

Supplementary Terms and Conditions for the Provision and Maintenance of Proprietary Software of S&T AG

(Last update: 01/2013, Version: 3.0)



1. DELIVERABLES AND DELIVERY TIME

- (a) The software is supplied as most recently updated version according to the attached documentation which shall finally govern its condition. Customer may not infer any other condition from other software presentations, for example in public announcements or advertisements.
- (b) Software is supplied either by shipping it or making it available online up to one month after the contract was concluded. The availability of software is subject to the condition that no embargo rules are in place on the delivery date. When shipped, transfer of risk takes place upon delivery to the transport company, otherwise when on-line availability is communicated.

2. RIGHTS TO SOFTWARE

- (a) S&T is entitled to all rights to the software. Customer is granted a timewise unlimited, non-exclusive right to use software for customer's own internal purposes. Customer may not use software for any purpose beyond that even if customer's technical and organisational resources would allow customer to access other software components or to use the software for any other purpose. S&T may at its election take adequate technical measures to protect its software from non-contractual use. Rights to software are granted only if customer have fully paid the agreed compensation.
- (b) Customer may carry out data back-up according to the state of the art, using necessary back-up copies. Customer shall mark such a copy as a backup copy and affix the copyright notice of the original data carrier. Customer may not change or remove an S&T copyright notice.
- (c) Customer may change, extend or otherwise rework software only within the legal requirements (especially Section 40d of the Austrian Copyright Act). The resulting rights to results shall be due to S&T. A reasonable commercial compensation will be negotiated separately. Customer will have to bear any adverse consequences resulting from changes to software made at customer's own initiative.
- (d) Prior to any decompilation, customer is required to ask S&T by written notice for information necessary to create interoperability. Only if customer do not receive that information within a reasonable time limit of at least 10 work days customer may carry out decompilation pursuant to Section 40a of the Austrian Copyright Act.
- (e) If S&T makes available to customer a different release or other software that replaces previously provided software,

all rights customer may have to that previously provided software will expire as soon as customer productively uses the new software. Returns are governed by Section 6.

- (f) Customer may make available to a third party any software only on a uniform basis, if customer fully and finally surrender customer's own use, provided that third party undertakes to observe the agreed terms and conditions for software use. Customer is also required to confirm to S&T that customer has delivered to that third party all original software copies and have deleted any reproductions customer may have made. S&T may withhold its consent for a transfer as described above in a particular case if its legitimate legal or market interests are affected.
- (g) If the software contains third-party software or open source software, customer will be granted only those rights which are necessary for a contractual use of that software. Customer is not granted any further rights, including the right to rework or disseminate software.

3. CLIENT'S OTHER OBLIGATIONS TO COOPERATE

- (a) Customer will ensure that the necessary environment for the software exists and is properly operated. Moreover, prior to any operative software use, customer will test that software as necessary as to whether it is fit for contractual use and customer will take the necessary precautions in case the software does not properly work. Customer is responsible for continuous and consistent data back-up. S&T can rely on customer fulfilling this obligation, unless customer states otherwise by written notice.
- (b) Customer will cooperate with S&T in line with execution policies and target dates defined by S&T from time to time and according to documented requirements. Any inquiries which S&T may make in the context of service provision shall generally be answered within two work days. Should customer need more time to process an inquiry in a particular case, customer is required to timely inform S&T. S&T's execution schedule will be extended accordingly.
- (c) In order to support S&T's services, customer will particularly
- strictly comply with the installation requirements applicable to the software components of customer's computer system;
 - use only accessories which comply with the computer system's manufacturer's specifications;

