



# **Special Terms and Conditions with regard to Software Components**

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## Article 1 Scope of application, Provision

- 1.1 RA Consulting shall provide the Client with the Software Components for Client- and Server applications (hereinafter referred to as "Software Components"), - which Software Components are stated in the offer, the order confirmation of RA Consulting and/or a separate written agreement (hereinafter collectively referred to as "Individual Contract"), and in the service description -, to be used in accordance with the Individual Contract, the Special Terms and Conditions specified hereinafter, and as a supplement to the General Terms and Conditions (GTC).
- 1.2 The scope of delivery and services shall be determined by the Individual Contract and the service description. Unless agreed otherwise, the Software Components shall be delivered in the version that is currently valid at the time of delivery. Delivery shall be effected by data transfer, by data download or on data carriers. Since the Software Components, as a rule, are not used directly by End Users, documentation is not included in the scope of services, and the service description in the respective Individual Contract is considered documentation. Should the Client additionally require documentation (subject to remuneration), the Contractual Parties must expressly agree on this in an Individual Contract.
- 1.3 Insofar as RA Consulting also supplies Third-Party Software Components (such as Open-Source software) from Third-Party Manufacturers, the license and usage conditions of the Third-Party Manufacturer shall prevail. In principle, the Client shall only receive the rights to the Third-Party Software Components which are provided to him in the respective license and usage conditions of the Third-Party Manufacturer and are necessary for the use thereof in conjunction with the Software Components. If the license and usage conditions of the Third-Party Manufacturer contain gaps, the usage stipulations in these Special Terms and Conditions shall apply as an alternative.



- 1.4 No stipulation in these Special Terms and Conditions obliges RA Consulting to maintain the Software Components or to provide support services therefor.

## § 2 Usage rights of the Client

- 2.1 The exclusive ownership-, usage- and exploitation rights to the Software Components shall remain with RA Consulting and/or its licensors. The scope of the usage rights granted shall be specified in the Individual Contract. Unless otherwise agreed therein, RA Consulting shall grant the Client, subject to the payment of the remuneration agreed upon for that purpose, a non-exclusive and non-transferable right to use the Software Components for his own application purposes, unlimited in time, and geographically restricted to the Member States of the European Union (EU) or the European Economic Area (EEA) (hereinafter also referred to as "License"). Each License or number of Licenses shall require an agreement with respect to its use to be drawn up in advance. The usage authorization shall be limited to the Software Components specified in the Individual Contract, even if the Client can technically access other Software Components. Furthermore, the following shall apply:
  - a) The Client may use the Software Components, as detailed in the Individual Contract, only for his own direct purposes and for the scopes of use defined in the Individual Contract, in particular for integration into Client Products produced by the Client. In particular, the data-center operation for other companies, or the use of the Software Components for training persons who are not employees of the Client or the use thereof by such persons, is not permitted.
  - b) In the context of Test Installations, the Client's usage authorizations shall be limited to such actions that serve the determination of the applicability of the Software Components and their suitability for the Client's operations. In particular, editing, decompiling, a productive operation of the Software



Components or the preparation for such a productive operation are not permitted.

- c) Renting-out or other forms of temporary assignment, time-sharing, use in the context of online services (ASP), and the data center- or outsourcing operation, or any other use of the Software Components for Third Parties, regardless as to whether against payment or not, shall require the prior written consent by RA Consulting.
- d) The sub-licensing of the Software Components, i.e. the granting of usage rights to Third Parties without relinquishing one's own License, is prohibited. The complete transfer of the License to Third Parties is governed by Article 7.
- e) The Client may perform data backups in accordance with the rules of technology and create the necessary backup copies of the Software Components for this purpose. A backup copy on a portable data carrier must be marked as such and provided with the copyright notice of the original data carrier. The Client may not change or remove copyright notices or other features serving to identify the program.
- f) The Client may only carry out modifications, extensions and reworking of the Software Components at the code sections provided by RA Consulting for that purpose, and to the extent expressly agreed upon in the Individual Contract, and otherwise only in the cases and to the extent permitted by the German Copyright Act. Prior to a decompilation for the purpose of establishing the interoperability of the Software Components, the Client shall request RA Consulting in writing, setting a reasonable deadline, to provide the necessary information and documentation. Only after the ineffective expiry of this deadline, shall the Client be entitled to decompilation within the legal limits (Article 69e of the German Copyright Act).

