

**General Terms and Conditions for Goods, Services and Software Licences of ELO Digital  
Office GmbH [referred to as "ELO"], Heilbronnerstrasse 150, 70191 Stuttgart;  
last revised: 1<sup>st</sup> May 2007 - release: ELO 6.0**

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**A. Contractual basis**

1. Scope

These Terms & Conditions apply to all contractual relationships and pre-contractual negotiations with our customers, regardless of the type and scope of services provided in the context of existing and future business relations.

2. Exclusivity

Our Terms & Conditions shall apply exclusively.

Any conflicting terms & conditions of our contractual partners or third parties shall only apply if ELO has expressly given its written consent to their validity.

If the customer does not agree with this, he shall notify ELO of this promptly in writing. In this case, ELO reserves the right to withdraw its proposal without the customer being able to assert any claims against ELO on this basis. ELO herewith expressly objects to any standard references in customers' terms & conditions regarding their validity.

3. Conclusion of contract and written form

We never enter into a contractual obligation until the type and scope of the service and the consideration have been determined in writing by both Parties. Any verbal agreements and additions made at a later stage shall only become valid if and when they are confirmed in writing. The same shall apply to all declarations of intent, in particular complaints, reminders and notifications of defects based on the contractual relationships.

The right to contractual penalties must be reserved by both parties in writing. This clause can only be annulled by an express written agreement to this effect.

**B. Provision of software**

1. Licence and scope of use

In its capacity as holder of rights, ELO shall transfer to the customer the non-exclusive, non-transferable right of use to the software and the documentation material specified in the order and/or invoice for an unlimited period.

The following is defined as contractually agreed use:

the import of instructions or data of a program by input at the terminal or transfer from storage units or data media to the agreed hardware for the purpose of processing it and producing a back-up copy in a machine-readable form. The area of use, performance and all other specific program properties shall be defined exclusively in the manual enclosed with the program. The customer shall acquire the right to use the software on as many workstations connected in one local network as he has paid for in the form of licence fees.

The basis for assessing this shall be the number of licences specified in the associated invoice and the special arrangements agreed upon, if any (quantity scales, unlimited licences,

individual invoice and usage terms according to a separate proposal, etc.).

The relevant factor is "read access" and/or "read/write access" to the archive server for a "named user" from a workstation on the network. Such a "named user" represents an access by way of unique identifying features assigned only once (user name, password and user rights). This may therefore be a single natural person or a group of people with the same function and the same rights logged in to the system server alternately, but not concurrently.

Where a differentiation is made between "read" and "read/write" named users, a named user shall only be considered a "read/write named user" if he performs more than three qualified write operations per month.

If more than 3 of these qualified write operations are carried out, this user shall be marked accordingly in the report as a read/write named user for which the use of a corresponding chargeable licence is mandatory.

2. Third-party rights

ELO shall exempt the customer from all claims asserted against him in connection with the use of the software as a result of a breach of copyrights, patents or other intellectual property rights, provided that

- the customer informs ELO promptly of any and all accusations of breaches made against him;
- the customer does not acknowledge any such claims without ELO's consent;
- the customer allows ELO to carry out all negotiations and proceedings involved and provides ELO with the necessary support to do so, whereby all costs incurred in the negotiations and proceedings shall be borne by ELO.

The aforementioned obligation shall not apply if the violation of copyrights, patents or other rights results from the use of the software or parts thereof on devices or programs that have not been supplied by ELO and the combined use of which has not been approved by ELO.

The aforementioned provisions shall govern the entire liability of ELO in connection with the violation of copyrights, patents or other intellectual property rights.

In case of claims already asserted or to be expected due to a breach of copyrights, patents or other intellectual property rights, ELO shall have the right to change or replace the devices or programs at its own expense in order to prevent the breach. The effectiveness of the software system supplied by ELO must not be reduced by this.

If the use of the software or parts thereof is prohibited by court order or if in ELO's opinion there is an impending threat of action because of a breach of intellectual property rights, ELO may choose to take either of the following actions at its own expense, to the exclusion of all other rights of the customer:

- change the programs in such a way that no violation of industrial property rights is caused;
- obtain the right for the customer to continue to use the systems;

replace the programs affected with programs by which no industrial property rights are breached and which either comply with the customer's requirements or are of equal value to the programs replaced;

- take back the programs or parts thereof and reimburse the customer for the purchase price (or part thereof, where applicable) minus an appropriate amount for use and depreciation, taking into account the damage incurred by the customer through this.

### 3. Ownership, copyrights and source code

The software provided to the customer, including all documentation, shall remain the property of ELO.

ELO shall remain the holder of all copyrights and rights of use to the programs provided to the customer, including the associated documentation material, even if the customer modifies these programs or materials or if he combines them with his own programs and/or those of third parties. The customer must apply an appropriate copyright notice if he makes such modifications or combinations or if he produces any copies.

Changes and extensions to the program code made at the customer's request and at the customer's expense shall become the property of ELO and may be made available to other customers by ELO with the customer's consent, provided that a corresponding agreement is reached between the customer and ELO on a case-by-case basis. The rights of use to the program enhancements shall be assigned to ELO. ELO herewith accepts this assignment.

