Software Purchase, Maintenance and Support Conditions

of

ViGEM GmbH

Zeppelinstraße 2, D-76185 Karlsruhe

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I. General Provisions

Section 1 Area of Validity

(1) These Software Purchase, Maintenance and Support Conditions (**Conditions**) apply to contracts that govern the purchase or delivery of software (II.) of ViGEM GmbH (**Licensor**) and software maintenance contracts with regard to purchased software or software acquired with the Licensor's hardware (III.).

(2) These Conditions apply only when the Customer is an entrepreneur according to Section 14 of the German Civil Code (BGB), a legal entity of public law or a special fund under public law.

Section 2 Relationship to other Contractual Conditions

(1) Unless otherwise agreed upon in the corresponding order confirmation, the Licensor's General Terms and Conditions (**GTC**) of business apply in addition to these Conditions. If the Licensor's GTC and these Conditions contradict one another, these Conditions have precedence.

(2) The Customer's deviating, opposing or supplementary GTC become only an integral part of the contract if the Licensor has expressly agreed to their validity.

Section 3 Liability

(1) In case of intent or gross negligence, the Licensor is liable according to the statutory rules. This also applies if an important contractual obligation has been culpably violated, i.e. an obligation whose fulfillment makes proper contractual execution possible in the first place and on whose compliance the contractual partner may trust on a regular basis; in this case, however, the Licensor's liability is limited to the replacement of the foreseeable damage that would typically occur.

(2) The Licensor is liable without restrictions according to Section 3 (1) Sentence 2 of the Product Liability Act for a possible agreed upon warranty and due to culpable life, limb or health injury.

(3) Unless otherwise expressly specified above, the Licensor's liability is excluded.

Section 4 Applicable Law and Place of Jurisdiction

(1) The law of the Federal Republic of Germany applies to these Conditions and the contractual relationship between the parties to the exclusion of the UN Sales Law (CISG).

(2) The exclusive place of jurisdiction for all disputes resulting from the contractual relationship is Karlsruhe if the Customer is a merchant, a legal entity of public law or a special fund under public law or he has no general place of jurisdiction in Germany. However, the Licensor is entitled to file a suit in the Customer's general place of jurisdiction.

II. Software Purchase

Section 5 Contractual Object and Scope of Services

(1) The object of this section is the purchase or delivery of standard software such as, for example, the Licensor's C-program libraries (**Software**) to the Customer and the granting of the corresponding usage rights according to Section 6 and Section 7. The software products purchased by the Customer result from the respective order confirmation.

(2) The owed condition of the Software results finally from the respective software service description and, where appropriate, from the Software documentation (together **Specification**), which the respective order confirmation makes reference to.

(3) Condition information according to the Specification or other product descriptions constitute no guarantees.

(4) If the Customer has acquired program libraries (**Libraries**), he gets the source code of the header files. Apart from that, the Customer has no claim to the transfer of the Software's source code.

(5) Unless otherwise agreed upon, the Licensor does not owe the Software installation or implementation.

(6) It is the Customer's responsibility to ensure the functionality of the working environment (e.g. operating system, development surroundings) for the software.

Section 6 Granting of Usage Rights

(1) After paying the purchasing price in full, the Customer receives the temporally unrestricted, non-exclusive, non-transferrable and non-sublicensable right to use the Software to the extent granted in these Conditions for own business purposes. The right of use includes the download of the Software and its reproduction that the Customer needs for using it. If a network license has been agreed upon, the Customer is also entitled to make the Software accessible in his internal network if the client-server operation needs this.

(2) The Customer is not allowed to disseminate, rent, lend, reproduce or make the Software and/or source code possibly given to the Customer publicly accessible and/or provide them otherwise to third parties for charge or no charge.

