

# Terms and Conditions of Software Licence Agreement

## 1. General

1.1 Software, supplied by **ATM**, is governed by the terms and conditions of this standardised Software Licence Agreement unless otherwise explicitly stated to the contrary in these Terms and Conditions, in the offer or the order confirmation forwarded by **ATM**. These Terms and Conditions shall take precedence over any terms and conditions issued by **Licensee** at any time and, amendments or supplements by **Licensee** to these Terms and Conditions as well as collateral agreements are only binding if confirmed in writing by **ATM**. If not expressly stated to the contrary herein, the provisions of the "Terms and Conditions for Supplies and Services" of **ATM** (issue: May, 2001) are integrated part of this Software Licence Agreement.

1.2 Third Party Software, if and when supplied stand-alone and mentioned as such expressly in the offer or the order confirmation by **ATM**, is governed exclusively by the terms and conditions of the Third Party Producer.

1.3 Should "Free Software" being integrated in software supplied, **ATM** shall be obliged to state this expressly in the offer or order confirmation; in such a case **Licensee's** rights and obligations with regard to such incorporated portions are exclusively governed by the terms and conditions of the copyright owner of said "Free Software" (General Public Licence Conditions). Consequently rights and obligations as stated below do not apply to such "Free Software" portions. As "Free Software" – when integrated in the software program – is licensed free of charge, there is no warranty and liability obligations for said integrated "Free Software" program portion(s), even if modified by **ATM**, to the extent permitted by applicable law.

## 2. Usage and Transfer Rights

2.1 If not agreed upon in writing to the contrary, **ATM** hereby grants the **Licensee** a non-transferable and non-exclusive right to use the software. The **Licensee's** right to use the software is hereby granted solely under the terms and conditions stated in this Software Licence Agreement. Copyright over the software always and exclusively remains with **ATM** and/or its suppliers (Third Party Producers), which in particular retain(s) all rights to publish, duplicate, process, and make commercial use of the software.

2.2 Should software been granted **Licensee** in connection with a system, **Licensee** shall be under the strict obligation not to pass on the software to any third party except on the basis of licence agreements containing the obligation to use the software solely in connection with the system with which and for which the software had been supplied (Licensed Equipment).

2.3. In addition to this, **Licensee** shall be under an irrevocable obligation not to transfer the usage rights except under the same terms and conditions as those contained in this Software Licence Agreement.

2.4 If the software has been provided to **Licensee** on a loan basis (see: Clause 9), the software shall, under no circumstances at all, be passed on or even lent to any third party.

2.5 With the exception of loan licences, it shall not be allowed to transfer the licence usage rights to third parties unless the conditions defined in Clause 9 are imposed and provided that all printed or machine-readable copies are also transferred to the third party or that the **Licensee** has destroyed such copies.

2.5 If Run-Time Licences (Follow-Up Licences) have been granted in addition to a Start Licence (Development Licence) and, the rights over the Start Licence (Development Licence) are transferred to a third party the rights over the Run-Time Licences (Follow-Up Licences) shall be deemed to have been transferred to the third (as new **Licensee**) as well. A transfer of a Start Licence requires the prior written consent of **ATM**; however, such written consent cannot be unreasonably withheld by **ATM**.

2.6 Only the **Licensee** who legally holds a Start Licence (Development Licence) shall be entitled to transfer to third parties the Run-Time Licences (Follow-Up licences) granted by the **ATM**.

## 3. Restrictions

3.1 With the exception for security purposes, it is expressly prohibited to make any copy of the software provided unless **ATM** has given prior written permission.

3.2 In the case of Run-Time Licences (Follow-Up Licences), the **Licensee** shall have the right to prepare the by order confirmation agreed upon number of copies of the software.



3.3 If not agreed upon to the contrary in writing it is likewise not permitted to copy the documentation supplied with the software, nor to grant any third party the right to prepare copies (Follow-Up Licences) of the software supplied (Start Licence).

3.4 **Licensee** must have a reasonable process in place to ensure that the number of licensed software installations does not exceed the number of licences granted. **Licensee** shall, upon request, certify to **ATM** the number of licensed software installations. Having more licensed software installations than licensed is a material breach of this Software Licence Agreement.

3.5 Source code of licensed software and design documentation are never considered as part of the licensed software and are neither delivered nor under any circumstances licensed to **Licensee** hereunder. If agreed upon in writing **ATM** is prepared to place a copy of licensed software source code in escrow with an Escrow Centre, Public Notary or similar in Germany, according to their normal terms and conditions and, subject to **Licensee's** payment of escrow fees.

3.6 **Licensee** shall have no right to use the licensed software, in whole or in part, for any purpose other than specified herein. Specifically, **Licensee** shall not modify, adapt, translate, decompile, disassemble or reverse engineer licensed software or any part thereof in any form whatsoever, or attempt to derive source code or create derivative works therefrom, and shall not authorise or allow any third party to do any of the above.

