

**GENERAL TERMS AND CONDITIONS FOR TRANSFER
OF POSSESSION OF SOFTWARE**

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of the TSK Prüfsysteme GmbH (hereinafter TSK)

On conclusion of this Transfer of Possession of Software Agreement the user will be granted a non-exclusive and non assignable right to the use of the TSK software and the documentations belonging to it and subsequent amendments for internal use with the products for which the software is delivered according to the following terms and conditions:

1. Licensed Material

(1) Unless otherwise agreed, the software will be provided on data carriers on which it is saved as object programs in an executable form. Together with the software the user receives an application documentation in printed form or also on a data carrier, and all other stored data (in particular files and data banks). The documentation and other data will be referred to hereinafter as "Licensed material".

(2) All versions of the licensed material which TSK transfers to user in accordance with the Transfer of Possession of Software Agreement are also licensed material, including possible upgrades and updates.

(3) The Transfer of Possession of Software Agreement and, where appropriate, a service agreement shall be considered concluded when TSK after receiving an order from the user sends the latter written confirmation, which document governs exclusively the extent of the individual performance obligations. TSK's offers are subject to confirmation and are non-binding.

2. Extent of Use

(1) The user is entitled to use the software for his own use within the framework of his business. The right of use is limited to the object code of the software. TSK is not –unless other agreements have been reached elsewhere – obliged to give the user the source code. The right of contractual use –subject to paragraph (4), is limited to the contemporaneous use at one workplace, or if more than one license has been purchased, limited to the contemporaneous use at the number of workplaces corresponding to the number of licenses purchased. Use of the software by data transfer is forbidden.

(2) "Use" is all continuous or temporary copying by loading, displaying, running, transferring, or saving the software and data in part or whole with the aim of implementation. The execution of the above named actions for the purposes of observation, examining and testing the software provided is also considered to be use. If the application documentation has been provided on a data carrier the above is valid for this too.

(3) If in the Transfer of Possession of Software Agreement use is limited to one specific and defined workplace, the rights as specified in paragraphs (1) and (2) are limited to this workplace. If the workplace specified in the Transfer of Possession of Software Agreement is temporarily out of order the user has the right to use the software and data at another workplace during this time. In all other cases the use of the software and data at another workplace must be agreed to in writing by TSK.

(4) If in the Transfer of Possession of Software Agreement the use of the software is specified for a local network, the rights according to paragraphs (1) and (2) extend to the number of workplaces of the local network for which the user has purchased licenses according to the Transfer of Possession of Software Agreement. If the installation of a client program is necessary to run the network the rights according to paragraphs (1) and (2) extend to the creation of the number of copies of the client program for which the user has purchased licenses according to the Transfer of Possession of Software Agreement.

(5) Licensed material provided in printed form may only be copied with the TSK's written consent. Additional copies of the printed licensed material may be obtained from TSK for a fee.

(6) The contractual use includes the creation of safety copies of the software provided and the data in it, inasmuch as this is necessary for future use of the software, the data or the complete system. If the program is equipped with technical copy protection and the program delivered is damaged while loading or during use the user will receive on request another copy at short notice.

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(7) The user is entitled to connect the software provided with other computer programs. The application documentation contains a description of the prescribed interfaces. More extensive changes to the software and error correction are only admissible in so far as they are necessary for the contractual use of the software. Interference with the object code (decompiling, reverse engineering, disassembling) and all other processing or amendments are not admissible, in as much as they do not serve to remedy a defect and TSK is in default in the remedy of the defect or refuses to carry it out or the interference is necessary for the purposes of creating the interoperability of an independently produced computer program with a computer program provided or with another computer program according to the limitations set down in § 69 e of the laws on intellectual property rights.

(8) The user is not entitled to assign the rights set out in paragraphs (1) and (2) to third party or allow third party the use of the same.

3. Protection of the Licensed Material / Dongle

(1) Irrespective of the rights of use set out in paragraphs 1. and 2., all rights to the licensed material including all copies or part copies of the same made by the user remain the property of TSK. The users' ownership of data carriers, data storage and other hardware is not affected by this.

(2) The user undertakes to keep unchanged all protection notices contained in the licensed material such as intellectual property rights notices together with registration numbers included in them, features serving the purpose of program identification and other legal reservations and to use them in unchanged form in all the whole or part copies of the licensed material made by the user.

