

## General Terms and Conditions for Smartcard Products

### 1 Scope of Application

The General Terms and Conditions shall apply to all services provided by Atos. Any terms and conditions of the Customer that are contrary to these GTC or deviate from them are hereby revoked. They shall only be valid, if they are expressly recognized by Atos in writing.

### 2 Delivery of the hardware and software products, rights to software products, Open Source Software

- 2.1 The Contractor shall deliver the products to the Customer. Setup and startup of the products shall be the responsibility of the Customer. If setup of the hardware products or pre-installation of the software products is stipulated in the contract, then setup or pre-installation shall be performed by the Contractor.
- 2.2 The Customer shall be entitled to the non-exclusive right to use the software products in unmodified form to the extent agreed upon and for the intended purpose as specified in the order overleaf. If no particular type of utilization is specified, software products with the same software serial numbers may be stored on one system unit only. The Customer shall neither compile nor process the software products without the written permission of the Contractor.
- 2.3 The Customer shall perpetually ensure that the software products, copies thereof, and the documentation are not made accessible to third parties without the written consent of the Contractor.
- 2.4 The rights granted to the Customer with respect to the Software are based on the License Type (see Section 2) and the Software Type (see Section 4). The License and Software Types are detailed in the Contract Data.
- 2.5 If the Software is supplied electronically or if copying rights are granted for it, the rights and duties specified in these General License Conditions shall apply to the legitimately generated copies.
- 2.6 If the Customer is legitimately in possession of a previous Software version/release (hereinafter referred to as "Previous Version"), the Customer shall be authorized to exercise the rights to use the Software granted to it either with respect to the Software or – if this is intended from a technical point of view – to the Previous Version, at its own discretion (downgrading). If the Software is an Upgrade in accordance with Section 5, Section 5 shall apply additionally.
- 2.7 In case the Customer obtains only the data media but no license as per the Contract Data, any use of the Software by the Customer is subject to the acquisition of a license according to Section 2. Up to the acquisition of the license the Customer is not entitled to supply the Software to third parties.
- 2.8 In case as the Software contains Open Source Software (hereinafter referred to as "OSS") the OSS is listed in the Readme\_OSS-file of the Software. The Customer is entitled to use the OSS in accordance with the respective license conditions of the OSS. The license conditions are provided on the same data

carrier as the Software. The license conditions of the respective OSS shall prevail over these General License Conditions with respect to the OSS. If the license conditions of the OSS require the distribution of the source code of such OSS Atos shall provide such source code on request against payment of the shipping and handling charges.

- 2.9 The Software may be licensed software, i.e. software which has not been developed by Atos itself but which has been licensed to Atos by a third party (hereinafter referred to as the "Licensor"), e.g. Microsoft Licensing Inc. In the event that the Customer receives the terms and conditions stipulated by the relevant Licensor together with the Software, such terms and conditions shall apply vis-à-vis the Customer.

### 3 License Type

Depending on the License Type, the Customer shall be granted the following rights to the Software:

- 3.1 **Application License:** The Customer shall be granted the non-exclusive right, transferable in accordance with Paragraph 6.2 and valid for an unlimited period of time, to install the Software on a certain number of the Customer's hardware devices and to utilize the Software thus installed in the manner specified in the Contract Data (see "Type of Use"). The number of ordered licenses that can be derived from the Contract Data reflects the maximum number of permitted Software installations or, in case of a Software-Installation on Servers (e.g. Terminal server) and therewith the use at the same time of several persons ("Concurrent Users"), the maximum number of permitted Concurrent Users.
- 3.2 **Evaluation License:** The Customer shall be granted the non-exclusive and non-transferable right to install the Software on one (1) hardware device for use by one individual person at the same time for validation purposes in the manner specified in the Contract Data (see "Type of Use"). The period of usage is limited to 90 days and commences with the Software start-up, unless a different period of usage is specified in the Contract Data.
- 3.3 **Beta-Test License:** The Customer shall be granted the non-exclusive and non-transferable right to install the Software on one (1) hardware device for use by one individual person at the same time for test purposes in the manner specified in the Contract Data (see "Type of Use"). The test period is limited to 90 days and commences with the Software start-up, unless a different period of usage is specified in the Contract Data. The Software is a non-released Version and its usage is permitted only for test purposes. The usage is at Customer's own risk. The Customer shall take all necessary precautions at his own expense to exclude damage, in particular data loss, etc., in connection with the test operation. Any liability on the part of the Contractor in connection with the use of the software is excluded unless liability is mandatory under law in the event of intent, gross negligence or due to violation of material contractual duties, in which case Paragraph 9 shall apply accordingly.

