

General Terms and Conditions of ITEMIS AG for Software License

itemis AG

Version 1.5, November 30, 2016

IMPORTANT! This English version is merely for the purpose of information. The legally binding text is the German text.

1. Applicability of the contractual conditions

- a. These General Terms and Conditions (hereinafter: "**GTC**") shall exclusively apply to the sale of proprietary software products of ITEMIS AG, Brambusch 15 - 24, D-44536 Lünen, Germany, for software license in the version retrievable for placing orders under legal.itemis.com/revisions/products/1.5/, provided that nothing otherwise is stipulated. Other contractual conditions shall not become substance of the contract, even if ITEMIS AG does not expressly object to them. Such shall also apply if, upon entering into similar contracts, no reference thereto is made.
- b. These GTC shall not apply to any ITEMIS AG open-source products.

2. Purpose of the contract

- a. The purpose of these GTC shall be the delivery of standard software and its related preparation for use, and the granting of usage rights contemplated under Clause 4.
- b. Services of another nature (e.g., software maintenance, setting up and installing software, training, etc.) shall not be the purpose of these GTC and shall be described in separate GTC of ITEMIS AG as necessary.

3. Services

- a. ITEMIS AG shall make the software products available to the person and/or party placing the order (the "**PPO**") for long-term usage in consideration of a one-time payment. Program-inclusive user documentation shall be readied for downloading over the internet and for subsequent installation by the PPO, provided that no other type of delivery or preparation is stipulated. No hand-over by data carriers shall be owed. The PPO shall initially obtain a fully functional version of the software product for a test period of thirty (30) days at no charge. After payment prior to expiration of the test period, the PPO shall obtain a license key by e-mail, in order to enable long-term usage of the software product after expiration of the test period.
- b. The PPO shall have no claim to hand-over of the source program.
- c. The product description retrievable at the time of ordering at YAKINDU Products (www.yakindu.de) shall be decisive for the scope, for the type, and for the quality of the services. Other information or requests shall become an element of the contract only if the contracting partner has agreed to such in writing or if ITEMIS AG has confirmed them in writing. Subsequent changes to the scope of the service shall require written agreement or written confirmation by ITEMIS AG.
- d. Product descriptions and depictions in test programs are specifications; however, they shall not be guarantees.
- e. In each instance, ITEMIS AG shall render all services in keeping with proven state-of-the-art technology.

4. Rights of the PPO in the software

- a. The software (program and user handbook) is legally protected. Provided that nothing to the contrary is expressly mentioned in Clause 4.b, ITEMIS AG shall have the right, in the relationship of the contracting partners, to copyrights, patent rights, trademark rights, and all other service intellectual property rights in the software and in other objects which ITEMIS AG hands over to or makes accessible to the PPO within the scope of initiating the contract.
- b. ITEMIS AG shall use each third-party software product within the parameters listed below. Furthermore all proprietary software products of ITEMIS AG make use of the third-party software product eclipse.org. Third-party software products shall be made available "as is" without any guarantees extending beyond the guarantee provided by law.

Third-party Software

YAKINDU Traceability

Apache FOP/POI, Artop, DOM4J, XMP Core, JNA, ([github](https://github.com)).com4j, Xstream

YAKINDU ModelViewer

JNA

YAKINDU EA-Bridge

JNA, ([github](https://github.com)).com4j, HXTT, jTDS Treiber

For the third-party software components mentioned here, deviating licensing conditions shall apply. The details for this purpose are itemized in the present document in an [Appendix](#).