(3) The user undertakes to keep a record of the contractual copies or part copies he makes and keep them in a safe place and on request supply information about this.

(4) The user undertakes not to make the licensed material available to third party either in its original form or in whole or part copy without express written agreement from TSK. This is also valid for a complete or partial sale or dissolution of the user's company. User's employees or other persons shall not be deemed third party, as long as they are working for him on his premises for the contractual use of the licensed material. All use of the software by third party commissioned by or for the purposes of the user which takes place anywhere outside the user's premises (outsourcing) needs TSK's prior written agreement.

(5) The user undertakes to delete all stored licensed material from data carriers, data storage, and other hardware before sale or other passing on.

(6) The user is entitled to the contractual use of an upgrade of the licensed material provided or he may choose not to use it. If he decides to use it he undertakes, three months after the start of productive use of the new version, to send back to TSK the version of the licensed material and all copies and part copies of the same in use up to then, and if these are stored on data carriers, data storage or other hardware to delete them completely. Retaining an archive copy must have written agreement.

(7) The software is protected by a dongle. Should this be lost TSK is not obliged to replace it. TSK will replace free of charge a damaged or defect dongle during the time period, mentioned under paragraph 5. (4), unless the damage has been caused by mechanical stress, use of force, or similar. In all other cases TSK will replace only on payment of an appropriate fee. The prerequisite for any replacement is the prior return of the damaged or defect dongle.

4. Delivery

(1) The customer receives a delivery copy of the software on a data carrier specified in the Transfer of Possession of Software Agreement and a copy of the application documentation. If the Transfer of Possession of Software Agreement specifies that the latter may also be sent on a data carrier this can be on the same data carrier as the delivery copy of the software.

(2) If the data carrier with the licensed material is damaged or accidentally deleted during transport or after receipt by the user TSK will replace it with a charge for forwarding.

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5. Liability for Defects

(1) TSK and user agree that it is not possible to develop software in such a way that it is free from defects in all application conditions. TSK provides a continually updated performance description of its software which specifies the contractual use and the operation conditions.

(2) TSK guarantees the suitability of the licensed material in the version provided to the user for the contractual use in conformity with the performance description valid at the time of shipping made available to the user before conclusion of agreement. Oral or written information about the suitability and possible applications not contained in the performance description should not be regarded as a guarantee as to specific attributes, rather as purchase advice. In the case of considerable variance from the performance description TSK is entitled to remedy the defect and if this does not incur unreasonable expense is obliged to do so. If TSK is not able within an appropriate period of time to remedy the variance from the performance description or to circumvent it in such a way that the user is able to use the software contractually, the user is entitled to choose between requesting a reduction in price or withdrawing from the Transfer of Possession of Software Agreement.

(3) The user undertakes to provide TSK with verifiable documents about the kind and appearance of the variance from the performance description and to assist with the limitation of the faults.

(4) Claims for deficiency must be made within 1 (one) year from the day of the hand-over of the software. Shortening of the term of limitation as shown under sentence 1 is inadmissible in cases of malice or gross negligence, or in cases of damage to life and limb or health, in the case of fraudulence or in the case of a guarantee undertaken by TSK. In these cases the statutory term of limitation prevails.

(5) The warranty does not cover defects which are caused by variance from the operation conditions prescribed for the program and specified in the performance description.

(6) If it should emerge that a defect which has been reported by the user either does not exist or was not caused by the software delivered by TSK, TSK is entitled to charge the user for costs arising from the analysis and other processing according to the current TSK tariff.

6. Software support

(1) TSK offers the user during the time period, according to paragraph 5. (4), during the office hours a telephone support for the software. choice of service options

(2) The support obligations always apply to the latest program version, if necessary, it is requested from the client, to install the actual software version.

(3) Other services such as individual adaptation to specific user needs or other programming services, training measures, support during office off time or a in house presence of TSK personnel are not part of this agreement but can be agreed on individually.

7. Costs

Payments to be made by user for the software must be paid in one sum in full plus VAT at the current rate immediately on receipt of a bill from TSK. Loss of or damage to / destruction of the dongle (see paragraph 3. (7)) which is the responsibility of the user does not entitle him to withhold payments.

8. Additional Purchase of Software Options

(1) Additional purchase of software options for software which has already been delivered (Hereinafter Basic System) is possible at all times.

