

Licence conditions of FORM & FUNCTION Entwicklung- und Fertigungs GmbH

1. Sphere of application of the licence conditions

(1) Supplies and services from FORM & FUNCTION Entwicklung und Fertigungs-GmbH (Referred to after this as FORM & FUNCTION) are provided exclusively on the basis of the following licence conditions.

(2) These licence conditions apply to the handing over (delivery and licensing) of standard user software and software from outside manufacturers, and to the support provided by FORM & FUNCTION when installing such software, and to all other FORM & FUNCTION performances (such as support and hot line services).

2. Definition of terms

(1) **Software:** each package of programs or each program that brings about the functionality detailed in FORM & FUNCTION's product specification on its current relevant price list(s). Representations in the documentation, in test programs, in product and project descriptions and so on do not constitute guarantees in any legal sense. Such guarantees, on the contrary, require FORM & FUNCTION's prior explicit confirmation. In the absence of agreement otherwise standard software is delivered in whatever is the current version at the time of delivery to the customer.

(2) **Hardware:** The Ethernetbox and the documentation pertaining to it. Insofar as programs are permanently saved in the hardware program or delivered with it these are destined solely to operate the hardware as per contract. Use of them in any other way is ruled out.

(3) **Documentation:** The complete description in terms of content and technical detail of the software product in electronic or printed form for any complete version of a product covered by this contract that can be operated at the time of entering into it.

3. Scope of supplies/services

(1) FORM & FUNCTION supplies and/or hires out the hardware components carriage paid, including assembly and installation for the purposes of operating the machinery listed in the contract. By the agreed delivery dates the customer must fulfil the setting up and connecting preconditions in terms of space, technical support and other respects that will put FORM & FUNCTION into a position to bring about operational readiness. FORM & FUNCTION's written order confirmation or the contract concerned are definitive for the scope and all other details of the supply/service. FORM & FUNCTION's written confirmation is required for deviations specified in any possible order placed by the customer (referred to also as the Licensee), and also for any assurances regarding particular features, for any ancillary agreements, and for any changes.

(2) The customer receives the hardware and a delivery copy of the software on data carriers, along with documentation.

(3) FORM & FUNCTION, or some third party commissioned by it, executes delivery of the hardware and installation/implementation of the software. On this it is incumbent on the customer to comply with FORM & FUNCTION's notes, and indeed to agree the installation conditions

in sufficient time and detail with FORM & FUNCTION to ensure that problem-free and swift installation is effected. Once installation has happened, FORM & FUNCTION draws up a notice formalising its readiness to operate.

(4) FORM & FUNCTION has the right but is not obliged to deliver software up-dates to the customer.

(5) The customer must enter into a separate contract for maintenance of the software covered by the contract.

a) Outside manufacturers' programs

(1) For programs that FORM & FUNCTION only markets under licence from other manufacturers (such as Access or ORACLE licences) the conditions of the Licensor concerned retain their complete validity, even if they differ from those of FORM & FUNCTION. For such software FORM & FUNCTION basically conveys just the rights that are necessary for their use in conjunction with its own licensed programs.

(2) If FORM & FUNCTION arranges application-specific licences from other manufacturers (such as Access or ORACLE licences), then these are limited to the application in conjunction with FORM & FUNCTION's programs, and they apply exclusively for that platform. In particular the customer has no right to extend the scope of the application arising from the registration, and especially none to operate further, unlicensed applications with such licences.

b) FORM & FUNCTION's licence program

(1) The customer receives a non-transferable and non-exclusive right itself to use the software manufactured by FORM & FUNCTION and handed over to it in combination with a specific central unit or systems configuration (referred to as the licensed installation).

(2) Should, in an individual case, the serial number not be documented in the way foreseen, the central unit or systems configuration on which the software was first operated counts as the licensed installation.

(3) The licence refers exclusively to the software licences acquired from the Licensor according to the order confirmation or individual contract. Explicit, prior and written agreement with FORM & FUNCTION is required for any modification, multiple use or use in connection with any change or extension of the system undertaken by the Licensee in respect of the number of devices linked up or storage capacities. The Licensee's right on its own responsibility to connect other manufacturers' devices to the systems remains unaffected.