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- c. Apart therefrom, the PPO shall acquire usage rights in the software in order to use it for the long term in its own operation for its own purposes, at the contractually stipulated number of work stations (a simple, non-transferable usage right). Such shall include the authorization to copy the programs on random access memory and on hard drives, and to create the back-up copies of the programs necessary for such a secure operation. The PPO shall not be allowed a usage of the software extending beyond the rights granted below.
 - d. If data carriers are delivered to the PPO, back-up copies shall have to be furnished with the copyright notice of the original data carrier, to the extent technologically possible. Copyright notices shall not be able to be deleted, modified, or eliminated.
 - e. It shall be permitted to copy the user handbook and other documents handed over by ITEMIS AG solely for internal operational purposes, if these documents were handed over to the PPO not as downloads but rather in printed form.
 - f. ITEMIS AG shall consent to the forwarding of the software (in whole or in part) to a third party under the following conditions:
 - i. The PPO (i) turns over the original data carrier (to the extent available) to the third party, deletes all other copies, including, but not limited to, those on data carriers, on hard drives, or on random access memory, (ii) surrenders the usage permanently, and (iii) confirms to ITEMIS AG in writing that it has fulfilled these duties.
 - ii. The third party declares to ITEMIS AG in writing that it, the third party, shall comply with the provisions of these GTC, including, but not limited to, Clause 4 vis-a-vis ITEMIS AG.
 - iii. There is no cause for opposition thereto.

The consent of ITEMIS AG shall require the written-form (*Schriftform*) to be effective.

- g. The PPO shall be able to decompile the interface information of the software only in accordance with § 69e of the German *Urheberrechtsgesetz* (the Copyright Act), and then only if it has informed ITEMIS AG of its intentions in writing and has asked for transfer of the necessary information with a notice period of at least two (2) weeks. Prior to each activation by third parties, the PPO shall procure for ITEMIS AG a written declaration from the third party stating that this party is directly obligated vis-a-vis ITEMIS AG to comply with the provisions established in Clauses 4 and 10.
- h. The rights in the software shall be turned over only upon tendering full payment due for the hand-over of the software to the PPO. Until then, the PPO shall have only a provisional, revocable usage right. ITEMIS AG shall, in particular, revoke this provisional usage right if the PPO does not pay the amount owed for the hand-over of the software or breaches Clause 4. In this event, ITEMIS AG shall be able to demand from the PPO the return of the objects handed over or the written assurance that they are destroyed, in addition to the deletion or destruction of all copies and the written assurance that such has taken place.
- i. All other exploitation activities, including, but not limited to, leasing, renting out, and dissemination in physical or non-physical form, shall not be permitted without prior written consent of ITEMIS AG.
- j. Contractual objects, documents, suggestions, test programs, and so forth belonging to ITEMIS AG, which are made accessible to the PPO before or after entering into the contract, shall be considered - if not freely accessible - as business and operational secrets of ITEMIS AG and shall be kept confidential pursuant to Clause 11.

5. Service periods and delays

- a. Details of times for service shall not be binding, unless ITEMIS AG has promised in writing that they shall be binding. ITEMIS AG shall be able to render partial services, insofar as the delivered or otherwise readied parts are for the PPO reasonably usable in isolation.
- b. Delivery and service times shall be extended by the period in which the PPO has delayed payment based on this contract, and by the period in which ITEMIS AG is hindered from making delivery or rendering service by circumstances for which it is not responsible, and by an appropriate preparation time after the hindrance has ended. These circumstances shall include *force majeure*, labor disputes, and the PPO's absence or insufficient cooperation.
- c. If the contractual partners subsequently agree to additional services which affect the stipulated times for service, these service periods shall be extended by an appropriate period of time.
- d. Warnings and deadlines set by the PPO shall require the written-form (*Schriftform*) in order to be effective. Any grace period must be appropriate. A period of at least two (2) weeks shall usually be appropriate to this end.

6. Payment

- a. The prices of the services shall follow from the respective order. All prices shall be fundamentally net prices,
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plus statutory value-added tax.

- b. Available methods of payment shall be direct transfer, PayPal, or credit cards. ITEMIS AG shall reserve the right to preclude individual payment methods.