(3) Contrary to Section 6 (1) and (2), the Customer is entitled to incorporate the binary part of a program library of the Licensor in own computer programs and utilize the resulting reworking. This reworking must be an own creative effort according to copyright law and have an own functionality going beyond the dissemination of the program library. On this condition, the Customer is additionally granted the temporally unrestricted, non-exclusive, non-transferrable right to reproduce, disseminate, rent, sublicense and make the binary part of the program library publicly accessible. It is expressly prohibited to forward the binary part of the program libraries which are not an integral part of the Customer's own computer program to third parties.

(4) The Customer is entitled to make a backup copy. The Customer is only entitled to decompile the Software if this is legally permissible (Section 69e of German Copyright Law (UrhG)).

Section 7 Licenses

(1) The type and number of the purchased licenses derives from the order confirmation.

(2) Each individual license entitles only to the use of the Software on one individual workplace or other terminal device. The Software may only be used simultaneously by the maximum number of natural persons that corresponds to the number of licenses acquired by the Customer.

(3) If a multiple license (package license) has been agreed upon, the Customer is entitled to use the Software on the number of individual workplaces or other terminal devices indicated in the order confirmation. The use of the Software within a network is not permitted if this creates the possibility of multiple Software use beyond the scope of the multiple license.

(4) If a company license (corporate license) has been agreed upon, the Customer may use the Software in his own company and also in this company's internal network.

(5) If a test or evaluation license has been agreed, the customer may - unless otherwise agreed - use the software free of charge for a maximum of 3 months from delivery, but by way of derogation from § 6 (1) and (3) only for evaluation and test purposes. Unless a full license is then acquired in accordance with the above paragraphs, the Customer shall completely cease using the Software at the end of the test period and delete it from all its systems.

Section 8 Delivery of the Software

(1) Unless otherwise agreed upon, the Customer is not entitled to the handover and assignment of a data carrier with the Software. The Licensor delivers the Software to the Customer as a download. To do this, the Licensor places the Software for the Customer in the customer portal, ready to be retrieved, for three years after the year in which the contract was concluded has ended.

(2) The Customer bears the possible telecommunication costs for the downloading.

(3) The software download requires the Customer's registration in the customer portal. The Customer keeps the access information for the customer portal for subsequent downloads that could become necessary, for example, during a reinstallation and reasonably protects it against unauthorized third-party access.

(4) If a delivery of the Software on a data carrier has been agreed upon, the delivery takes place ex stock, where the place of fulfillment for the delivery and a possible subsequent fulfillment is located. If the Customer requests it, the item is sent to another destination at his expense (sale by dispatch).

Section 9 Permanent Forwarding of the Software to Third Parties

(1) The Customer may sell or give away the Software in the long run (**Forwarding**) if the following conditions are met. No rental or lending is allowed.

(2) Before forwarding the Software, the Customer must show these Conditions to the acquiring third party, who shall agree to the continued application of these Conditions both towards the Customer and the Licensor.

(3) By forwarding the Software, the Customer's right to use and sublicense it expires.

(4) In case of forwarding the Software, the Customer commits himself to communicate to the Licensor the company name and the address of the third party in text format.

Section 10 Warranty

(1) The basis for the warranty is the software agreement concluded about the Software's condition according to Section 5 (2). The Licensor assumes no liability for public third-party statements.

(2) The Customer's claims for errors require him to have complied with his examination and complaint obligations according to Sections 377 and 381 of the German Commercial Code (HGB). If an error is detected during the examination or afterwards, then the Customer must notify this immediately to the Licensor in text format.

(3) If the Software is defective, the Licensor can initially choose whether to rectify the deficiency by eliminating the error especially through updates (**Rework**) or deliver a flawless product (**Replacement Delivery**). The Licensor's right to refuse the rectification of the error under the statutory requirements remains unaffected.

(4) The Licensor can choose to rectify the error locally in the Customer's premises or through remote maintenance. In the latter case, the Customer must grant the Licensor electronic access to the Software.

(5) In case of a Replacement Delivery, the Customer must delete the defective Software. The Replacement Delivery takes place like the initial delivery according to Section 8. The rectification of the error includes neither the uninstallation of the defective Software nor the reinstallation if the Licensor was not originally obligated to the installation.