(4) **Contract to purchase:** FORM & FUNCTION's software licences are, **in the case of purchase**, granted for unlimited time and notice from FORM & FUNCTION to terminate them may only be given for a compelling reason. A compelling reason would be, in particular, if the Licensee disregarded its contractual obligations (including those laid down in the licence conditions) to a considerable extent. The notice to terminate refers to all the rights of use conceded to the customer.

(5) **Lease:** In the case of entering into a **lease** the customer receives a non-transferable and

non-exclusive right to use the hardware and software for the term of the lease, at the end of which it gives back to FORM & FUNCTION all the items of hardware and software that were handed over to it. It expressly has no right to retain such items. The customer is not authorised to make dispositions covering the items put at its disposal for its use without prior written consent. It must hold the items free of encumbrances of any kind and advise FORM & FUNCTION immediately of any possible third party access to them. The customer shall bear the costs of all measures that are necessary for warding off third party access, unless what is involved is access to a third party attributable to FORM & FUNCTION's own sphere of operations. The customer must bear the costs of necessary maintenance, repair or reconditioning work.

4. Handing over and installation of the software, marketing

(1) Any extended use of the licence program deviating from clause 2 b) requires express, separate, prior and written agreement with FORM & FUNCTION. This applies especially to a) handing over the licence program to third parties, b) making the licence program or parts thereof available to third parties – whether or not for a financial consideration – even if this takes place on computers that are in the Licensee's possession, c) handing control of such computers over to third parties, d) installing the licence program at the premises of a third party, and e) offering to deploy the licence program in order to provide data processing services.

(2) In the context of any such extension of use FORM & FUNCTION's contract partner concerned is obliged to impose the provisions of these licence conditions on its end customers in unchanged form. On request by FORM & FUNCTION the end customer must demonstrate this to it in the form of a written confirmation.

5. Protection of the licence material

(1) The Licensee may only hand the software on to third parties by onward sale and only by relinquishing its own use. FORM & FUNCTION's explicit prior written consent is a precondition for such handing on. That consent may only be refused for a compelling reason. With its application for consent the Licensee must present a written statement by the third party, under which the latter commits itself vis-à-vis FORM & FUNCTION to observing the rules for use and passing on in accordance with the Licensee's existing contract, and to observing these licence conditions. The Licensee must also present FORM & FUNCTION with written confirmation that it has passed all original program copies on to the third party and deleted copies that it

Licence conditions of FORM & FUNCTION Entwicklung- und Fertigungs GmbH

has itself made before the third party has the right to use the program.

(2) Licence material handed over in printed form may only be duplicated with FORM & FUNCTION's written consent. Additional copies of the licence material in printed form may be obtained from FORM & FUNCTION by giving details of the licence number in writing.

(3) The software may only be copied, duplicated or conveyed via a computer network to some other system if that is necessary for operating the installation so licensed and for the purposes of archiving and securing it. If, because of some defect in a device, it is impossible to operate the software on the licensed installation then the Licensee has the right to operate the software temporarily on some other central unit or systems configuration. In all other cases use of the software on any facility other than the licensed one requires FORM & FUNCTION's written consent. The software remains subject to FORM & FUNCTION's conditions even as a component in some adaptation.

(4) The Licensee shall treat confidentially all information on the programs, the methods and procedures used, and on the documentation covering the programs, and take all the precautions necessary to prevent unauthorised third party access to them.

(5) Insofar as the software is handed over under a lease, when the use ends the programs handed over together with their documentation and including duplicates made by the Licensee must be given back to FORM & FUNCTION without the latter have to request that. The Licensee is liable to FORM & FUNCTION for damage caused by improper use of the programs, especially in the case of further use of programs on which notice has been given or in the case of programs, including documentation, being handed on to third parties. The Licensee's employees do not count as third parties, nor do other persons insofar as they remain with the Licensee for the purposes of making use of the licence material at its premises.

(6) The Licensee is prohibited from developing from the binary software the source program or parts thereof (for instance, by decompiling), with the exception of the statutory restrictions under §69 e of the German law on copyright. Any decompilation of the programs within the limits of that clause of that law is only permissible if the Licensee has called upon FORM & FUNCTION in writing and set an appropriate period of grace of at least 14 working days, to make available the information and documentation necessary to create interoperability, and if the period of grace set has expired fruitlessly.