The contracting parties agree that they are regarding 50 % of the annual contract value as contractually typical, foreseeable loss.

- 3.4 **Distributor License:** The Customer shall be granted the non-exclusive and non-transferable right to award sublicenses to Endusers ("Sublicensee"). The right to award sublicenses may be granted for a certain period of time or for certain regions only, subject to the stipulations in the Contract Data. The Customer shall impose obligations/prohibitions on the Sublicensee to provide for protection of the Software which are equivalent to the obligations/prohibitions set forth in the Contract Data. The Customer shall be responsible for the acts, defaults and neglects of the Sublicensee as fully as if they were the acts, defaults or neglects of the Customer. The Customer is obliged to inform us in writing about the quantity of sublicenses, the time of their award and the Sublicensee's identity. In addition the Customer is obliged to forward to us a copy of the sublicense agreement concluded with the Sublicensee.

#### 4 Software Type

If the Software Type is not specified in the Contract Data, the rights specified in Paragraph 4.2 (Runtime Software) shall apply to the Software.

- 4.1 Engineering Software (hereinafter referred to as "E-Software")

In the event that the Customer uses E-Software to generate its own programs or data containing parts of the E-Software, the Customer shall have the right, without having to pay any license fee, to copy and to use these parts of the E-Software as a part of its own programs or data, or to supply them to third parties for use. In the event that such parts are supplied to third parties for use, these parties shall be bound in writing to comply with stipulations corresponding to those in Paragraphs with respect to the above parts of the E-Software.

- 4.2 Runtime Software (hereinafter referred to as "R-Software")

- 4.3 If the Customer incorporates R-Software or any parts thereof into its own programs or data, it shall purchase a license with respect to the R-Software each time it installs or copies – depending on what is done first - its own programs or data containing R-Software or parts thereof, in accordance with the relevant intended Type of Use and on the basis of the Atos pricelist valid at that time. In the event that the Customer supplies the specified programs or data to third parties for their use, these parties shall be bound in writing to adhere to stipulations corresponding, with respect to the R-Software parts contained therein. The aforesaid shall not affect the Customer's obligation to purchase a license for the R-Software if the R-Software original is copied.

If the R-Software contains tools for parameterization/configuration and extended rights have been granted in this regard, this will be detailed in the readme file of the R-Software.

#### 5 Upgrade

If it is apparent from the Contract Data, e.g. by the addition "Upgrade" after the Software product name, that the Software is an upgrade for another software item (hereinafter referred to as "Source License"), the Customer shall also have the rights to use the Software granted to it with respect to the Source License as soon as this has been upgraded with the

Upgrade. The rights originally granted to the Customer to use the Source License end in conjunction with the upgrade measure. However, the Customer is entitled to undo the upgrading (downgrading) - if this is intended from a technical point of view - and to exercise the rights to use the Software granted to it with respect to the Source Version in accordance with Paragraph 2.6.

#### 6 Further Rights and Duties of the Customer

- 6.1 The Customer may make a copy of each component for back-up purposes. In so doing, the alphanumeric ID, trademark, and copyright notices must also be copied unchanged, and a list has to be kept indicating the location of the copies, which the Contractor may examine upon request. Documentation may not be copied.

- 6.2 If the Customer is entitled to transfer the right to use the SW granted to it to a third party, such transfer shall be on the proviso that the Customer concludes a written agreement with the third party in conformance with all of the conditions contained in this Section 6 and that it does not retain any copies of the SW.