7. PPO's duties to cooperate

- a. Prior to entering into the contract, the PPO shall have reviewed that the specifications of the software meet its wishes and requirements. The essential functionality characteristics and conditions of the software are known to the PPO.
- b. Upon receipt, the PPO shall be obligated to inspect all delivered products of ITEMIS AG without undue delay, in accordance with the provisions of the German *Handelsgesetzbuch* (the Commercial Code) (§ 377 HGB), and to lodge any complaints of discerned defects in writing, containing a precise description of the defect. The PPO shall thoroughly test each module for usability in the specific situation prior to beginning operational use. Such shall also apply to programs which the PPO obtains within the scope of the warranty.
- c. The PPO shall implement appropriate precautions for the event that the program, in whole or in part, does not properly function (e.g., by backing up data, by disruption diagnosis, and by reviewing results regularly). The PPO shall be responsible for ensuring operation of the work environment.
- d. The PPO shall support ITEMIS AG in eliminating defects, by specifically describing the problems occurring, by comprehensively informing ITEMIS AG, and by granting ITEMIS AG the time and opportunity necessary to eliminate the defects.
- e. At its own expense, the PPO is to provide the technical prerequisites necessary for remote maintenance in accordance with Clause 8.c and to grant ITEMIS AG access to its EDP facility, following appropriate prior notification. The PPO shall grant ITEMIS AG remote access to its systems provided that such is beneficial and not proscribed to the PPO due to compelling provisions of law.

8. Material and title defects

- a. The software shall have the stipulated quality, shall be suitable for the contractually anticipated or otherwise usual use, and shall have the usual qualities of software of this type; however, it shall not be error-free. If and to the extent that in the particular case no individual agreement regarding the qualities was entered into, the qualities represented in the respective product description shall be deemed stipulated. A functional impairment of the software which results from hardware defects, environmental circumstances, operator error, or the like, shall not constitute a defect. A negligible deviation in qualities shall not be taken into consideration.
 - b. In the event of material defects, ITEMIS AG shall initially be able to render subsequent performance. Subsequent performance shall take place at the discretion of ITEMIS AG (i) by means of eliminating the defect, (ii) by delivering a program which does not evince the defect, or (iii) by demonstrating possibilities for avoiding the effects of the defect. The PPO is to take on a new version of the program, equally valued, or the previous version of the program, equally valued, which did not contain the defect, if such is reasonable for the PPO.
 - c. ITEMIS AG, at its discretion, shall be able to remedy defects on site or at its offices. ITEMIS AG shall also be able to remedy defects under the prerequisites of Clause 7.e by means of remote access to the systems of the PPO.
 - d. ITEMIS AG shall be able to demand reimbursement for its work expenses occasioned by the PPO complaints of defect, to the extent that the PPO is not in the position to demonstrate proof of any defect and has ascertained the defects with the least amount of negligence.
 - e. With the exception of claims for compensatory damages in the event of malice or bad faith, warranty-based claims based on material defects shall lapse in one (1) year. In the event of sale via data carrier, the limitation period shall commence starting with the delivery of the software pursuant to the contract; in the event of sale via downloading from the internet, it shall commence after notification and release of the access data for the download site. If a licensing key is necessary for using the software, then the delivery of the licensing key shall be decisive for the commencement of the limitation period following the preceding delivery of the software pursuant to the contract or its readying in the download site.
 - f. ITEMIS AG shall guarantee that the usage of the software by the PPO pursuant to the contract shall not be opposed to any third-party rights. In the event of defects in title, ITEMIS AG shall guarantee that, at its discretion, it shall provide the PPO a legally unobjectionable opportunity to usage in the software or software of equivalent value.
 - g. The PPO shall instruct ITEMIS AG in writing and without undue delay in the event that a third party enforcing intellectual property rights (e.g., copyrights or patent rights) against it. The PPO shall authorize ITEMIS AG to pursue the dispute alone against the third party. If ITEMIS AG makes use of this authorization, the PPO shall not be able to acknowledge the third-party claims itself without the consent of ITEMIS AG. ITEMIS AG shall
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defend against the claims of the third party at its own expense and shall release the PPO from all costs associated with the defense of these claims, provided that these are not based upon duty-breaching conduct of the PPO (e.g., duty-breaching usage of the programs).

