



# **Specific Terms and Conditions for Software Use (License Agreement)**

RA Consulting GmbH

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## **§1 Scope of Application**

§1.1 RA Consulting provides Client with standardized software products, customer-specific adaptations, and new developments of software for an indefinite term in accordance with the individual contract, the Specific Terms and Conditions set forth below, and the supplementary General Terms and Conditions (GTC). In addition, the development of customer-specific software and customizing is subject to the Specific Terms and Conditions for Contracts for Services (STC Services).

§1.2 The scope of supplies and/or services is subject to the individual contract, the offer/quotation, or the order confirmation issued by RA Consulting. Unless otherwise agreed, the most recent software version will be shipped.

§1.3 As a rule, third-party software (including Open Source software) and third-party data supplied by RA Consulting as a part of its supplies and/or services are subject to the license and terms of use of such third-party provider. In all cases, Client is only granted such rights in and to third-party software that are required for its use in connection with the software created by RA Consulting. In the event of a gap in the license terms and conditions and terms of use of such third-party provider, the terms of use contained in the present Specific Terms and Conditions shall alternatively apply *mutatis mutandis*.

## **§2 Delivery and Passing of the Risk of Loss**

§2.1 Delivery of the software (computer program and documentation) shall either mean that RA Consulting provides the software to Client on data media or makes it available for retrieval in a network and notifies Client hereof (download).

§2.2 Client will receive the software in machine-readable code (executable version). Client may not claim the surrender of the source code.

§2.3 Client shall install the software in its system environment on its own.



## §3 Rights to Use of Client

§3.1 Subject to the condition precedent that the agreed compensation is paid, Client is granted a nonexclusive right to use the software. Client shall use the software only within the scope agreed by and between the parties. The right to use is restricted to the software indicated in the Agreement, including all cases where Client is physically able to access additional software components. With regard to the contract types License/Purchase Agreement or Contract for Services, Client is granted the right to use for an indefinite term in each case. The use of the software is subject to the following terms and conditions:

- a) RA Consulting grants Client a non-exclusive, indefinite right, restricted to one computer per license, to use the software within its business operations for its own purposes and in accordance with the terms and conditions of the present Specific Terms and Conditions for Software Licenses and the relevant individual contract.
- b) Client shall use the software only for its immediate own purposes, in particular, for inspecting the goods it has produced. In particular, the operation at a data center for the benefit of other organizations or the use of the software for training individuals that are not employed by Client or the use of the software by such individuals is not permitted.
- c) With regard to evaluation installations, the rights to use of Client are restricted to such acts that serve the evaluation of the functionality of the software and the suitability for Client's operations. In particular, adaptations, decompiling, a productive use of the software, or the preparation of the productive use, respectively, are not permitted.
- d) Client shall not rent, lease, or make the software available to third parties on a temporary basis, use the software in a time-sharing arrangement or in connection with online services (ASP), for data center or outsourcing arrangements, or for any other paid or unpaid kind of use of the software



for the benefit of third parties unless prior written consent has been obtained from RA Consulting.

- e) The sub-licensing of the software, i.e., the grant of rights to use to third parties without relinquishing Client's own license, is not permissible. The full transfer of the license to third parties is governed by § 4.
- f) Client may backup data based on the state-of-the-art and make any backup copies of the software required. A backup copy on a moveable data medium shall be marked as such, and the copyright notice of the original data medium shall be attached to it. Client shall not change, obliterate, or remove copyright notices or other notices, numbers, marks, or features serving the purpose of program identification.
- g) Client is only authorized to modify, extend, and adapt the software in those areas predefined by RA Consulting for this purpose and otherwise only in those cases and to such extent permitted by the German Copyright Act. Prior to any decompiling for the purpose of achieving interoperability of the software, Client shall request RA Consulting in writing to make available the necessary information and records within a reasonable period of time. Decompiling is not permitted until the time period granted for providing information and records has expired fruitlessly and only within the statutory limits (§ 69e Copyright Act). Prior to retaining any third party, Client shall furnish a written declaration to RA Consulting in which such third party represents and agrees directly vis-à-vis RA Consulting to be bound by the provisions set forth in the present Specific Terms and Conditions.