- 6.3 If the Customer receives a data medium which, in addition to the Software, contains further software products which are released for use, then it shall have the right to use these released software products exclusively for validation purposes, for a limited period of time and free of charge. The period of use shall be limited to 90 days, commencing with the first start-up of the relevant software program unless a different period is specified e.g. in the readme file of the relevant software product.

- 6.4 These software products supplied exclusively for validation purposes shall be governed, mutatis mutandis, by the stipulations contained in these General License Conditions. The Customer shall not be authorized to pass on these software products separately, i.e. without the Software, to a third party.

#### 7 Retention of title, liability for defects as to quality

- 7.1 Ownership of the hardware products shall not be transferred to the Customer until full payment of the purchase price is made.

- 7.2 In the event of defects to the hardware products or data media that occur within the 12 months as of delivery (limitation period), as the result of a circumstance prior to delivery (e.g. defects in design or material), the Contractor shall provide subsequent performance at his discretion either by removing the defect or by making a new delivery.

- 7.3 In the event of defects, i.e. deviations from the specification laid down in the description, that occur within the 12 months as of delivery (limitation period), as the result of a circumstance prior to delivery, subsequent fulfillment comprises the obligation to transfer corrections/alterations, to such an extent as these exist in the case of the Contractor.

- 7.4 Liability for defects is excluded in the case of software products which the Customer has altered, even if a defect occurs in a part of the software product which has not been altered, unless the Customer proves that the alterations have no causality regarding the defect that has occurred.

- 7.5 The Customer must report any defects to the Contractor without delay.

- 7.6 If a defect is not corrected or worked around in a manner which is reasonable for the Customer, the

Customer shall retain the right to reduce the payment or to cancel the contract.

- 7.7 A negligible defect is irrelevant.
- 7.8 Paragraph 10.5 shall apply mutatis mutandis to any and all further claims for defects and to claims for damages or for reimbursement of costs.
- 7.9 Software, for which a Evaluation License has been granted in accordance with Paragraph 3.2 or a Beta-Test License in accordance with Paragraph 3.3 or which has been supplied for validation purposes in accordance with Paragraph 6.3, shall be governed by the following liability regulations only if Atos has willfully hidden the defect.
- 7.10 In the event that the Customer does not exercise its rights with respect to the Software, but decides to exercise said rights with respect to a Previous Version as per Paragraph 2.6, Atos shall only be liable for Errors in the Previous Version to the extent to which they also occur in the Software. Claims of the Customer with respect to Errors in Previous Versions which are in the Customer's possession and which arise from license agreements concluded for such Previous Versions, shall not be affected.
- 7.11 Contractor shall correct Errors at its own discretion by providing a new Software release in which only the relevant Error has been remedied ("ServicePack") or by supplying an upgrade in which the Error has also been remedied.
- 7.12 Contractor shall remedy defects in data media by replacing the defective unit with one that is in perfect working order. With respect to the procurement of data medium material, the replacement duty shall not include expenditure incurred in the replacement of lost data and information.

## **8 Prices, terms of payment**

- 8.1 The prices for the purchase of hardware products and use of software products, as well as other non-recurring prices, shall be due immediately after delivery/part delivery or upon the service having been rendered and submission of the invoice to the Customer. The Value Added Tax shall be added as a separate item.
- 8.2 For all types of payment, the date of completion shall be the day upon which the Contractor is able to access the funds.
- 8.3 In addition to the prices quoted above, the Contractor shall invoice the following separately in accordance with the valid list prices applicable from time to time.
- The diagnosis and correction of faults or damage resulting from improper handling or from other circumstances not attributable to the Contractor,
  - Work related to the duplication, compilation, and generation of the software products,
  - Service, setup, consulting, software engineering, and other support services desired by the Customer.
- 8.4 The Customer shall reimburse incidental costs, e.g. for necessary trips and any necessary overnight stays away from home, at the Contractor's current list prices.