9. Liability

- a. ITEMIS AG shall tender compensatory damage payments or reimbursement of unavailing expenditures, regardless of legal grounds (e.g., for debt or similar obligations based in commercial law, for breach of duty, and for tortious acts), only to the following extent.
 - i. ITEMIS AG shall have unlimited liability for malice or gross negligence, for injury to life, body, or health, in accordance with the provisions of the German *Produkthaftungsgesetz* (the Products Liability Act) and to the extent of any guarantee assumed by ITEMIS AG.
 - ii. For slight negligence, ITEMIS AG shall be liable only to the extent that it has breached a material contractual duty (i) the fulfillment of which is absolutely necessary for performance pursuant to the contract, or (ii) the breach of which jeopardizes the attainment of the contractual purpose and upon compliance with which the PPO may regularly rely. The liability of ITEMIS AG in these cases shall be limited to the damages which are foreseeable and typical for the type of business in question.
 - iii. The liability of ITEMIS AG shall be limited in cases under Clause 9.a.ii to a maximum of EUR 200,000.00 per damage event, totaling EUR 400,000.00 for all of the client's damage events.
 - iv. ITEMIS AG shall have no further liability.
- b. The above limitation of liability shall also apply to the personal liability of employees, representatives, organs, and vicarious agents of ITEMIS AG.
- c. Objections based on contributory negligence shall remain available to ITEMIS AG.

10. Audit right

- a. The PPO shall enable ITEMIS AG to review upon demand whether the PPO is qualitatively and quantitatively using the program within the framework of the licenses it has acquired. For this purpose, the PPO (i) shall provide ITEMIS AG with information, (ii) shall guarantee access by ITEMIS AG to view relevant documents and files, and (iii) shall facilitate review by ITEMIS AG or by an auditor appointed by ITEMIS AG of the hardware and software environment employed.
- b. ITEMIS AG shall be able to carry out the review at the offices of the PPO during its regular business hours, or have it carried out by third parties who are sworn to silence. ITEMIS AG shall be careful to ensure that its on-site activities are minimally disruptive as possible to the business operations of the PPO.
- c. If it follows from the review that the number of licenses used exceeds the number of licenses acquired by more than 5 % (five percent) or that there are other usages not in keeping with the contract, the PPO shall bear the costs of the review. Otherwise, ITEMIS AG shall bear the costs of the review.

11. Non-disclosure

- a. "**Confidential Information**" shall mean all information and documents of each party, labeled as confidential or, based upon surrounding circumstances, are to be regarded as confidential, including, but not limited to, information concerning operational processes, business relationships, and know-how.
 - b. The parties are to keep such Confidential Information in confidence. This obligation shall continue to exist for a term of three (3) years following the order.
 - c. Excepted from this obligation shall be such Confidential Information,
 - i. which, upon entering into this contract, was already demonstrably known or thereafter became known to a third party, without the nondisclosure agreement having been breached or provisions of law or official regulations having been violated;
 - ii. which, upon entering the contract, is publicly known or thereupon is made publicly known, insofar as such is not due to a breach of this contract;
 - iii. which must be disclosed due to obligations under law or by order of a court or of an official agency. To the extent possible and permissible, the recipient obligated to disclosure shall notify the other party in advance and shall provide it the opportunity to make legal objections to the disclosure.
 - d. The parties shall grant access to Confidential Information only to such consultants who are subject to professional confidentiality or to whom obligations corresponding to the non-disclosure obligations of this contract have been previously imposed. Furthermore, the parties shall disclose Confidential Information only to those employees who have to know such for the performance of this contract, and shall also obligate these employees, to the extent permissible under labor law, to non-disclosure for the time period subsequent to their departure.
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12. Data protection/data security