(7) The Licensee has the right solely to use the licences listed in the contract or in the order confirmation. Each and every extension of the licence requires FORM & FUNCTION's prior written agreement. If the Licensee extends the scope of the licence without proper authority it is obliged to bear the costs that it would have had to pay to FORM & FUNCTION in the case of justified use, in line in each case with the current list of prices and conditions.

(8) The right to modify, translate, process or otherwise change the software remains reserved exclusively to FORM & FUNCTION and/or to the outside manufacturer concerned, whereby the Licensee's right to have faults eliminated, under § 69 d of the German law on copyright, remain unaffected if FORM & FUNCTION offers no fault elimination at normal market conditions or if the fault elimination service offered fails twice on account of the same fault or because of faults directly connected with that fault.

6. Ownership rights and copyrights, other rights

(1) Irrespective of the rights of use described above FORM & FUNCTION retains all ownership rights and copyrights in the software product including the copies manufactured by the Licensee or partial copies of them and their respective documentation. The Licensee's ownership of the machine-readable record carriers, data saving devices and data processing devices remains unaffected by this.

(2) The Licensee is obliged to retain, unchanged, the trademarks used in connection with the licence programs, such as notes on copyright and other reservations of rights, and to take them over in unchanged form in all the complete or partial copies it makes of them.

(3) According to the availability of any new version of the software the Licensee has the right to exchange the software package for a corresponding package of programs at an up-date price to be detailed by FORM & FUNCTION in accordance with its price lists.

7. Claim for information

The Licensee shall keep proper accounts covering the use of the software, and especially covering its authorised users and locations where it is installed. It grants FORM & FUNCTION the right to check whether the software is being used as per contract and whether the provisions of the contract concerned and of these licence conditions are being complied with. Insofar as necessary for this FORM & FUNCTION may demand of the Licensee that, at the latter's option, FORM & FUNCTION or a person to be specified by FORM & FUNCTION may obtain access during normal business hours to the Licensee's business premises and may inspect the books, records, and electronic files relevant for such a check and may have access to the Licensee's computers. The Licensee shall in this context advise FORM & FUNCTION and/or the third party involved comprehensively, and shall involve its own employees in the process of giving out information. FORM & FUNCTION shall bear the costs of such an investigation unless some not inconsiderable breach of contract is established in the course of it.

8. Passage of risk and acceptance

(1) The risk of the loss of or damage to the software passes over on its delivery to the customer, and indeed also does so when part performances are made or when FORM & FUNCTION has undertaken to provide other services (such as installation).

(2) If the installation is delayed as a result of circumstances for which the customer has to answer, then the risk passes over to the

customer from the day FORM & FUNCTION formally notifies the customer of its readiness to install.

(3) The customer must basically test each program for freedom from defects and for usability in its actual situation before it begins operational use of the program.

(4) The customer must take suitable measures to protect its data against the risks of data crashing from the point in time of the passage of risk.

9. Guarantee

(1) The customer is aware that in accordance with the status of the technology faults in programs and in other material pertaining to them cannot be ruled out. In particular, no fault exists if the program licensed corresponds substantially with the specifications that emanate from its documentation. In the case of considerable deviations FORM & FUNCTION has the right to rectify them.

(2) The customer shall basically test the contracted item according to FORM & FUNCTION's notice of readiness for installation for freedom from defects and for usability for the contractually predetermined purpose, prior to it embarking on permanent (operational) use of the hardware and software programs. This shall also apply for any programs that the customer has received in the context of performance under guarantee or of maintenance. In this respect the customer also takes over, with reference to all FORM & FUNCTION's supplies and services that affect the item contracted for, the commercial duties to investigate and complain under § 377 of the German Commercial Code. After installation has been effected and the software has been finally accepted it must examine it within a period of 14 days for its functional capabilities and immediately pass on – in a comprehensible form – to FORM & FUNCTION whatever defects were established. The client is obliged to make available to FORM & FUNCTION all information and checkable documents such as are necessary for problem analysis, and it must co-operate in the ring fencing of faults. If FORM & FUNCTION is unable to establish the defect in the course of an examination, then the customer shall bear the costs of it, especially in the case of improper use of the program or of the existence of faults for which FORM & FUNCTION is not answerable.