## **9 Liability of the Contractor in respect of any infringement of Protective Rights of third parties**

- 9.1 If a third party claims damages from the Customer in respect of an infringement of industrial property rights or copyright (hereinafter referred to as "Protective

Rights") by deliveries/services provided by the Contractor, and if use of the deliveries/ services in Germany is thereby impaired or prohibited, the Contractor shall be liable until one year has elapsed since the start of the statutory limitation period as follows:

- 9.2 The Contractor shall, at his option and own expense, either amend or replace the deliveries/ services in such a way that they do not infringe the Protective Right but nevertheless essentially comply with the agreed specifications or shall hold the Customer harmless from license fees in favor of the third party for use of the deliveries/services. If this is not possible for the Contractor upon reasonable terms and conditions, he must take the deliveries/services back from the Customer against reimbursement of the price paid. The Contractor can demand reasonable compensation from the Customer for the use of the deliveries/services.
- 9.3 Conditions for liability on the part of the Contractor as per Paragraph 9.1 are that the Customer immediately informs the Contractor in writing of any claim of infringement of Protective Rights by a third party, that he does not acknowledge the alleged infringement, and that he conducts any disputes, including any out-of-court settlements, only with the consent of the Contractor. If the Customer ceases using the deliveries/services in order to minimize damages, or on other important grounds, he shall be obliged to point out to the third party that such cessation of use does not constitute any acknowledgement of the infringement of Protective Rights.
- 9.4 Insofar as the Customer himself is responsible for the infringement of Protective Rights, claims against the Contractor under Paragraph 9.1 are excluded. The same shall apply if such infringement stems from special requirements of the Customer, or from an application not foreseen by the Contractor, or result from the Customer changing the deliveries/services or employing them with deliveries/services not supplied by the Contractor.
- 9.5 Any and all further claims by the Customer because of any infringement of third party Protective Rights are excluded. The right of the Customer to rescind the agreement shall however, remain unaffected, together with the provisions in Paragraphs 10.4 through 10.7.

## **10 Liability of the Contractor**

- 10.1 If the Contractor fails to deliver the products ordered or to provide other agreed services on time, and the Customer can establish that he has suffered damages or cost as a result, the Customer is entitled to claim liquidated damages. The Contractor shall not be liable for delays due in particular, to force majeure, such as mobilization, war, situations of unrest, or similar events, such as strikes or lockouts. The liquidated damages shall be 0.5% of the sales price of the delayed products or service, for each completed week of delay up to a maximum of 5% of the respective price. If the Customer cannot use some of the products or services within the time or to the extent agreed, the liquidated damages shall be reduced accordingly.
- 10.2 Claims by the Customer for damages or reimbursement of costs because of the delay in delivery and claims for damages or reimbursement of costs in lieu of performance, which exceed the limits set out under Paragraph 10.1 shall be excluded in any case of delayed delivery or services, even after expiry

of any deadline for performance which may have been issued to the Contractor. This shall not apply where liability is mandatory due to intent or gross negligence. The right of the Customer to rescind the contract and the provisions stipulated under Paragraphs 10.4 through 10.7 shall remain unaffected. However, the Customer can rescind the contract pursuant to the statutory provisions only if the Contractor is responsible for the delay in delivery.

- 10.3 If so requested by the Contractor, the Customer is under a duty to state within a reasonable period whether he is rescinding the contract because of the delay in delivery or whether he insists upon delivery being made. Until such statement is made the Contractor shall remain entitled to perform the services and the Customer shall remain obliged to accept such performance.
- 10.4 The Contractor shall have unlimited liability for any injury to persons (injury to life, the body or health) for which he may be held responsible, and shall, in the event of any damage to property so attributable, pay compensation for the repair of such property up to the amount of EUR 250,000.00 per occurrence. If data media are lost or damaged, the due compensation shall not include any costs incurred in replacing any lost data or information.
- 10.5 The Contractor shall not be liable for claims for defects or claims for damages or for reimbursement of costs by the Customer, whatever their legal justification, which go beyond the terms of this agreement, in particular claims concerning disruptions to operation, loss of profit, loss of information and data or consequential damages, except where mandatory liability applies for example under the Product Liability Act or in the case of intent, gross negligence, or violation of material contractual obligations. Claims for damages or reimbursement of costs because of material contractual obligations are, however, limited to foreseeable damages, typical of such contracts, except in the case of intent or gross negligence.
- 10.6 The contracting parties agree that they are regarding 50 % of the annual contract value as contractually typical, foreseeable loss.
- 10.7 The provisions under Paragraphs 10.2 to 10.6 above do not change the burden of proof to the Customer's disadvantage.