#### 4. Obligation to keep records

4.1 The **Licensee** shall be under the obligation, for the entire duration of the use of the software, to keep records according to which it can be shown where, by whom (company, organisational unit, etc.), and on what system the software has been used. This obligation shall not expire until 3 (three) years after **ATM** is informed in writing that the **Licensee** has irrevocably waived all his usage rights and has destroyed or returned to **ATM** the software entirely.

4.2 If **ATM** can demonstrate its legitimate interest in so doing, or for instance that a third party (such as the producer of the software or parts thereof) is imposing the requirement, **ATM** shall be entitled to inspect such records.

#### 5. Ownership and Copyright notices

5.1 All title, ownership rights and intellectual property rights (including, however, without limitation, all copyright, confidential information, patents, design rights, trade names, trademarks, and database rights) in and to the licensed software shall remain exclusively in **ATM** and/or its suppliers (Third Party Producers). **Licensee** acquires no title, ownership rights or other interest in licensed software other than specifically granted herein by **ATM**. However, **Licensee** acquires the ownership rights to the medium upon which licensed software is delivered, if physical delivery is made by **ATM**.

5.2 **Licensee** shall not remove any trademark, trade name, copyright notice or other proprietary notice from licensed software. If the **Licensee** modifies the software and/or incorporates it into any other programme, any modification and any part of the software incorporated in another programme shall be likewise subject to the provisions of this Software Licence Agreement. The same applies to documentation supplied with the licensed software.

5.3 The **Licensee** hereby acknowledges that he will bear responsibility towards **ATM** for all and any injury, loss, or damage caused by any violation of title, ownership rights or other interest as above.

#### 6. Warranty/Liability

6.1 **Licensee** acknowledges and accepts that licensed software is a complex software product and may include defects. If not agreed upon otherwise in writing, **ATM** warrants software products according to its software classes as per clause 7 (below) within a 90 (ninety) day period after delivery. The warranty period of Run-Time Licences (Follow-Up Licences) is covered by the by the **Licensee** acquired Start Licence (Development Licence); should **Licensee** acquire at a later stage (further) Run-Time Licences (Follow-Up Licences), which shall be warranted separately, additional charges shall apply. The warranty period and consequently the services as per clause 6.2 and clause 6.3 might be extended upon written agreement between **ATM** and **Licensee**.

6.2 **ATM** warrants that the medium on which licensed software is recorded (if and only if physical delivery is effected) is free from defects in materials or workmanship under normal use and service. If **Licensee** discovers any physical defects in the medium on which licensed software is recorded, **ATM** shall replace within said 90 (ninety) day period of time the licensed software at no charge to **Licensee**, provided **Licensee** returns the defective medium with proof of supply by **ATM**.

6.3 If any material defect within licensed software, which shall specifically mean that the licensed software is materially and functionally inoperable, is discovered by **Licensee** and verified by **ATM** as such within **ATM's** test environment, **ATM** shall repair or replace such licensed software at no charge to **Licensee**, provided that **Licensee** reports such defect within said 90 (ninety) day period.



If **ATM** cannot, following commercially reasonable efforts, replace or repair materially defective licensed software, **ATM** shall refund the Licence Fee for the defective software, less an amount to be agreed upon for reasonable usage.

6.4 If not expressly agreed upon in writing to the contrary, the right of replacement is **Licensee's** only remedy and **ATM's** only liability for any defect in licensed software.

## 7. Warranty Service – Software Classes

7.1 The warranty obligations and therefore the warranty service rendered by **ATM** and/or its suppliers (Third Party Producers) shall be according to the classification of the software products supplied as follows:

### Software Class 1

Such software is a product of **ATM**, regularly up-dated and adjusted to **ATM's** standard hardware and software commodities, especially to **ATM's** own Operating Systems. No restrictions of warranty obligations shall apply. The warranty service shall be rendered by **ATM** according to clauses 6.2 + 6.3 above.

### Software Class 2

Such software is a product of **ATM**, specially designed and developed for a customer and, however, not any longer adjusted and up-dated. **ATM** makes sure, that the software is properly functioning during the warranty period.

### Software Class 3

Such software is a product of a third party, mainly COTS-products (COTS = Commercial Of The Shelf), not regularly up-dated and adjusted by the third party, and not supported by **ATM** at all; however, **ATM** sustain such product as far as it was acquired from **ATM** in connection with **ATM's** standard hardware and/or software commodities, enabling by this a proper performance of the software within the entire project unit during the warranty period.

### Software Class 4

Such software is a product of a third party and not supported by **ATM**; warranty and liability obligations exclusively according to Third Party Producer's terms and conditions; **ATM** shall be obliged to make such terms and conditions of the Third Party Producer accessible to the **Licensee**.

7.2 Unless the law mandatorily prescribes anything to the contrary, any legal warranty and liability obligation over and above the foregoing shall be expressly excluded, including any liability for consequential damages, such as, but not limited to, loss of production, loss of utilisation or loss of profit.