- train customer's staff continuously to ensure that service assignments are not solely necessary due to the use of wrong accessories or operation errors;
 - take precautions which allow rapid fault diagnosis, such as independent fault analysis using diagnostic routines, and customer will record hardware and software components and error descriptions on the basis of check lists;
 - take appropriate security precautions to restore customer's data, and particularly make regular data back-ups;
 - grant S&T unrestricted and safe access to all premises where hardware and software components of customer's computer system are located to allow S&T to provide its services;
 - make available during the provision of S&T's services an employee who is well familiar with the computer system and who may provide S&T with information which allows rapid fault diagnosis and, in case of remote service, who can make available a working phone or data network connection and track and cancel, if necessary, S&T's service actions on a screen;
 - make available to S&T documentation as well as updated installation disks for the software used; and
 - assign an appropriate room to S&T for the storage of spare parts, manuals and the like.
- (d) Customer acknowledges that all warranty obligations and guarantees which may have been issued by S&T shall expire if customer fails to comply with this obligation.
- (e) Customer shall ensure at customer's own responsibility that confidential data/information relating to customer's own computer system, including but not limited to access codes, codes, passwords, and other subscriber data be kept confidential. Any such information stored on hard disks will be reasonably encrypted.
- (f) Customer will use and maintain any software delivered/provided by S&T as well as any services provided to customer with the care and diligence of a prudent business man. Customer will especially respect all applicable laws and regulations as well as restrictions under existing licences. Customer will not, in any event, misuse S&T's services. Customer shall, in any event,

be responsible for any content customer transmit via S&T facilities.

- (g) The same applies to claims resulting from the fact that a third party obtains access to S&T's facilities via the Client.

4. INSPECTION AND COMPLAINTS

(a) Section 377 and 378 of the Austrian Commercial Code (Inspection and Notice of Non-Conformity) are applicable for entrepreneurs. Customer is obliged to inspect the software promptly and undertake to report to S&T any defects inherent in the software which customer may have discovered, such notice to describe the defects and be accompanied by all relevant documents and information within a period of 8 working days ex delivery. Hidden defects shall be reported within 8 work days after customer has discovered them, otherwise customer's warranty claim will expire. S&T undertakes to examine a notice of defects received and to start eliminating such defect within a time limit that is reasonable in view of the seriousness of the defect. Customer will grant S&T best possible support in connection with the elimination of defects by providing relevant information, staff and other necessary resources.

(b) If S&T is able to prove that defects customer has allegedly discovered in the software delivered/provided do not constitute defects and that the software are prescribed by customers's tasks underlying the specifications or other instructions customer may have issued, customer is required to reimburse S&T for any costs it has incurred in connection with processing customers's complaint. The amount of that compensation depends on S&T's rates and tariffs as applicable from time to time.

5. RETURNS

Upon termination of customers's authorisation to use software on whatever legal ground, customer is required to surrender to S&T deliveries and software copies and to delete saved software, unless customer is required by law to preserve proprietary data contained therein for a longer period of time.

6. RESERVATION OF TITLE

Any software and data carrier, which S&T has made available to customer in performance of the contract shall remain S&T's property until customer has fully and completely paid the contractually owed compensation. Furthermore the rules referring to the reservation of title mentioned in Section 5 of the General Terms and Conditions of S&T shall be applicable.

7. SOFTWARE MAINTENANCE

- (a) S&T maintains the software as updated from time to time in the contractually agreed scope from the contractually agreed point in time. If customer does not order software maintenance from delivery, customer will be required to pay maintenance fees whenever customer subsequently orders software maintenance, these fees amounting to those customer would have been required to pay had customer ordered software maintenance from delivery. Maintenance of purchased software or renewed post-termination maintenance must separately be agreed by virtue of a contract.
- (b) Software maintenance may fully be terminated at the end of a calendar year by giving one calendar quarter's written notice; the earliest termination date is at the end of two calendar years. Termination may not concern parts of software maintenance.
- (c) Notwithstanding the above, termination for good cause shall be possible. Repeated or serious breach of material contractual obligations shall constitute good cause. Customer shall be deemed to have breached a material contractual obligation if customer alters or causes software made available to be altered without S&T's consent. Notice of termination must be given in writing.
- (d) Software maintenance starts on the date mentioned in the contract. Unless otherwise stated herein, software maintenance starts with the month following the supply of software. The compensation is payable for each calendar quarter in advance by the 15th day of the relevant calendar quarter free and clear of any deduction. Subsequent payments by virtue of later ordered maintenance are due and payable immediately free and clear of any deduction.