## 11 Confidentiality, subcontracts

- 11.1 Both contracting parties shall undertake to treat all information that they receive and/or which becomes known to them about the respective other contracting party as confidential. They shall keep confidential all the operating and business secrets, which come into their cognizance within the framework of the individual contract. This obligation shall remain in force for an unlimited period after the end of the contract.
- 11.2 The contracting parties shall be obliged to instruct their employees and other persons entrusted with the implementation of the contract, which have access to contractual documents, in writing about the duty of confidentiality and shall ensure that these individuals undertake to observe this obligation.
- 11.3 9.3 The receiving party shall particularly be obliged not to directly or indirectly commercially dispose the information obtained somehow or other or to use it for the registration of an intellectual property right without the prior written consent of the disclosing party. All information obtained by the receiving party is confidential,

unless the disclosing party has explicitly marked it in writing as non confidential.

- 11.4 All written documents, also in the form of electronic da-ta files, belonging to information the receiving party obtained from the disclosing party remains property of the disclosing party. The receiving party shall always confirm in writing the receipt of such documents. By request of the disclosing party permissible at any time, the receiving party shall completely return such documents (including all copies, transcriptions, etc.), completely delete copies of software respectively and confirm this in writing to the disclosing party.
- 11.5 The receiving party shall be obliged not to pass the information obtained or parts thereof to third parties, unless the receiving party has been authorized to do so by closing a similar confidentiality agreement. Affiliated companies and their employees in terms of §§ 15 ff of the German Stock Companies Act [AktG] or other third parties, which the parties grant rights at the contract, are not third parties in the meaning of this Fig.
- 11.6 The obligations of Fig. 11 do not apply for such information or parts thereof, for which the receiving party is able to respectively verify that
- The information was already known to the receiving party before the receipt or
  - The information was made accessible to the receiving party by an authorized third party without a confidentiality agreement at any date or
  - The information was publicly known or generally accessible before the receipt or
  - The information became publicly known or generally accessible after the receipt without any responsibility of the receiving party for this or
  - The information was independently developed by the receiving party or
  - The receiving party as a result of a legal obligation to disclose, official or juridical directives or in order to pursue own claims against the disclosing party disclosed the information.
- 11.7 The Contractor may assign subcontracts but must impose obligations which correspond to those contained in Paragraph 11.1 on his subcontractors.

## 12 Reservation, Export license, Transfer of contractual rights and obligations, Subsidiary Agreements

- 12.1 The Contractor's obligations to fulfill this agreement is subject to the proviso that the fulfillment is not prevented by any impediments arising out of national and international foreign trade and customs requirements or any embargos or other sanctions.
- 12.2 The export of the subject matter of this contract and the documents may - e.g. by their nature or purpose - be subject to export control regulations (see also the notices in the bill of delivery and invoices).
- 12.3 The Contractor may assign accounts receivable under this Contract to a third party. In addition the Contractor may assign rights and obligations arising under this Contract to a third party provided that the Customer does not object in writing within four weeks of receiving a corresponding notification; the Contractor shall point this out in the notification.
- 12.4 Subsidiary agreements must be made in writing.

**13 Applicable law, settlement of disputes, place of jurisdiction**

- 13.1 German substantive law shall apply with the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- 13.2 All disputes arising out of or in connection with the individual contract, including any question regarding its existence, validity or termination, shall be settled, if possible, by negotiation of the contracting parties. If disputes cannot be settled on the respective project level, the contracting parties will escalate to next management level and if an amicable agreement cannot be found on that level, the contracting parties will escalate to the executive level.

The contracting parties agree to take legal action not until after 60 days after start of the dispute discussions at the earliest. Each contractual party's right to apply for a preliminary injunction shall remain unaffected by the obligation to perform the aforementioned dispute resolution procedure.

- 13.3 The place of jurisdiction shall be Essen, provided the Customer is a merchant ("Kaufmann") as defined by the German Commercial Code (Handelsgesetzbuch).