§3.2 In the event that Client is provided with a software version that replaces a previously supplied version, e.g., in discharging subsequent improvement obligations or as part of the software maintenance services, Client's rights pursuant to § 3 and § 4 shall expire with regard to the previously shipped and, thus, replaced software as soon as Client starts to use the new software in its productive business operations (go-live). In the event that RA



Consulting modifies or extends the software on behalf of Client, Client has the same rights of use in the modified or extended version as it had in the standardized software of RA Consulting and, in particular, Client is not granted any right to grant sub-licenses to third parties.

§3.3 Any use of the software beyond the provisions of the present Specific Terms and Conditions or the relevant Agreement requires prior written consent from RA Consulting. In the event that the software is used without this consent, RA Consulting may charge Client for the more extensive use in accordance with the then-valid price list. RA Consulting reserves the right to prove that it suffered a higher damage and/or loss. Client shall notify RA Consulting of any change affecting its right to use or the compensation (e.g., impending sub-licensing) in writing and in advance.

## §4 Transfer

§4.1 Client shall transfer the software that it acquired for its own use for an indefinite term (including any software that it may have obtained under subsequent licenses or as part of the maintenance services) to a third party only in its entirety (multiple seat licenses only for all seats as a whole) and provided that Client abandons the use of the software fully and finally. The temporary or partial transfer of the right to use to third parties or the transfer to several third parties is not permitted. The same applies in the event of any reorganization of a company or organization.

§4.2 Any transfer of the software requires prior written consent by RA Consulting. RA Consulting shall grant its consent, provided, however, that Client submits a written declaration of the new user in which the latter agrees vis-à-vis RA Consulting that it will comply with the Terms of Use and Transfer applying to the software, and if Client informs RA Consulting in writing that it has transferred all original software copies to the third party and has deleted or will delete all other copies that it may have made. In no event may Client continue to use the software in its live business operations following a transfer to a third party. Client shall provide the new user with the original



data media and documentation. Upon request by RA Consulting, Client will declare in writing that it has not retained any software of RA Consulting. RA Consulting may demand from Client and from the third party to whom the software has been transferred a notarized affidavit in support of the written declarations required under this paragraph; in the event that Client or a third party refuses such affidavit, consent may be withheld or revoked. RA Consulting has the right to verify whether the software has been deleted following the transfer in the form of an audit conducted at Client's site. Upon request of Client, independent experts will have to be commissioned with this task. RA Consulting may also refuse its consent in the event that the use of the software by the new user collides with its legitimate and reasonable best interests (e.g., transfer to a competitor).

## **§5 Activation, Registration, and Obligations of Client**

§5.1 Any user of the software will have to register as a client with RA Consulting.

When the software is directly shipped by RA Consulting, the registration will be handled in the course of the order fulfillment process, otherwise in connection with the transfer pursuant to § 4.

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## **§6 License Fee**

RA Consulting shall provide Client with the software in consideration of the license fees indicated in the individual contract or the quotation. § 5 of the GTC shall apply in all other regards.



## **§7 Warranty and Liability**

§7.1 If the software was directly shipped from RA Consulting to Client, the warranty clauses set forth in the RA Consulting GTC shall apply (confer § 6 and § 7 GTC).

§7.2 If the software was shipped by an intermediary (vendor) to a client or end-user, such client may only assert its warranty claims against such intermediary.

§7.3 The liability obligations of RA Consulting are subject to § 8 of the GTC.

## **§8 Termination of Right to Use**

In all cases where Client's right to use is terminated (e.g., by rescission) Client shall return all supplies and copies of the software and delete stored software, unless it is bound by a longer statutory duty to retain business records or Client has a legitimate interest in a further possession (e. g., since claims are based on the software or for the defense against claims). Client shall confirm its compliance with this requirement to RA Consulting in writing, upon request of RA Consulting also by way of a notarized affidavit. RA Consulting also has the right to request an audit pursuant to § 4 par. 2 for the purpose of verifying compliance with this section.