- 2.2 In the context of the License specified in more detail in the Individual Contract, the Client may, where necessary, copy, modify and/or expand the Software Components and integrate them into his own devices, hardware and/or software (hereinafter referred to as "Client Products") which are



specified in more detail in the Individual Contract. The Client has the right to reproduce the object codes that are created with the aid of the Software Components and/or the Software Components that are integrated as object codes, and to distribute them as an integral part of the Client Products; any potentially delivered source codes may neither be reproduced nor passed on in any form. Furthermore, the Software Components (including their object code or source code) may not be passed on or published by the Client in any form other than the integration into the Client Products.

- 2.3 A transfer of the usage right to Third Parties without prior explicit written consent by RA Consulting is prohibited. Details are stipulated in Article 7.
- 2.4 A usage right (company- or group License) granted to the Client for use by the entire company or the entire group of companies of the Client is not transferable. The usage right to the Software Components expires, if the Client or the companies affiliated with the Client leave the group of companies, or if the Client is merged with or taken over by other companies, especially when competitors of RA Consulting take over the Client or companies affiliated with the Client.
- 2.5 For Third-Party Software Components that RA Consulting (co-)provides to the Client, the License Terms and Conditions of the respective Third-Party Manufacturer shall prevail - unless agreed otherwise. Alternatively, and in addition, the stipulations in Article 2 shall apply. For Open-Source software, which RA Consulting (co-)provides to the Client, the respective applicable Open-Source License Terms and Conditions with regard to the granting of usage rights and the relationship to the Third-Party Manufacturers and/or developers of the Open-Source software shall apply exclusively. Upon specific request, RA Consulting shall provide the Client with the License Terms and Conditions; furthermore, they are also provided in a text file in the installation directory.
- 2.6 Any use of the Software Components (including exploitation and transfer) that goes beyond the regulations stipulated in these Special Terms and



Conditions or the relevant Individual Contract shall require the express written consent by RA Consulting. In particular, the Client is prohibited from creating programs similar to the Software Components provided, or from creating programs derived from said Software Components, as well as from the distribution thereof or from any other independent exploitation or transfer thereof. Any use without the consent by RA Consulting shall entitle RA Consulting to invoice the Client for this further use, in accordance with the respective valid price list. RA Consulting reserves the right to compensation for further damages and the assertion of further rights. The Client is obliged to notify RA Consulting in advance in writing of any change affecting his usage right or the corresponding remuneration.

### **Article 3 Implementation of the contract**

- 3.1 The Software Components shall be put into operation by the Client on his own responsibility. In this context, the Client shall check these Software Components prior to the productive use thereof, under his own usage conditions. Upon request and against payment of the expenses incurred thereby, RA Consulting is willing to support the Client in this endeavor in accordance with the GTC and on the basis of the price list valid for the Client at the time.
- 3.2 The Contracting Parties shall provide the respective other Contracting Party with a designated contact person responsible for handling the contractual relationships. The respective contact persons themselves must be authorized within their respective company structure to make decisions in connection with the handling of the contractual relationships or to bring about such decisions without delay. These decisions shall be recorded in writing by the contact person appointed by RA Consulting. The designated contact persons of the Contractual Parties shall each be available to the respective other Contractual Party, for all necessary information. The contact persons shall be called in by the Contractual Parties, if required, and as far as required, for the execution of the contract.