## 8. Maintenance, Support and Updating

8.1 Maintenance and Support Services are only provided by **ATM** pursuant to a separate 'Maintenance and Support Service Agreement'.

8.2 **ATM** reserves the right to sub-contract any or all Maintenance and Support Services to local partners, however, such sub-contracting does not relieve **ATM** of its obligation to ensure that such services are provided in accordance with the **ATM** standard.

8.3 **ATM** shall be entitled to write and supply up-dates of the software at its own free discretion. **ATM** shall not be under any obligation to provide up-dates to those licensees who are neither registered with **ATM** as licensees nor have acknowledged the provisions of this Software Licence Agreement and paid the up-dating fee.

## 9. Lending, renting, selling, giving away

9.1 If the software is being provided to the **Licensee** on a loan basis, it shall be identified as such by the letter "L" in the licence number or, otherwise expressly stated in the offer or order confirmation issued by **ATM**. In any such case, the software is only allowed to be used for internal evaluation and not for commercial purposes. The loan period shall come to an end no later than 3 (three) months after delivery, and can be extended for a further 3 (three) months, but only by prior written agreement.

9.2 If the **Licensee** has not returned the software at the end of the loan period, and/or has not informed **ATM** that he has irrevocably ceased to make use of it, **ATM** shall be entitled to charge the Licence Fee of the software.

9.3 For reasons connected with the law on licences, it is not permitted to rent, sell, or make a gift of the software to any third party unless **ATM** has been informed in advance and in writing and has received the licence fee from or on behalf of the receiving third party. The **Licensee** shall be responsible for ensuring the payment of the Licence Fee by or on behalf of said receiving third party.



9.4 This general ban on transfer shall also basically apply to Run-Time Licences (Follow-Up Licences) with the sole exception that the **Licensee** can transfer these once (for each copy) to a third party. Any further (or renewed) transfer of a Run-Time Licence (Follow-Up Licence) shall create the obligation to report the transfer and pay the Licence Fee of respective Start Licence (Development Licence).

## 10. Start of Usage Right

The **Licensee's** right to use the software and the rights over the Start Licence (Development Licence) and/or Run-Time Licence (Follow-Up Licence) shall not come into existence until the relevant Licence Fee has been paid, unless anything to the contrary had been agreed in writing. Deferred payment terms do not allow any other use than for internal evaluation purposes by the **Licensee**.

## 11. Duration of Usage Right

With the exception of software provided on loan, the licence is always granted for an indefinite period of time. However, the **Licensee** can bring it to an end by destroying the software, together with all copies, modifications, and parts of the software that may exist in other programmes or in any other form, and informing **ATM** accordingly and in writing.

The licence shall also expire if the terms and conditions of this Software Licence Agreement are not adhered to.

## 12. ATM's Licence Administration Department

**ATM's** Licence Administration Department shall be responsible for all questions connected with problems under the law on licences and in particular for those relating to the transfer of rights to third parties and the termination of Usage Rights. Should the address of **ATM's** Licence Administration Department not be mentioned in the offer or order confirmation forwarded by **ATM**, the point of contact for the Licence Administration Department can be obtained from **ATM's** Selling Department.

## 13. Export Restrictions and Requirements

13.1 The software supplied by **ATM** to **Licensee** is subject to all German and United States laws and regulations related to exports and to all administrative acts of said governments pursuant to such laws and regulations.

13.2 The software as such, including the documentation, as well as products made therewith, are submitted to export restrictions by the German and/or US governmental authorities, wherefore none of them shall be resold, diverted, transferred, transhipped or otherwise disposed of, in any other third country, neither in their original form nor after being incorporated through an intermediate process into other end-items, without first obtaining an Export Licence from the governmental authorities of **Licensee's** country. Should on **Licensee's** request software and documentation being exported by **ATM** to a third country, in such a case the Export Licence has to be obtained from the governmental authorities of said third country.

13.3 Any export without first having obtained such an Export Licence is hereby expressly prohibited.

## 14. Law and Place of Jurisdiction

14.1 Any dispute, of whatever nature, arising out of, or in connection with the contract shall be exclusively settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce in Paris/France for final verdict. The place of arbitration shall be Geneva/Switzerland; language of the arbitration procedure shall be English. The arbitration tribunal (three arbitrators, the chairman being a judge) shall decide in accordance with the Swiss Code of Obligations. Neither the 'Hague Convention to a Uniform Law on International Sale of Goods', nor the 'United Nations Convention on Contracts for the International Sale of Goods', nor any other multilateral or bilateral conventions and regulations nor, any national laws except as per clause 13 above, shall apply.

14.2 The verdict shall also include the statement regarding the costs of the arbitration procedure, indicating which Party has to bear such costs (incl. the costs of the lawyers of the succeeded Party) in total or in part.

14.3 **ATM** and **Licensee** irrevocably accept such a verdict as being definitely and waive expressly the right to appeal.

14.4 Despite of the foregoing provisions, none of the Parties shall be excluded from seeking interim measures of protection by temporary injunction from any competent ordinary court.

