

# Terms of Contract for Software Licensing (General Terms and Conditions / Software "GTC Software") of OptiY GmbH

## Status on 01.11.2011

### § 1 General - Scope of Application

(1) The following Terms of Contract for Software Licensing (hereinafter: "GTC Software") of OptiY GmbH (hereinafter: "OptiY") are applicable to all contractual relationships between OptiY and Customer in connection with Customer's use of OptiY computer programs and OptiY user documentation. Computer programs, updates and documentation are also called "Licensed Products" or "Licensed Material" in the following.

(2) These GTC are exclusively applicable; Customer's terms and conditions to the contrary or which deviate from our GTC will not be accepted, unless expressly agreed otherwise in writing. Our GTC shall also be applicable when we execute the delivery to Customer unconditionally even if we know that Customer's terms and conditions are to the contrary or deviate from our GTC.

(3) Any agreements made between OptiY and Customer regarding the execution of this contract must be made in writing.

### § 2 Scope of Use

(1) OptiY grants Customer a nonexclusive right of use in the Licensed Products.

(2) Customer is not allowed to reproduce the Licensed Material, neither temporarily nor permanently, in whole or in part, with any means or in any form or to translate, process, rearrange the computer program, to alter the computer program in any way or to reproduce the results obtained, unless to the extent necessary for the intended use (booting and running the computer program) and the correction of errors.

(3) Customer may only make a back-up copy of the Licensed Material if OptiY did not make available such copy. OptiY acquires any rights in copies solely made for backup purposes unless these rights have been transferred upon Customer.

(4) Licensed Material provided for a special limited use at reduced license fees or free of charge (particularly demo versions and student editions) may be used by Customer only for the contractual purposes of evaluation and training. Any use in excess whose purpose is to directly or indirectly make profit is prohibited.

(5) OptiY shall be obliged to provide user manuals and other documentation beside the Licensed Material supplied with the software and in excess to user prompting which may be implemented in the Licensed Material or to provide online help or induction training only if expressly agreed in writing between the contract parties. Supply of operating instructions or online help in the English language shall be admissible if they are only available in English.

### § 3 Protection of Licensed Material

(1) Regardless of the granted rights of use, all rights in the Licensed Material including any copies or partial copies of it made by Customer will be retained by OptiY. Customer's ownership in machine-readable recording media, data storages and data processing devices shall not be affected by this condition.

(2) Customer undertakes to leave unchanged any protection symbols in the Licensed Material, such as copyrights and other legal reservations, and to transfer them unchanged to any full or partial copies of the machine-readable Licensed Material made by him.

(3) Customer shall keep records about the contractually made copies or partial copies of machine-readable Licensed Material, keep them in a safe place and give information about them upon request.

(4) Customer shall erase completely any stored Licensed Material prior to the destruction or handing on of machine-readable recording media, data storages or data processing devices. This condition shall apply except to the concretely supplied program copy and its backup copy.

(5) Despite the granting of rights under § 2, OptiY shall remain the owner of all rights in the Licensed Product even if Customer modifies the Licensed Product or combines it with his own programs or those of a third party. Customer may combine the licensed computer programs with other computer programs. The user documentation contains a description of the interfaces which are provided for this. Other changes of the programs and error corrections are admissible only to the extent that they are necessary for the intended use of the programs. Any decompilation of the program codes to another type of representation is prohibited. This is applicable with the exception of a partial compilation of

the code form to obtain interoperability of an independently created computer program with a licensed computer program or with other computer programs under the restrictions specified in §69 e Urheberrechtsgesetz (copy right statute).

#### **§ 4 Copy Protection, Contract Violation**

(1) OptiY reserves the right to provide the program with a technical copy protection, for example, in the form of a dongle. In the case of failure during the warranty period (§ 7), OptiY will provide a replacement dongle contemporaneously against sending of the defective dongle.

(2) The bypassing of the copy protection, especially the bypassing or removal of the dongle and program routines of the dongle, is not allowed, OptiY will prefer criminal information in such cases, regardless of claiming damages under civil law.

(3) Regardless of claiming other rights, Customer is obliged to compensate OptiY for any damage which arises due to any violation of this contract.

#### **§ 5 Application Conditions**

(1) The Licensed Material provided to Customer was developed for application on certain data processing equipment and for the interaction with certain other programs. These application conditions are specified in the performance specification.

(2) If the Licensed Material is used under conditions other than those stated in Section (1), the warranty obligations under § 6 will not be applicable.

#### **§ 6 Warranty**

(1) The contract parties are aware that it is not possible to develop computer programs so that they will run faultlessly in any applications, sequence variants and combinations. If any claimed fault of the computer program is not reproducible, warranty shall be excluded.

(2) For the Licensed Material - except the free-of-charge or demo versions - in the version provided to Customer, OptiY warrants contractual use in compliance with the performance specification which is valid at the time of delivery and which was available to Customer prior to the conclusion of the contract. If there are serious deviations from the performance specification, OptiY may remedy the defect which remedy OptiY is even obliged to undertake unless this is connected with unreasonable efforts.

(3) If OptiY does not succeed, in a reasonable time, to remedy the serious deviation from the performance specification or to provide such conditions that Customer can make contractual use of the program, Customer may, at his own discretion, demand a reduction of the purchase price or, in the case of serious defect(s), withdraw from the contract.

(4) Customer is obliged to give a detailed description of the defect and its manifestation in a written notice of defect and to provide verifiable documentation about nature and occurrence of deviations from the performance specification to assist in the locating of faults, particularly by providing error messages and specifying the operational steps.

#### **§ 7 Warranty Period**

The warranty period is one year.

#### **§ 8 Liability**

OptiY refuses to accept any liability, except for the warranty conditions (§§ 6, 7), regardless of the legal basis. This is likewise applicable to the personal liability of employees, representatives and vicarious agents. This limitation of liability does not apply to claims based on any guarantee with regard to quality or durability accepted by OptiY. The limitation of liability does not apply either insofar that the cause of loss results from intent or gross negligence. This is also without prejudice to the liability for damages from harm caused to life, bodily injury or injury to health and caused by the culpable violation of fundamental contractual obligations. In the case of culpable violation of fundamental contractual obligations, OptiY shall be liable only for such damage which is typical and reasonably foreseeable for the contract, which condition shall apply except for intent, gross negligence and liability for damages from harm caused to life, bodily injury or injury to health. The exclusion of liability does not apply to cases where liability must be accepted for personal damage or physical damage to privately used property in accordance with the product liability law in the case of defects of the Licensed Material.

#### **§ 9 Venue, Governing Law**

(1) If Customer is a businessman, legal person under public law or special assets under public law, the venue is the place of domicile of OptiY. OptiY may choose between this agreed venue and Customer's legal general venue.

(2) The governing law is the law of the Federal Republic of Germany. The application of the UN sales law is barred.