## Article 4 Protection of the Software and other obligations of the Client

- 4.1 As a rule, the Client does not receive any rights to the source code of the Software Components and cannot demand the surrender or disclosure thereof. Only when explicitly agreed in the Individual Contract, can the Client exceptionally obtain the Software Components from RA Consulting in the form of source code, in order to process the Software Components for the Client's own purposes (cf. Article 2.2). Any disclosure of information about the Software Components in the form of source code to Third Parties, by the Client, is prohibited. The same applies to making the Software Components accessible to Third Parties or passing them on to Third Parties. This also applies to versions modified, expanded and/or integrated by the Client.
- 4.2 The Software Components are a trade secret of RA Consulting. The Client is obliged to protect the potentially handed-over source code and any documentation pertaining thereto against disclosure and misuse, by implementing appropriate secrecy measures. In particular, it shall be ensured that these Software Components are only stored on an IT system for the duration of necessary editing. Furthermore, such source code shall be stored in such a manner that it is only accessible to a limited number of authorized users.
- 4.3 The Contracting Parties agree that the provided Software Components, including any documentation and further documents, and also in future versions, shall be protected by copyright in favor of RA Consulting. In this respect, the Software Components shall also be subject to precautions being provided by the Client against any misuse, for an unlimited period of time.
- 4.4 The Client is restricted, within the scope of his rights according to Article 2.2, to integrating or connecting only such Open-Source software into the Software Components or to connecting only such Open-Source software with the Software Components, of which the Open-Source License Terms and Conditions belong to a License family which is also used by RA Consulting with regard to the Software Components or parts thereof (e.g. as



stated in the text file in the installation directory, cf. Article 2.5), or to the extent that such integration or connection has been explicitly permitted by RA Consulting in writing. More particularly, the use of Open-Source software, which falls under Open-Source License Terms and Conditions with a so-called copyleft effect (e.g. from the (L)GPL License families), is prohibited.

- 4.5 Third Parties, who act as vicarious agents on behalf of the Client, may only be granted access to the Software Components for administration, further development and operating purposes, provided that they (i) contractually bind themselves in writing, verifiable upon request by RA Consulting, to these Special Terms and Conditions, and (ii) delete all copies of the Software Components and cease the use thereof after the order for the Client has been completed.
- 4.6 In order to enable RA Consulting to improve and further develop the Software Components at its own discretion, the Client shall promptly inform RA Consulting in writing about defects or errors in the Software Components, and comprehensibly document the circumstances as to how the defect or error occurs. In addition, in particular Articles 6 and 7.5 of the GTC shall apply.
- 4.7 The Client shall acknowledge that he has a special testing obligation, which includes in particular the interaction of the Software Components with the Client Products. The Client will therefore carefully test the Software Components of RA Consulting according to the state of the art, especially prior to using them in applications that may pose a danger to life and limb or that may lead to property or financial damage.

## **Article 5 Warranty and liability**

- 5.1 The regulations for the remedying of defects specified hereinafter shall only apply to the delivery of such Software Components that have been released for the productive use by the Client. If advance deliveries of the Software Components or test licenses are handed over to the Client, the warranty and



liability of RA Consulting is, where necessary, governed by separate contractual conditions for the handing-over of test software.