(6) In case of a Replacement Delivery, the Licensor is also entitled to deliver a new Software version with at least an equivalent functional scope unless this is unreasonable for the Customer.

(7) The Customer's claims for damage compensation or refund of futile expenses also exist in errors only according to Section 3 and are incidentally excluded.

Section 11 Statute of Limitation

(1) The limitation period for claims arising from errors of quality and title is one year from delivery of the Software. The Software is delivered when the Licensor has facilitated a download to the Customer. Statutory special rules for the statute of limitation such as Section 438 Paragraph 1 No. 1 and 2, Paragraph 3, Section 444 and/or Section 445b BGB remain unaffected.

(2) The preceding limitation periods also apply to the Customer's contractual and extra-contractual damage compensation claims based on a Software error unless the application of the regular statutory statute of limitation (Sections 195 and 199 BGB) would lead to a shorter statute of limitation in the individual case. The Customer's damage compensation claims according to Section 3 (1) Sentence 1 and (2) expire after the statutory limitation periods.

III. Software Maintenance and Support

Section 12 Contractual Object and Service Content

(1) For the provision maintenance (**Maintenance**) and/or support (**Support**) of the software, the stipulations of this section apply in addition to the general stipulations of Section I.

(2) Unless otherwise agreed upon, the Licensor owes Maintenance and Support for the Software only in the first year after delivery. Apart from that, Maintenance and Support is not object of a contract on the purchase or delivery of Software.

(3) The object of the Maintenance and Support consists exclusively of program libraries and, as far as agreed upon, other software products (**Software**) listed in the order confirmation under the heading "Software Maintenance". No Maintenance of the Software documentation is owed.

(4) The object of the owed Maintenance and Support services is only the current version of the respective Software.

(5) Unless otherwise agreed upon, Maintenance and Support does not include:
   a) Services for the Software that is not used under the usage conditions specified by the Licensor, especially adaptations of the Software to a new operating system, changed Software or hardware environment of the Customer including new versions of third-party software used in the Customer's system;
   b) Software adaptation, supplementation or expansion, especially to new statutory regulations, products, services or changed operations of the Customer;

c) Services for the Software changed by programming work not done by the Licensor;
d) Services for the Software, for which the Updates or other error rectifications provided by the Licensor were not installed and the reported error was already rectified therein, unless its installation is unreasonable for the Customer for reasons he is not responsible for;
e) Services in the Customer's local premises;
f) Services that become necessary because the Customer is not complying with his co-operation obligations;
g) Elimination of defective functions that occurred due to the Customer's improper operation of the Software, force majeure (e.g. riots, natural catastrophes, strike) or third-party interventions;
h) General advice of the Customer;
i) Services outside service times.

Section 13 Service Content Maintenance

(1) The Licensor provides the following services as part of Maintenance:
a) The treatment of errors that occur while the Software is being properly used, provided the treatment is necessary for maintaining the preservation and recovery of the current version of the Software's operational readiness;
b) Handover of the latest Software version (**Updates**), although the Licensor is not obligated to develop Updates;
(2) The treatment of errors includes the delimitation of the cause of the error, the error diagnosis and services aimed at rectifying the error. The Licensor can choose to treat the error treatment by providing the services of a bypass (**Work Around**), installing patches and Updates and – after consulting with the Customer – also by delivering a new program version (**Version**).
(3) Maintenance is done exclusively by means of remote servicing.
(4) The Customer's possible claims for defects remain unaffected.

Section 14 Updates

(1) The Licensor can deliver Updates and new Versions to the Customer, as this was allowed to him for the first delivery according to the Software Purchase Contract, or by making Updates or new Versions available to the Customer via download.
(2) The Customer shall install the patches or Updates provided by the Licensor immediately, unless their installation is unreasonable for the Customer due to reasons for which he is not responsible. Unless otherwise agreed upon, the patches, Updates and new Versions are installed at the Customer's expense.
(3) As far as the Licensor hands over to the Customer copyright-protected works due to the maintenance services, Sections 6 and 7 apply accordingly to these protected objects and the usage rights granted to the Customer on them. However, the Customer may only use one Version productively. If they are libraries, old Versions may also be used productively. He may make and store backup copies of the last two earlier Software Versions after the productive use has ended for documentation and emergencies.