The contracting partners shall observe the pertinent data protection regulations as provided by law. If and to the extent that ITEMIS AG, when rendering services, obtains access to personal data within the meaning of § 11 sentence 5 of the German *Bundesdatenschutzgesetz* (the Federal Data Protection Act, the "**BDSG**"), ITEMIS AG shall collect, process, or use these data only within the parameters of the instructions of the PPO as the "owner of the data". The PPO shall advise ITEMIS AG, without being requested to do so, if there exists, within the parameters of the remote access, any possibility of access to the personal data of customers, employees, or other concerned persons. For this purpose, it shall be possible to agree upon additional provisions as needed in the individual case, under a separate agreement in accordance with § 11 sentence 2 BDSG. Pursuant to § 5 BDSG, the contracting partners shall obligate their employees comply with data confidentiality.

13. Arbitration proceedings

The contracting partners agree to submit all differences of opinion arising from or in connection with this contract, or from enhancements to or restatements of this contract, which differences they cannot resolve between themselves, to the dispute resolution center of the *Deutsche Gesellschaft fuer Recht und Informatik* (the German Association of Law and Informatics, www.dgri.de), in order to settle the dispute provisionally or conclusively, in whole or in part, in accordance with the rules of arbitration as amended at the time of the initiation of the arbitration proceedings. The limitation period for all claims arising from the disputed matter shall be tolled from the time of the application for arbitration as of the end of the arbitration proceedings; § 203 of the German *Buergerliches Gesetzbuch* (the Civil Code) shall apply *mutatis mutandis*.

14. Final provisions

- a. The PPO shall be able to transfer to third parties any claims against ITEMIS AG based upon this contract only following written consent of ITEMIS AG.
 - b. The PPO shall be able to offset or to withhold payment due to defects only insofar as it is actually entitled to claims for payment due to material or title defects in service. For other defect claims, the PPO shall be able to withhold payments only in a proportional partial amount, taking the defect into consideration. The PPO shall have no withholding right if its defect claim is time-barred. Apart therefrom, the PPO shall be able to offset or to withhold payment only for undisputed or legally ascertained claims.
 - c. Amendments to and restatements of to these GTC shall require the written-form (*Schriftform*). Such shall also apply to the amendment to or deletion of this clause. The written-form (*Schriftform*) shall be satisfied only by transmitting the signed original.
 - d. German law is to be applied to this contract, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods dated 11 April 1980 (UN sales law).
 - e. The place of performance shall be the seat of ITEMIS AG. The sole venue shall also be the seat of ITEMIS AG, to the extent that the PPO is a merchant or a legal person under public law.
 - f. Should individual provisions of these GTC be ineffective, such shall not impair the effectiveness of the remaining provisions. In lieu of the ineffective provision, the contracting parties shall implement one which legally and financially is best attuned to the objective of the contract.
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Appendix A: Third-party provider software and the applicable license conditions:

eclipse.org

Eclipse public license, Version 1.0 (www.eclipse.org/legal/epl-v10.html)

Apache FOP/POI

Apache license, Version 2.0 (www.apache.org/licenses/LICENSE-2.0)

Artop

Artop software license based on AUTOSAR released material (ASLR) (www.artop.org/laslr.html)

DOM4J

dom4j license by MetaStuff (dom4j.sourceforge.net/dom4j-1.6.1/license.html)

XMP Core

BSD (www.adobe.com/devnet/xmp.html)

JNA

LGPL 2.1 (jtds.sourceforge.net/license.html)

(github).com4j

BSD/com4j license by Kohsuke Kawaguchi (github.com/kohsuke/com4j/blob/master/LICENSE.txt)

Xstream

BSD (xstream.codehaus.org/legal/epl-v10.html)

HXTT

HXTT software license (www.hxtt.com/license.html)

jTDS Treiber

LGPL 2.1 (jtds.sourceforge.net/license.html)
