

# Software use and licence agreement

of

## gds GmbH

In connection with the purchase of the gds software product, the present software use and licence agreement shall constitute a legally valid agreement between the buyer/user (hereinafter referred to as "User") and gds GmbH (hereinafter referred to as "Supplier").

### § 1

#### Subject of the contract

- (1) The user buys the gds software product, consisting of one or several data carrier(s), at the price agreed in the order.
- (2) If the user places a corresponding order with the supplier, the supplier will install the software on the user's hardware.
- (3) If this involves the use of one or several data carriers for the evaluation of the aforementioned software, then the software is made available for a certain period of time and/or is limited to a given number of data records.

### § 2

#### Rights of reproduction and access protection

- (1) The user shall be entitled to reproduce the delivered software as far as the reproduction is necessary for using the program. Necessary reproductions include the installation of the software from the original data carrier on the mass storage device of the hardware used and the loading of the software into the main memory.
- (2) In addition to that, the user is allowed to make one reproduction as a backup copy. However and as a general rule, only one backup copy may be made and stored. This backup copy shall be clearly marked as a backup copy of the software.
- (3) If for reasons of data integrity or for ensuring a quick reactivation of the computer system following a total failure, the rotational backup of the entire data stock including the computer programs employed is imperative, the user is allowed to make the absolutely required number of backup copies. The data carriers in question shall be marked accordingly. The backup copies may be used for archiving purposes exclusively.
- (4) The user shall be obliged to prevent unauthorized access to the program and to the documentation by third parties by taking suitable measures. The delivered original data carrier as well as the backup copies shall be kept at a safe place safeguarded against unauthorized access by third parties. It must be explicitly stressed towards the user's employees that the present terms of the agreement and the copyright provisions must be respected.
- (5) The user is not allowed to make any further copies including the output of the program code on a printer.

### § 3

#### Multiple uses and use in a network

- (1) The user may use the software on any hardware available to him. However, when the user changes the hardware, the software installed on the hardware previously employed must be deleted.
- (2) Simultaneous storage of server data, keeping available or use on more than one hardware is not permitted; if the user intends to use the server software on several hardware configurations, he must purchase the corresponding number of licences.
- (3) The use of the software within a network is not allowed if this creates the possibility of simultaneous use of unpurchased licences of the program. If the user wishes to use the software on several computer systems as purchased licences, he must pay a corresponding licence fee to the supplier the amount of which is determined by the number of computers connected to the computer system. The supplier will inform the user without delay about the licence fee to be paid in a specific case as soon as the user has made the planned network use including the number of connected computers known to the supplier in writing. The use in such a network or multi-station computer system is permitted only after full payment of the corresponding licence fee.

### § 4

#### Decompilation and program modifications

Decompiling the program code into other code forms as well as other types of reverse engineering of the different software production stages including modifications to the program are not permitted, including those intended for the own use.

### § 5

#### Resale and subletting

- (1) The user is entitled to permanently sell or give away the software to third parties, provided said third party agrees to the continued validity of the present terms of the agreement. In case the software is passed on, the user must either hand over to the new user all copies of the program including any existing backup copies or destroy the copies not handed over. As a consequence of passing on the software, the previous user's right to use the program shall expire.
- (2) The user shall be entitled to let third parties use the software for a limited time as far as this is not done by way of hiring out for a profit motive or by lease and as far as the third party agrees to respect the present terms of agreement and the original user hands over all copies of the program including any existing backup copies or destroys the copies not handed over. While letting a third party use the software, the original user shall have no right to use the program himself. Hiring out for a profit motive or lease are not permitted.

(3) The user is not entitled to let third parties use the software if the third party is under reasonable suspicion of not respecting the terms of the agreement and especially of making unauthorized copies. This same also applies to the user's employees.

## **§ 6 Warranty**

(1) Defects of the delivered software will be removed by the supplier either by subsequent improvement or by substitute delivery within the legal warranty period, starting with the delivery and following notification by the user.

(2) If subsequent performance fails, the user shall as a basic rule be entitled to demand, at his option, either reduction of the purchase price (reduction) or cancellation of the contract (revocation). However, the customer shall have no right of revocation when only minor defects appear.

(3) If the user decides to revoke the contract because of a defect of title or a defect as to quality and following a failure in subsequent performance, he shall not additionally be entitled to claim damages because of the defect.

(4) Basically, only the supplier's product description shall be deemed as agreed regarding the quality of the software. Statements made in public, boosting or advertisements by the supplier shall not represent contractual characteristics of the goods.

## **§ 7 Liability**

(1) The supplier's liability shall be excluded in case of slightly negligent violation of immaterial contractual obligations. The same shall apply in case of slightly negligent violations of obligations by the supplier's legal representatives and senior officers.

(2) Liability for loss of data shall be limited to the typical effort for restoration that would have been required if backup copies had been made on a regular basis and in line with the danger.

(3) The above limitations on liability do not concern user's claims from product liability or user's claims because of physical injury to or injury to health attributable to supplier or death of the user.

(4) Liability according to the Product Liability Act shall remain unaffected.

## **§ 8 Duty to examine and requirement to make a complaint in respect of a defect immediately on receipt, acceptance**

(1) The user will examine the delivered software including the documentation within 12 working days following delivery, especially in respect of completeness of data carriers and correct function of fundamental programming functions. Any defects detected in this process must be notified to the supplier within another 12 working days in writing. The complaint in respect of a defect must include a detailed description of the defects.

(2) A complaint in respect of a defect must be filed within 12 working days following detection of the defect.

(3) If the duty to examine and the requirement to make a complaint in respect of a defect immediately on receipt is violated, the software shall be deemed approved, considering the defect in question.

(4) If the user places an order with the supplier for installation of the software on the user's hardware, software installation on the user's hardware shall be followed by the acceptance. If the user fails to declare acceptance within 12 working days following the installation of the software or if he fails to file a complaint in respect of a defect of the software in writing within the same period, the software shall be deemed accepted upon expiry of that period. Immaterial defects shall not entitle the user to refuse acceptance.

## **§ 9 Retention of title**

(1) The supplier retains the property in the software delivered to the user until payment of all receivables from this contractual relationship and existing at the time of delivery or occurring at a later date is effected in full; if payment is effected by cheque or bill of exchange until these are honoured.

(2) If the user is responsible for payment in arrears and in case of substantial violation of the duty to take due care and to exercise proper care, the assertion of the retention of title by the supplier shall not be deemed to constitute a revocation of the contract unless the supplier explicitly informs the user about such step in writing.

(3) If the retention of title is asserted by the supplier, the user's right to use the software shall expire. All program copies made by the user must be deleted.

## **§ 10 Written form**

All agreements containing a modification or a supplement of the present terms of the agreement or making them more concrete as well as particular undertakings and understandings shall be made in writing.

## **§ 11 Choice of law and place of jurisdiction**

(1) In respect of all legal relationships arising from the present contractual relationship, the parties agree to apply the laws of the Federal Republic of Germany, excluding the provisions of the UN Sales Convention.

(2) If the user is a merchant in the sense of the German Commercial Code, a legal person under public law or a separate fund under public law, Warendorf shall be agreed as the place of jurisdiction for all disputes arising during the handling of the present contractual relationship.