GENERAL TERMS AND CONDITIONS
RELATING TO THE USE OF SOFTWARE
of IT-POWER SERVICES GMBH (LICENSOR)

PREAMBLE

Licensor offers several software programs. Licensee wishes to use these software programs for business use only.

§ 1
DEFINITIONS

1.1   "Program" denotes software programs developed by IT-Power Services.

1.2   "Royalties" encompass all the consideration owed by the Licensee for the Program.

§ 2
LICENSE GRANT

2.1   The Program is copyrighted by IT-Power Services GmbH (Licensor) and licensed to Licensee, not sold.

2.2   Licensor grants Licensee a nonexclusive, non-transferable license to

   2.2.1   download, install and use the Program solely for the use described in the detailed Program specifications and

   2.2.2   make a back-up copy

on condition that

   2.2.3   the system software and the Program are interoperable (see § 3);

   2.2.4   Licensee has lawfully obtained the Program and complies with the terms of this Agreement;

   2.2.5   Licensee does not copy (but see § 2.2.2), modify, distribute, transfer, sublicense, sell, rent or lease the Program as well as does not reproduce the Program (permanent or temporary, wired or wireless) by any means in any form in part or in whole;

2.2.6   Licensee does not reverse assemble, reverse compile, otherwise translate or reverse engineer the Program in part or in whole except when explicitly permitted in writing by Licensor;

2.2.7   Licensee does not use components, files, modules, audio-visual content of the Program apart from that Program.

§ 3
DOWNLOAD AND TRIAL VERSION

3.1   To check whether the system software and the Program are interoperable, Licensor offers and recommends Licensee a royalty-free trial version of the Program. The download of the Program is only operable if the system and the Program are interoperable.

3.2   If the system software and the Program are not interoperable, the contract cannot be effected. Licensor is not liable for any damage and/or loss of data, inaccuracy of data or technical faults, special, incidental, indirect or consequential damages or lost profits, business, revenue, goodwill or anticipated savings caused by the trial version. The Program should be deleted in this case.

3.3   To run the full version of the Program Licensee receives an activation code within two weeks upon payment of the royalties.

§ 4
INSTRUCTIONS

4.1   A user manual and installation instructions shall be delivered with the Program. Licensor is obliged to follow the user manual and the installation instructions.

4.2   Upon Licensee's request Licensor may offer (as far as available)

4.2.1   personal installation of the Program,

4.2.2   providing the Program on the Licensor's server,

4.2.3   altering the Program according to Licensee's wishes.

§ 5
SCOPE OF USE / NOTIFICATIONS

5.1   Licensee has the right to install the Program once and use it on one device or on the individually agreed amount of devices only. This includes loading and running, storing the program in the working memory and other storage processes associated with use as intended. The Licensee does not receive the right to grant user rights to third parties.

5.2   Licensee does not have the right to use the Program in a network configuration, in the Internet, a network or modem application exceeding his own operation or to make further copies thereof beyond those mentioned in § 2.2.2. Licensee further does not have the right to provide the Program to third parties or to modify it in any way, in particular to remove the software protection.

5.3   Licensee shall, upon reasonable advance notice by Licensor, provide Licensor with information required by Licensor to control that the Licensee complies with the scope of the license granted in this Agreement. Licensor shall have the right, upon reasonable advance notice to Licensee, to conduct an annual audit on site of the Licensee to confirm Licensee's compliance with this Agreement. Licensee agrees to fully cooperate with any such audit, provided that Licensor has committed itself by separate agreement prior to the audit to strict confidentiality as well as protection of all data received in the course of such audit. To the extent that an audit reveals unauthorized use of the Program or Third Party Software, Licensee shall be responsible for procuring additional licences to remedy such unauthorised use, without prejudice to Licensor's other rights assigned to it by law or by this Agreement.

§ 6
ROYALTIES

6.1   The cost for the first download of the Program and for the annual license renewal shall be determined by individual offer.

6.2   The additional services according to § 4 – as far as available – shall be paid by Licensee under the then valid fees of Licensor.

6.3   The Licensor reserves the right to adjust the royalties, especially the annual license renewal fee, at regular intervals.

§ 7
GUARANTEE

7.1   Licensor guarantees that the Program is not subject to the rights of third parties, in particular that its use does not infringe patents, copyrights or other intellectual property rights of third parties.

7.2   Licensee shall instruct all employees and agents having access to the Program about the obligations under this Agreement. Licensee is obliged to prevent the unauthorized access to as well as the copying and decompiling of the Program by appropriate measures.

7.3   Licensee shall further subject any legal successor to the obligations under this Agreement, if the Program is sold or provided to third parties in any way.

§ 8
LIMITATION OF LIABILITY

Licensor is not liable for any failures eventually held in the Program, damage and/or loss of data, inaccuracy of data or technical faults, special, incidental, indirect or consequential damages or lost profits, business, revenue, goodwill or anticipated savings; further Licensor is not liable for attainment of the purpose intended by the Licensee. In addition, Licensor is not liable for any inaccuracies caused by the Program.

§ 9
PROGRAM IMPROVEMENTS

9.1   Licensor may offer to Licensee (but is not obliged thereto) all innovations, improvements and new features of the Program as well as new developed subprograms of the Program for licence. The price shall be in accordance with the price list of Licensor.

9.2 Licensor may offer to Licensee (but is not obliged thereto) Updates to guarantee the functionality of the Program. Licensor is not obliged to provide such Updates within a certain time period.

§ 10
TERM AND TERMINATION

10.1 The Agreement is entered into for the duration of the first license (signing of this Agreement until December, 31st of the year of signing this Agreement) and is extended calendar year by calendar year upon the annual available renewal of the license in due time. If Licensee does not terminate this Agreement by August, 31st at the latest by written notice, the license shall be renewed for another year. Licensor reserves the right not to offer a license renewal.

10.2 Licensor may terminate the Agreement and therefore Licensee's license if Licensee fails to comply with the terms of this Agreement.

10.3 If the license is terminated or not renewed for any reason by either party, Licensee agrees to promptly discontinue use of and destroy all of Licensee's copies of the Program. Any terms of this Agreement that by their nature extend beyond termination of this Agreement remain in effect until fulfilled, and apply to both parties' respective successors and assignees.

§ 11
NO-CHALLENGE CLAUSE

During the time of this Agreement, Licensee shall not challenge the validity of the licensed Program or file an action for this purpose or support third party in such a challenge.

§ 12
SEVERABILITY CLAUSE

If a provision of this Agreement should be invalid or become invalid, or if this Agreement contains an omission, then the legal effect to the other provisions shall remain unchanged. Instead of an invalid provision, a valid provision shall be deemed to be agreed which comes closest to what the parties intended economically; the same applies in the case of an omission.

§ 13
MODIFICATIONS OF THE AGREEMENT

Any modification of this Agreement shall be effective only when agreed upon by the parties in writing, collateral agreements to this Agreement have not been entered into.

§ 14
JURISDICTION AND APPLICABLE LAW

14.1   This Agreement is governed by and construed in accordance with the laws of the Republic of Austria. The parties irrevocably agree that the competent court of Wiener Neustadt shall have exclusive jurisdiction to settle all disputes that may arise out of or in connection with this Agreement and, accordingly, any proceeding arising out of or in connection with this Agreement is to be brought before this court. The parties irrevocably submit to the jurisdiction of this court and waive any objection to the proceedings in this court on the ground of venue or that the proceedings have been brought in an inconvenient forum.

14.2   The United Nations Convention on Contracts for the International Sale of Goods and the Austrian IPR does not apply.