(3) The guarantee shall lapse in respect of such programs or parts of programs that have been changed or extended by the customer itself, unless the customer demonstrates that such changes or extensions were not causal for the defect.

(4) The guarantee shall in addition not apply if the customer, by circumventing the FORM & FUNCTION program, directly accesses the database server or extends the scope of application of the licences without proper authority.

Licence conditions of FORM & FUNCTION Entwicklung- und Fertigungs GmbH

(5) In lieu of the elimination of a fault FORM & FUNCTION may, at its option, offer the customer the use of a newer version or update of the program. The customer is obliged to take an update up unless that is associated with unreasonable disadvantages for it. Counting as an unreasonable disadvantage would be, for instance, if an adjustment that might be necessary is not technically possible in combination with the other systems software, or application software/standard application software handed over by FORM & FUNCTION. If the customer has itself or through third parties undertaken changes or extensions to the programs, it may not apply such changes or extensions to the justification of an unreasonable disadvantage. If the customer declines to take over a newer version of the program, without there being a case in the sense just mentioned, then FORM & FUNCTION is not obliged to eliminate the fault.

(6) If repeated attempts to rectify remain fruitless or if FORM & FUNCTION offers no defect-free newer version of the program, the statutory rights of the customer to an abatement of the fee or to rescission of the contract re-activate. If the customer asserts rights under guarantee, that has no influence of other contracts entered into between it and FORM & FUNCTION.

(7) FORM & FUNCTION only falls into arrears if a formal reminder has been made. All formal reminders and the setting of periods of grace by the customer must be in writing to be effective. Final periods of grace must consist of at least 12 working days.

(8) The guarantee period is 12 months, calculated from the completed installation and final acceptance by the customer.

(9) The customer shall take appropriate precautions for the eventuality that the item contracted for does not work properly at all, or functions only partially, especially by undertaking data securitisation operations, by the diagnosis of faults with documentation, and by regular checking and monitoring.

10. Limitations on liability

(1) Claims for compensation in damages – irrespective on what legal basis – are ruled out both against FORM & FUNCTION and also against its vicarious agents and/or servants, provided no intentional or grossly negligent behaviour is involved. Providing FORM & FUNCTION is not accused of any deliberate breach of contract its liability for compensation in damages is limited to damage that is typical and foreseeable for this type of contract.

(2) In any case any liability of FORM & FUNCTION for damage to life, body or health in accordance with the law on product liability, any liability under the law of product liability and other claims arising from producer liability and in the case of FORM & FUNCTION assuming any guarantee remains unaffected. If the purchaser appeals to the assumption of a guarantee, then the burden of proof of the existence of a case for guarantee is on it. Likewise remaining unaffected is any liability on the part of FORM & FUNCTION for the culpable disregard for any substantial contractual duty, or for any “cardinal” duty the fulfil-

ment of which makes execution of the contract possible; in that case, however, the liability for compensation in damages is limited to damage occurring that is typical and foreseeable for this type of contract.

(3) For the loss or defective processing of data and for its reinstatement and for the loss of programs FORM & FUNCTION is liable if any such loss would have been unavoidable by appropriate measures to secure data on the part of the customer, and in particular by the daily preparation of safety copies of all data and programs.

(4) Insofar as FORM & FUNCTION's software, or the running of updates or upgrades of the control software or of other software components, is deleted or impaired in its functionality as a result of a power cut, the customer must bear the possible costs arising as a result of re-installation.

11. Assignment, applicable law, jurisdiction, place of fulfilment, miscellaneous

(1) The manufacturer has the right to assign its claims arising from trade receivables.

(2) The law of the Federal Republic of Germany applies to these business terms and conditions and to the entirety of the legal relationships between the manufacturer and the purchaser, to the exclusion of the CIGS (the United Nations convention on contracts for the international sale of goods).

(3) Insofar as the purchaser is a registered trader within the meaning of the German Commercial Code, a legal entity or a special fund under public law, the registered office of the manufacturer is the exclusive jurisdiction for all disputes arising directly or indirectly from the contractual relationship.

(4) The manufacturer's registered office is the place of fulfilment.

(5) Should any provision in these business conditions or any provision in the context of other agreements be or become ineffective, then the effectiveness of all the other provisions or agreements shall not be affected by that.