- 5.2 The Client shall support RA Consulting with the remedying of defects, unless such support requires an unreasonable and burdensome effort in individual cases. In particular, upon request of RA Consulting, the Client will transmit the Software Components in the concrete version as they were being used when the defect occurred, to RA Consulting, and will permit a testing of corrective measures or replacement deliveries by RA Consulting in the Client's environment.
- 5.3 Functional impairments of the Software Components resulting from the Client's hardware or software environment, the Client's products, faulty data, improper use or use contrary to the contract (contrary to the description of services or documentation), modifications/adaptations of the Software Components by the Client, an exceeding of the rights of use, or from other circumstances within the Client's area of responsibility, do not constitute a defect, unless the Client proves that the defect is independent of the circumstances stated above.
- 5.4 RA Consulting may demand remuneration for the expenses incurred as a result of the notification of non-existent defects or the notification of defects that do not have to be remedied by RA Consulting, unless the Client bears no responsibility for the incorrect notification.
- 5.5 In the internal relationship between the Contracting Parties, the Client shall bear all damages resulting from product liability or producer's liability, unless RA Consulting is liable according to Articles 6 and 7 of the GTC. In this respect, the Client shall indemnify RA Consulting, upon first request, from claims of Third Parties.
- 5.6 If the Software Components were provided to the Client directly by RA Consulting, in addition, the General Terms and Conditions of RA Consulting shall apply to the warranty and liability (see Articles 6 and 7 of the GTC). If the



Software Components were provided to an (End) Client by an Intermediary, said Client shall only be entitled to warranty claims against the Intermediary.

## **Article 6 Remuneration (License fee), support services**

- 6.1 The remuneration for the provision of the Software Components shall be due upon delivery of the Software Components, regardless of whether the contract also includes installation, adaptation or other services (in accordance with the GTC). Details of the remuneration shall be governed by the respective agreements in the Individual Contract and shall be linked, for example, to the respective Software Component(s), Client product and/or company of the Client.
- 6.2 Insofar as support services (support, instruction, training, implementation and other consulting services) are requested by and agreed upon by the Client, they shall be remunerated separately according to proven expenditure, unless agreed otherwise in the contract. The remuneration shall be based on the price list valid at RA Consulting.

## **Article 7 Passing on the Software Components**

- 7.1 With the exception of the contractually stipulated or assumed transfer together with the Client Products, the Client may only transfer the Software Components to a Third Party upon the simultaneous, complete and final surrender of his own use of the transferred Licenses. The transfer of use to Third Parties for a limited time-period against payment (leasing) or without payment (lending) shall be prohibited, regardless of whether the Software Components are transferred in corporeal or incorporeal form. An isolated passing on of License keys prior to receiving or downloading the Software Components – regardless of whether this concerns individual or all License keys made available to the Client - is not permitted.
- 7.2 Any passing on of the Software Components shall require the written consent by RA Consulting. RA Consulting shall consent, if (i) the Client assures RA Consulting in writing that he will pass on all original copies of the Licenses to-



be-passed-on to the Third Party and delete all copies he has made himself, and (ii) the Third Party declares in writing his agreement to the terms of use and to the terms for passing on the Software Components, as stipulated above.

## Article 8 Miscellaneous

- 8.1 The Client alone shall be responsible for the legally-compliant use of the Software Components. The Client assures that he will comply with the relevant legal or official regulations and requirements (e.g. for data protection or with respect to export control).
- 8.2 RA Consulting is subject to the Export Control Laws and Regulations of Germany and the European Union. The Client confirms that the Software Components will not be sent to, transmitted to or executed in Third Countries, either directly or indirectly (nor integrated into Client Products), and that he will not use, in any way or manner, the Software Components in violation of applicable laws, regulations or agreements, in particular with respect to export control.
- 8.3 RA Consulting reserves the right (i) to change the functionalities as well as the technical design of the Software Components in future versions or, if necessary, to pass on changes made by Third-Party Manufacturers, e.g. to add new functions, (ii) to further develop the Software Components, (iii) to make available updates, upgrades and other actualizations of the Software Components, as well as (iv) to discontinue further development of the Software Components in their entirety or in part. In any case, the Client shall not have any legal claim thereto. Should the Client receive a new version of the Software Components, which new version replaces a previously provided version of the Software Components, the Client's rights with respect to the previously provided and now replaced version shall expire as soon as the Client uses the new version. The Client is obliged to implement significant new versions, which are designated by RA Consulting accordingly as



mandatory updates or the like, for example in the case of security-critical patches.