

Special Conditions for Software Licensing Agreements of Gantner Electronic LLC Germany

All contracts concluded between the vendor and its contract partners (hereinafter also referred to as “customers”) are subject to the General Terms of Delivery of Gantner Electronic LLC Germany. The following special conditions apply on a supplemental basis and have priority in the case of software licensing agreements.

1. Subject of the contract

(1) The subject of the software licensing agreement is the permanent transfer of the computer software in object code format (standard software) which is specified in the respective agreement, including the related user documentation (“contractual software”) as well as the grant of rights of use described in Section 2. The hardware and software environment within which the contractual software is to be used is specified in the license certificate.

(2) The vendor will install the contractual software on the customer’s target system (servers, etc.) and provide the respective user documentation in printed form or as a download. If delivery is made as a download, the vendor will provide the customer with the contractual software and user documentation by means of a download from its homepage (link). The vendor will supply the customer with a username and respective password (“access data”) needed to log in to the secured area of its website. If the software is protected with a license key, the customer will receive this license key solely for the purpose of using the software according to the present contract, the license certificate, and the user documentation.

(3) The characteristics and functionality of the contractual software are set forth in the license certificate and the product description. The details included therein are to be understood as performance specifications and not as warranties. A warranty is only granted if it is explicitly labelled as a warranty.

(4) The vendor is not obliged to perform installation and configuration services unless otherwise expressly agreed upon in writing.

2. License

(1) After the full payment of the remuneration, the customer will obtain a non-exclusive, open-end right to use the contractual software within the scope agreed in the contract and license certificate. The contractual software may only be used simultaneously by that number of natural persons that matches the number of licenses the customer has bought. Permitted use comprises the installation of the contractual software, loading into the internal memory, and the intended use by the customer. The number of licenses as well as the type and scope of use are otherwise set forth in the license certificate. In no case is the customer permitted to rent or otherwise sublicense the acquired contractual software, to reproduce it publicly by means of a wired or wireless connection or make it accessible, or to provide third parties with it in return for payment or free of charge for example via application service providing or as “software as a service”. Paragraph 4 remains unaffected.

(2) The customer may create a backup copy if this is necessary to safeguard future usage. The customer shall display the remark “backup copy” as well as a copyright notice of the manufacturer on the backup copy in a clearly visible way.

(3) The customer is only permitted to decompile and reproduce the contractual to the extent permitted by law. This only applies, however, on the condition that the vendor has not given the customer access to the information that is necessary for this purpose upon the customer's request and within an appropriate period.

(4) The customer may permanently transfer the purchased copy including the license certificate and the documentation of the contractual software to a third party. In this event, it will completely cease use of the program, delete all installed copies of the program from its computers, as well as delete any potential copies on other data carriers or hand these over to the vendor, unless it is legally obliged to retain them for a longer period. Upon the vendor's request, the customer will confirm the execution of the aforementioned measures in writing or state the reasons any longer storage period if applicable. Furthermore, the customer will explicitly arrange compliance with the scope of the license according to this Section 2 with the third party. The division of a license package that has been purchased is not permitted.

(5) If the customer uses the contractual software to an extent that surpasses the acquired rights of usage qualitatively (with regard to the type of the permitted usage) or quantitatively (with regard to the number of purchased licenses), it shall immediately purchase the additional licenses needed for lawful use. If it fails to do so, the vendor will assert the rights to which it is entitled.

(6) Copyright notices, serial numbers, as well as other features used to identify the program may not be changed or removed from the contractual software.

Section 3 Payment, due date, and delay

In addition to the provisions of Section 3(3) of the vendor's general terms of delivery, the purchase price is also due once the software has been made available and the access data has been communicated to the customer.

Section 4 Warranty

(1) The vendor warrants the agreed condition and that the customer can use the contractual software without violating the rights of third parties. The warranty for material defects does not apply to defects that are the result of using the contractual software in a hardware or software environment which does not conform to the requirements stated in the license certificate and does also not apply to changes and modifications made to the software by the customer without authorisation by law, this contract or in the form of written authorisation by the vendor.

(2) If provided a replacement, the customer shall, if necessary, adopt a new version of the software unless this would lead to unreasonable impairments. In the case of legal defects, the vendor will, at its election, secure an option to use the contractual software that is legally unobjectionable or change it in a way that rights of third parties are not violated.

(3) The vendor is permitted to perform warranty work on the customer's premises. The vendor may also meet its obligation for curing defects by making downloads available on its website which include an automatic installation routine and by providing telephone support for resolving possible installation problems.

(4) The statute of limitations begins in case of sale on a data carrier upon the handover of the contractual software and in case of a download with the communication and activation of the

access data for the download area. For all other purposes, the duration of the statute of limitations is determined on the basis of Section 6(1) of the general terms of delivery.

Section 5 Security measures, audit right

(1) The customer shall safeguard the contractual software, and any and all access data for online access, against access by unauthorised third parties by means of appropriate measures. Without limitation, it shall store any copies of the contractual software and the access data in a secure location.

(2) The customer shall enable the vendor to verify proper usage of the contractual software upon its request, especially with regard to the customer's qualitative and quantitative usage of the program within the scope of the licenses purchased. For this purpose, the customer will give the vendor information, provide access to relevant documents and files as well as enable the vendor, or an auditing company appointed by the vendor that is acceptable to the purchaser, to perform an audit concerning the deployed hardware and software environment. The vendor may perform this audit on the premises of the customer during its regular business hours or can allow third parties who are sworn to maintain confidentiality to perform the audit. The vendor shall take care to disturb the business operations of the customer as little as possible whilst carrying out these tasks on its premises. In the event that the audit reveals an overrun of the number of purchased licenses by more than 5% (five percent) or usage that otherwise deviates from the usage agreed upon in the contract, the purchaser will bear the costs of the audit which are otherwise paid by the vendor.

Section 6 Confidentiality

(1) "Confidential information" comprise all information and documents from the other respective party which are marked as confidential or are to be regarded as confidential in the respective circumstances, in particular information about operational processes, business relations, and know-how.

(2) The parties agree not to disclose confidential information.

(3) An exception to this obligation is such confidential information that

a) were evidently known to the recipient at the conclusion of the contract or that it comes to know afterwards through third parties in such a way that no confidentiality agreement, legal regulations or administrative orders are violated;

b) were publicly known at the conclusion of the contract or were made publicly known afterwards, insofar as that this is not based on an infringement of this contract;

c) have to be disclosed due to legal regulations or a judicial or administrative order. Insofar as this is permitted and possible, the recipient obliged to disclose the information will inform the other party in advance and enable such party to proceed against the disclosure.

(4) The parties shall only grant access to confidential information to consultants who are sworn to professional secrecy or on which obligations of secrecy conforming to this contract have been imposed beforehand. Furthermore, the parties shall only grant access to confidential information to employees who need to know such information in order to fulfil this contract and also bind these employees to secrecy to the extent that is legally permissible after their resignation or retirement.

(5) For every case in which the customer violates these obligations it will shall pay an adequate contractual penalty the exact amount of which shall be determined by the vendor in the reasonable of its discretion for each individual case and which may be reviewed by a competent court in case of any dispute. The contractual penalty need not be paid if the customer is not liable for the infringement. This is without prejudice to the right to assert claims for additional compensation beyond the contractual, however, the contractual penalty shall be offset against any such compensation claim.

Bochum, 20.07.2018