

Terms and Conditions regarding the Software License of think project! International GmbH & Co. KG

Last update: 10.11.2009

Preamble

These Terms and Conditions regarding the Software License ("Terms and Conditions") are agreed on between the licensor of think project! International GmbH & Co. KG ("think project! International") and the customer.

1 Scope, conclusion of agreement

- 1.1 These Terms and Conditions regarding the software license govern the terms and conditions on the basis of which think project! International supplies the customer with the Licensed Software under 2.1 and grants the customer the relevant license from the date on which the agreement enters into effect. Any additional services, such as the installation or adaptation of the Licensed Software to the system environment or individual requirements of the customer, shall not be part of the obligations of think project! International, nor shall be any instructions for or training of the customer and/or the customer's employees. Such additional services shall be ordered separately and shall be subject to separate contractual terms.
- 1.2 The permitted use of the Licensed Software and the rendering of software maintenance services shall be subject to the parties' entering into a relevant individual agreement for such purpose.
- 1.3 think project! International will agree to entering into agreement with the customer only on the basis of such terms and conditions. The general terms and conditions of the customer shall not apply. This shall also apply even if think project! International does not expressly contradict such general terms and conditions or even if such general terms and conditions do not contradict with these Terms and Conditions.

2 Definitions

- 2.1 "Licensed Software" shall refer to the think project! International software products listed in an order form (only in machine-readable object code), including any manuals or other end-user documentation supplied by think project! International (hereinafter collectively referred to as "Documentation").
- 2.2 "System Environment" shall denote the number and type of computers (including computer model and operating system) as stated in the respective order form. System Environment may also refer to a type of computer and/or software that corresponds to that listed in the order form.
- 2.3 "Order Form" shall denote a document used to place an order for the Licensed Software and/or an order for software maintenance services, including the customer's order forms, which shall contain all the necessary information that think project! International requires to execute an order. All Order Forms shall integrate these Terms and Conditions effectively.
- 2.4 "Master Copy" shall denote such duplicate or copy of the Licensed Software and/or Documentation as think project! International delivers to the customer.
- 2.5 "CISG" shall denote the United Nations Convention on Contracts for the International Sale of Goods.
- 2.6 "License Rights" shall be such rights as the licensor grants the licensee.

- 2.7 "Material Defect" shall be a material defect as defined under s. 434 BGB (German Civil Code).
- 2.8 "Proprietary Rights" shall be industrial proprietary rights or copyright.

3 User Rights

- 3.1 The Licensed Software is protected under copyright law. think project! International grants the customer a non-exclusive license to use the Licensed Software for an indefinite period of time on the System Environment and at the location defined on the Order Form, barring any provisions to the contrary contained in the Order Form. If the environment defined in the Order Form is temporarily not operational, the customer will have the right to use the Licensed Software on a different system environment that corresponds to the one defined in the Order Form
- 3.2 The use of the Licensed Software shall be limited to the number of users stated in the Order Form. The customer shall use the Licensed Software only for the purpose of carrying out his internal business transactions and events as well as those of companies that are affiliated with him pursuant to section 15 of the German Stock Corporation Act ("Group Companies").

In particular, the following shall be permitted only with the prior written consent of think project! International:

- b) Operation of a computing centre, or
 - c) Temporary provision of the Licensed Software (e.g., as Application Service Providing) to other group companies, or
 - d) Use of the software for the purposes of training persons who are not employees of the customer or one of his group companies, or
 - e) Commercial leasing of the Licensed Software.
- 3.3 The Licensed Software shall be duplicated only to such extent as is necessary to allow for the contractual use of the software. The buyer may produce state-of-the-art backup copies of the Licensed Software to such extent as is necessary. Backup copies on portable data media shall be identified as such and shall be affixed with the copyright notice of the original data medium.
If the buyer acquires the Licensed Software by downloading it online, he shall be entitled to make a copy on a data medium in the event of transferring the software under Section 6. In all other cases, the buyer's rights with respect to the online copy shall be limited in the same way as those of a buyer who acquired the software on a data medium.
 - 3.4 The customer shall make changes, additions or other modifications to the software only to such extent as provided for under the law. Before attempting to rectify errors or causing a third party to do so, the customer shall allow think project! International two attempts to rectify such errors. The customer shall have no license or exploitation rights in respect of modifications — in excess of his rights under the license under this agreement. think project! International, however, may — against a reasonable fee — demand the granting of a non-exclusive license unlimited in space and time, including the right to issue sublicenses.

