3.2. The licensee is not authorized to distribute externally
  - a) any components of the Software Application Programming Interface or
  - b) any Executables which are delivered with the software unless another agreement is specifically agreed upon.
- 3.3. The licensee is not authorized to do the following:
  - a) To decompile, disassemble or reverse engineer the object code form of a part of the software,
  - b) to distribute or lend out the software,
  - c) to copy the product documentation including all documentation which can be found online.

### 4. License Protection Duties

- 4.1. The licensee commits himself to preventing the unauthorized access of third parties to the software through suitable provisions: explicitly alerting his employees to observance of the present

contract stipulations and the copyright conditions. The licensee should particularly request that his employees not manufacture unauthorized copies of the software.

- 4.2. If an employee of the licensee or a third party tampers with the authorization of the transferred software, the licensee is obligated to assist to the best of his abilities in the explanation of the incident, especially with regards to informing the authorities during the immediate corresponding infraction process. This also applies when the licensee tampers with the authorization himself.

## 5. Guarantee

- 5.1. It is to be noted that computer software cannot be developed so that it works error-free in all possible combinations and applications according to the present standards of technology. The subject of the contract and the purpose of the guarantee is therefore only one type of fundamentally useable software in the sense of product documentation. The software requires implementation through a software programmer with experience in the application of development tools and classic libraries. The software was not conceived for use from private users or the laity as well as for home-use.
- 5.2. The licensee vouches that the software which will remain unchanged after delivery and that it fulfills in large part all functions which arise from the product documentation under normal operating conditions and normal maintenance.
- 5.3. The guarantee begins with the delivery and lasts for 12 months.
- 5.4. Shortcomings are to be immediately reported to the licensor in writing and to be described at length.
- 5.5. The guarantee rights is for the time being restricted to amendments. Thereafter, the licensor takes on all reasonable efforts regarding the removal of substantial, proven, and remaining shortcomings in the unchanged software.
- 5.6. If the licensor cannot remedy the deficiency through amendment or replacement delivery within an appropriate time frame the licensee can proportionately minimize the royalty fees or request a retroactivation of the contract. In case of a replacement delivery or a retroactivation of the contract, the figures in 2., 3., remain and the specified duties of the licensor are covered.

## 6. Licensor's Liabilities

- 6.1. The licensor is only liable for damages which cause a punishable breach in the fundamental contractual obligations. The liability is limited to damages which are to be counted upon at the time that the licensor completes the contract. A liability for foregone profits,

omitted savings, indirect damages, and consequential losses is out of the question. The liability for the loss of data is out of the question. The licensee is required to lay out an appropriate backup copy.

- 6.2. The aforementioned liability limitations do not apply to damages which occur because of malicious intent, gross negligence, the lack of assured properties, or for eventual claims due to the product liability law.
- 6.3. A confirmation of properties will only be available if it is explicit and put in writing vis-a-vis each licensee and is explained through a representative who is explicitly authorized through the licensor and releases the confirmation in writing.

## 7. Length of the Contract, Termination and Licensing Fees

- 7.1. The license will be granted on the basis of a one-time fee for an unspecified length of time unless the licensor and the licensee explicitly agree to another agreement in writing.
- 7.2. The licensor can terminate the contractual relationship at his own discretion with a monthly time limit if the licensee breaches the terms of the contract. The right to an instant termination remains inviolate here for an important reason.
- 7.3. The licensee can terminate the contractual relationship at any time with immediate force if he simultaneously discontinues the use of the software and gives it back to the licensor as well as destroys any possible copies.
- 7.4. The termination of the contract does not have an effect on the duties of the licensee according to figures 2., 3. and 4.
- 7.5. If the contract is terminated, reimbursement of the one-time fee will not take place.

## 8. Miscellaneous

- 8.1. The contract regarding the granting of the license requires a written confirmation through the licensor, which when remitted with the corresponding data carrier, will count as delivered.
- 8.2. The prices of the licensor listed in the offer are quoted in euros if not explicitly agreed upon otherwise. The prices are understood to include taxes but do not include shipping and handling, insurance, and special delivery costs.
- 8.3. In case of a payment default, an additional default interest rate of 4% will be affixed to each prime lending rate used by the Deutsche Bundesbank in order to compensate for any losses. This does not rule out however, that further damages caused by delay will be reasserted.

- 8.4. The licensor undertakes the consignment of the data carrier for the licensee with all the necessary prudence, but will be liable only for intentional malice and gross negligence.
- 8.5. Delivery dates and deadlines are only valid if they are explicitly confirmed by the licensor. A delivery deadline begins with the day on which the contract is confirmed and ends with the duty of delivering the ordered products.
- 8.6. Place of execution is the current location of the licensor.
- 8.7. Differing agreements to these general business terms need to be done in writing. The business terms arranged here override other identical conditions which could come up when accessing the software. Other general business terms, especially those of the licensee, are not the subject matter of the contract.
- 8.8. Court of Jurisdiction is Munich, provided that the licensor is the merchant entered in the commercial register.
- 8.9. This contract is subject to the law of the Federal Republic of Germany.
- 8.10. Should a provision of these terms of contract turn out to be void by law, ineffective, or inexecutable, this does not affect the validity of this contract completely. At the places which are determined to be void by law, ineffective, or inexecutable, the federal laws which correspond most closely to the desired terms will go into effect.

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