(2) The additional purchase of a software option did not extend the limitation of claims, according to paragraph 4. (4), even though in that case, that a new Basic System is provided.

9. Conditions for Use

(1) The licensed material provided to the user is developed for use with specific hardware and for combination with other specific programs. These conditions for use are described in the performance description.

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(2) If the licensed material is used without conforming to the conditions of use according to paragraph (1) TSK has no obligation according to paragraph 5. to defect warranty. TSK undertakes in such a case to attempt as far as possible to perform the service according to paragraph 6. The service will, however, only include such defects which can be identified during use of the licensed material under the conditions for use specified in the performance description.

10. Liability Restrictions

(1) TSK is liable, irrespective of the legal basis, for damage caused by unlawful infringement of a substantial contractual obligation in a way that endangers achieving the contractual aims. The liability is restricted to typical contractual damage of which possibility TSK should have been aware on conclusion of agreement due to conditions known to them at this point in time. TSK is not liable for lack of user's commercial success.

(2) TSK is liable for the loss of data and its recovery to the extent set out in paragraph (1) only if such loss was unavoidable even if the user had carried out appropriate data security measures.

(3) The liability restriction as shown in paragraphs (1) and (2) are valid correspondingly for the employees and agents of TSK.

(4) The liability of the contractual partners for damage occurring through gross negligence or malice by members of the company board, or executives of the contractual partners, for damage to life and limb or health or a possible liability on the part of TSK for the infringement of intellectual property rights of third party caused by the use of the contractual licensed material and for the claims on the basis of the laws on product liability remains unaffected.

11. Third Party Protection Rights

(1) TSK undertakes to defend user against all claims arising from an infringement of commercial protection rights or intellectual property rights by the contractual use of the licensed material in the Federal Republic of Germany. TSK undertakes to pay the user all costs imposed by a court of law and compensation sums on condition that the user has informed TSK immediately in writing of such claims and that TSK has the right to all defensive measures and settlement negotiations.

(2) Should claims be made or be expected against the user as shown in paragraph (1) TSK can at own cost change or exchange the licensed material in a way reasonable to the user. If this or the securing of rights of use is not possible without undue expense both contractual parties are entitled to terminate without notice the license agreement for the program involved. In this case TSK is liable to user for damage arising from the termination according to the specifications under paragraph 10..

(3) TSK has no liability for claims as shown in paragraph (1) arising from programs or data provided by the user or when the software and the data contained in it was not used in a valid, unchanged original version provided by TSK or used in any other way than that specified in the conditions of use described in the description of performance.

12. Notice to Terminate, Return, Deletion of Licensed Material

Notwithstanding other rights TSK is entitled to terminate the Transfer of Possession of Software Agreement immediately if the user infringes the conditions of use contained in this agreement. The right of the user to use the software ends with the notice to terminate. In this case the user undertakes to return to TSK the original and all copies and part copies of the licensed material (where appropriate including dongle). If licensed material is on data carriers or hardware belonging to user instead of returning it, it must be completely deleted, in such a way that it cannot be recovered. At TSK's request proof of this deletion must be given in an affidavit. This also applies for changed or corrected version of the licensed software as shown under paragraph 2 (7) sentence 3.

13. Statute of Limitations, Supplementary Agreements

(1) Claims on the basis of an infringement to conditions set down in paragraph 2. "Extent of Use" and paragraph 3. "Protection of the Licensed Material" become statute barred 6 (six) years after occurrence, all

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other claims arising from this agreement three years after occurrence unless shorter statute of limitation periods have been agreed on above or unless shorter statutory periods of statute of limitation prevail.

(2) Assignment of the contractual rights and obligation to third party by user is admissible only with TSK's written consent.

(3) The transfer of the software, these conditions and all legal relationships between TSK and user are governed by the laws of the German Federal Republic. The terms of UN Purchase Law are not applicable.

(4) Insofar as the contractual partner is a businessman, legal entity, or special fund under public law, or if the user has no legal forum in this country, sole legal forum shall be Porta Westfalica / Germany. TSK is also entitled to take legal action at user's principal place of business.

(5) Should any term in these terms and conditions of trade or a term in the framework of other agreements be or become invalid the validity of all other remaining terms or agreements shall not be affected; the invalid terms or agreements shall be replaced by appropriate terms or agreements to be agreed in the parties' economic interests.

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