3.5 The customer shall undertake not to convert the Licensed Software to any other code form unless it is permitted under the provisions of copyright law. In particular, the customer's right to decompile, reverse engineer or disassemble the software shall be limited by statutory provisions and shall exist only after think project! International has failed to provide the necessary data and/or information within a reasonable period of time following a written request, and only at such time may the customer establish interoperability by means of other hardware/software.

think project! International makes the customer expressly aware in this context that even minor interference with the Licensed Software may result in substantial and unforeseeable disruptions in the operation of the Licensed Software and, possibly, the System Environment. As a result, the customer is warned against interfering with the Licensed Software; the specific risk shall be the customer's alone.

- 3.6 The customer undertakes to ensure the proper use of the Licensed Software by way of appropriate technical and organizational measures.
- 3.7 If think project! International provides the customer, as part of subsequent improvement or maintenance, additions (e.g., patches, additions to the user manual) or a new version of the contractual object (e.g., updates, upgrades), which replaces previous contractual objects ("legacy software"), such additions or new versions shall be subject to the provisions of this agreement. If think project! International provides a new version of the contractual object, the buyer's authorizations with respect to the legacy software shall expire under this agreement, even if think project! International does not expressly demand the return of the legacy software, as soon as the customer uses the new software productively. think project! International, however, will grant the customer a three-month transition period during which both versions of the contractual objects may be used side by side.

4 Proprietary and license rights

- 4.1 The customer undertakes to maintain without changes the proprietary notices, such as copyright and other right reservations, contained in the Licensed Software as well as to incorporate such notices without changes in all complete or partial copies produced by the customer of machine-readable licensed material.
- 4.2 The customer undertakes not to make the licensed material available to any third party without the express and written consent of the licensor in the original or as complete or partial copies thereof. This shall also apply to the event of a complete or partial sale or winding-up of the customer's company. Employees of the customer shall not be deemed third parties, nor shall be any other persons as long as they are on the customer's premises while using the licensed material in accordance with the agreement. The customer shall notify think project! International immediately of any license violation.
- 4.3 think project! International will defend the customer against all claims that arise from an infringement of an industrial proprietary right or copyright caused by the Licensed Software in the Federal Republic of Germany. think project! International shall defend against such claims at its own expense and shall exempt the customer from all costs and damages related to such defence, provided they are not the result of a breach of duty on the part of the customer.

The customer shall notify think project! International in writing immediately of any such claims brought by a third party. The customer hereby authorizes think project! International to defend such claims by a third party in court as well as out of court as the sole party.

- 4.4 If claims have been brought against the customer under 4.3 or are expected, think project! International may modify the Licensed Software to an extent that is reasonable for the customer or replace it. If this or the assertion of a license right is not possible without unreasonable expenditure, either party to the agreement may terminate the license for the program in question without notice. In such event, think project! International shall be liable to the customer for the damage he has incurred as a result pursuant to Section 9.

5 Transfer

- 5.1 The customer shall transfer the Licensed Software to a third party only as a whole and after discontinuing his own use of the Licensed Software in full and definitively. Any temporary transfer or a partial transfer against a fee to a third party shall be prohibited, regardless of whether the Licensed Software is transferred physically or not. The same shall apply to transfers not subject to a fee.
- 5.2 Any transfer of the Licensed Software shall be subject to the written consent of think project! International. think project! International shall give its consent if
- The customer confirms to think project! International in writing that he has transferred to the third party all of his original copies of the Licensed Software and has deleted all of his own copies thereof;
 - The third party agrees in writing to the provisions of the terms and conditions of license and transfer herein;
 - The third party runs the Licensed Software on such System Environment as is defined in the Order Form.