Section 15 Service Content Support

(1) The Licensor supports the Customer via e-mail through indications on how to use the Software as well as on how to prevent, eliminate and work around the errors.
(2) If not agreed in the order confirmation, there is no support in the Customer's premises.

(3) For the Licensor's support, a reaction time of one week applies as agreed upon.

Section 16 The Customer's Cooperation Obligations

(1) Before notifying the error, the Customer must conduct a system environment analysis within his possibilities to ensure that the error is not caused by system components that are not the object of the maintenance agreement.

(2) The Customer notifies errors to the Licensor immediately. Section 10 (4) Sentence 2 applies accordingly. The Customer shall record errors determined in the course of the test or live operation in an understandable form.

(3) The Customer allows the Licensor to access the Software and deliver patches, Updates or new Versions via the internet. The Customer commits himself to conclude an order processing agreement according to Art. 28 GDPR so remote maintenance can be conducted.

(4) The Customer provides the Licensor test data and a test environment to a reasonable extent if this is necessary to diagnose or eliminate the error.

(5) So maintenance and support can take place, the Customer shall allow the Licensor to inspect the necessary files and documents, especially about his hardware and third-party software.

(6) The Customer shall immediately implement measures to eliminate the error, especially by installing Updates.

(7) It is the Customer's responsibility to regularly secure his database according to the state of the art.

(8) If the Customer falls behind in the actions needed to fulfill his responsibility, the Licensor's service obligation ceases for as long as he falls behind, which without this action cannot be provided or only with disproportionate additional effort. The Customer shall reimburse the Licensor for the additional effort caused by this in addition to the agreed upon remuneration based on the applicable hourly rates. The Licensor's legal right of termination remains unaffected.

Section 17 Special Conditions for the Remuneration of Maintenance and Support

(1) Maintenance and Support according to these Conditions are provided during the first 12 months after delivery of the Software. Apart from that, the remuneration for Maintenance and Support results from the order confirmation.

(2) The remuneration for Maintenance and Support is billed in advance for each contractual calendar year and is payable immediately.

Section 18 Effective Date and Term of the Maintenance and Support

(1) Maintenance and Support are provided free of charge for 12 months from delivery of the Software. Afterwards, the Maintenance and Support obligation ends automatically, without the need of a termination.

(2) No later than two months before the term of the Maintenance and Support Agreement ends, the Customer can apply to the client for an extension of Maintenance and Support services for another 12 months from the end of the term of the previous Maintenance and Support Agreement. Thereupon, the Licensor shall generally make an offer to the Customer to extend the Maintenance and Support. The Customer will have up to 3 working days before the term of the previous Maintenance and Support Agreement ends to accept it. Section 18 (1) Sentence 2 applies accordingly to the respective extension of Maintenance and Support.

(3) The Customer's free right of termination according to Section 648 Sentence 1 BGB is excluded.

(4) The right to an extraordinary immediate termination of Maintenance and Support for an important reason remains unaffected.

(5) Terminations need to be in text format.

(6) The usage rights granted according to Section 14 (3) remain unaffected by a termination.

Section 19 Warranty for Maintenance Services

As far as patches, Updates and new Software releases in the sense of new versions are delivered to the Customer as part of Maintenance and Support, the claims for defects regarding the new features contained therein, which do not represent a mere elimination of defects in the original, are determined in accordance with Section 10. For the statute of limitation of these claims, Section 11 applies accordingly, provided that the legal statute of limitation rules according to Section 634a Paragraph 3 of the BGB remain unaffected and the delivery of the patch, Update or release is decisive for the start of the statute of limitation.

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