6 Delivery / Force majeure

- 6.1 In the absence of any other agreements, the Licensed Software will be shipped in such version as is the current version at the time of shipping.
- 6.2 think project! International effects delivery by, at its own discretion,
- providing the customer with one (1) program copy of the software on machine-readable data media and the user documentation in such quantity as is stated in the Order Form; or
 - providing the software via a network and making it available for download and informing the customer thereof and providing the customer with the user documentation in such quantity as is stated in the Order Form.
- 6.3 Data is saved to transportable data carriers for the purposes of transportation. It is the customer's responsibility to create an appropriate backup of the data provided.

7 Duty to examine and to make a complaint regarding defective goods

With respect to all goods and services received from think project! International, the customer shall assume, upon executing the agreement, a duty to examine and to make a complaint regarding defective goods and services pursuant to s. 377 HGB (German Commercial Code).

8 Material defects, defects of title; any other interference with the performance of an obligation; limitation

8.1 think project! International shall be liable, under sales law, for the agreed quality of the Licensed Software and for ensuring that the use of the Licensed Software pursuant to the agreement by the customer does not infringe on third-party rights. Liability for ensuring that the Licensed Software does not infringe on third-party rights shall apply, however, only for the country, as agreed by the parties, in which the contractual objects are to be used. In the absence of any express agreement, liability shall apply for the country in which the customer maintains his business domicile.

8.2 think project! International shall be liable for material defects to the extent of subsequent performance at first. For this purpose and at its own discretion, think project! International will provide the customer with a new and non-defective software or rectify the defect; another acceptable way of rectifying the defect shall be if think project! International shows the customer reasonable options for avoiding the consequences of the defect.

In the event of defects of title, think project! International shall provide a warranty by way of subsequent performance at first. For this purpose and at the discretion of the customer, it will create a legally unobjectionable manner in which to use the Licensed Software or provide replacement or modified yet equivalent software.

think project! International shall be entitled to make subsequent performance dependent on whether the customer has already paid a reasonable portion of the fee for the Licensed Software.

8.3 The customer shall accept a software (updates, upgrades, patches) if the contractual scope of functionality is maintained and if such acceptance does not result in considerable detriment to the customer.

8.4 If two attempts at subsequent performance have failed, the customer shall be entitled to set a reasonable period for the rectification of the defect. In doing so, the customer shall state expressly and in writing that he reserves the right to rescind the agreement and/or claim damages should another attempt fail.

If subsequent performance fails during such additional period as well, the customer may withdraw from the agreement or reduce the fee, provided the defect is not a minor defect. think project! International shall pay damages or compensation for futile expenses to such extent as is provided for under Section 9. think project! think project! International, following expiration of the period defined in sentence of hereof, may demand that the customer exercise his rights resulting from the expiration of such period within two weeks of receiving such demand. Upon expiration of such period of time, the right to choose shall pass to think project! International.

8.5 To such extent as think project! International provides services relating to the identification or rectification of defects, without being obligated to do so, it may demand payment for such services according to its standard rates. This shall apply, in particular, if a defect cannot be proved or is attributable to the customer. In addition, any such additional expenses on the part of think project! International shall be reimbursed as are incurred as a result of the customer's failure to cooperate as required under the agreement.

8.6 The customer shall derive rights from any other breaches of duty on the part of think project! International only if he has communicated them in writing and has set a period for remedying such breaches. This shall not apply to breaches of duty for which remedies do not exist. Damages or compensation for futile expenses shall be subject to the provisions under Section 9.

8.7 The period of limitation for all claims related to liability for defects shall be one (1) year and shall commence upon delivery and/or provision of the Licensed Software; the same period shall apply to any other claims of any nature whatsoever brought against think project! International. In the event of wilful or gross negligence on the part of think project! International, fraudulent concealment of a defect, personal injury or defects of title under s. 438 I No. 1 a BGB (German Civil Code) as well as in connection with warranty (s. 444 BGB), the statutory limitation periods shall apply, as well as to claims brought under the Product Liability Act.