Changes to the program code by the customer shall only be permissible with the prior written consent of ELO. Consent may only be withheld for good cause. ELO shall be supplied with a copy of the change on a data medium or in printed form together with all the necessary information in case of such changes. Use of the changed program version requires the customer's consent.

If programs modified by the customer or third parties or other programs not supplied by ELO are used and if this impairs the functioning of the system, ELO shall not be liable for the damages incurred.

Release of the source code requires an explicit written agreement on the type and scope of the release as well as an additional remuneration.

### 4. Payments

In order to be able to use the software for an unlimited period of time, the customer shall be obliged to pay a one-time licence fee. The amount of this licence fee shall depend on the current price list or on the separate agreements reached in this respect as outlined in the order or invoice.

The services invoiced fall due with their delivery and acceptance. All other services invoiced on the basis of this contract shall fall due on delivery. Provided that no agreements to the contrary exist, the customer shall make prompt payment of the amounts due into a bank account held by ELO.

If the customer defaults on the payment of the amounts due for more than 30 days, ELO shall be entitled to charge interest on arrears at 5% above the applicable base interest rate p.a.

### 5. Duties of the customer

The programs and documentation materials provided to the customer may not be made available, either in part or in full, to third parties inciting them to potential misuse.

The customer must not change the identifiers, copyright notices and property information of ELO on the programs in any form.

The customer must ensure that all programs, documentation and operating documents and program-specific knowledge are kept secret vis-à-vis third parties. This also includes documents which have been made available to the customer for the purpose of performance of this contract, but not advertising brochures and their content. The customer must pledge his employees to maintain the same level of secrecy. This secrecy obligation shall also apply after the contract has ended, even if the contractual relationship has been terminated prematurely for whatever reason. In addition to this, the secrecy obligation also includes a prohibition to publish parts of materials or quotations. Circumventing the secrecy obligation shall only be allowed with the prior written consent of ELO.

The customer undertakes to reimburse ELO for any damages incurred as a result of a breach of the aforementioned provisions, if caused by gross negligence, to a maximum amount of the licence price, except in cases of deliberate intent.

### 6. Termination

ELO may terminate the contract with immediate effect if the customer defaults on the payment of the agreed licence fee over more than two months and/or the customer continues to breach a provision of these General Terms & Conditions or another provision stipulated in an individual contract after having received a written warning.

The customer shall only be entitled to terminate of this contract on the grounds of a delay in performance by ELO or irremediable defects, if ELO has failed to comply with its duties and has received a written warning from the customer regarding this failure and an appropriate period for rectification has lapsed without the breach of contract having been rectified.

Within a period of five days after termination of the licence, the customer shall destroy all programs, copies thereof and associated materials, including modified or combined programs, unless the customer is obliged to keep these programs and materials due to legal provisions. The customer shall confirm to ELO in writing within 30 days, without being prompted to do so, that he has destroyed the materials or that they are being kept due to legal provisions. The customer shall also grant ELO the right to check compliance with this provision.

## C. Extended provisions in case of software enhancement and adaptation

### 1. Handling

ELO shall enhance and adapt the software supplied by it.

Unless explicitly agreed otherwise in writing, the customer shall inform the contractor in good time of his requirements regarding the software by submitting an adequate written description of these requirements.

The customer shall provide ELO with all the information required for the creation of the software in a clearly written form and also give verbal explanations at ELO's request.

If the customer discovers that requirements analyses, target specifications or service specifications do not correspond to what is actually requested by the customer, he shall make ELO aware of this in writing without delay, making alternative suggestions. The parties shall then agree on an addition or modification to the requirements. The customer shall provide all the assistance mentioned here free of charge.

If ELO discovers that the details or information provided by the customer are faulty, incomplete or unsuitable for the fulfilment of the order, ELO shall make the customer aware of this in writing without delay. The customer shall decide promptly on a

modification resulting from this notification in so far as it affects the process of creating the software.

Either party shall provide the other immediately upon conclusion of the contract with the name of a specialist who is authorized to make decisions in connection with the creation of the software.

## 2. Change requests

As long as the software has not yet been delivered by ELO, the customer may request a change of the requirements in writing at any time, provided that the scope of the change request is reasonable compared to the overall order and is based on factual considerations. ELO shall comply with this change request unless it cannot be reasonably expected of ELO to do so due to its specific operational situation.

If such a customer change request leads to a more than insignificant shift in the contractual balance between the service and the consideration for it, the parties shall promptly make a written adjustment to the contractual provisions with regard to the key content of the contract (in particular remuneration, delivery time, etc.).

If the Parties are unable to reach an agreement within four weeks from receipt of the change request by ELO, the order shall be carried out without taking into account the change request.

## D. Delivery, acceptance, warranty, liability, confidentiality and data protection

### 1. Delivery, deadlines and installation in case of enhancements and adaptations of the standard software

Delivery dates and deadlines are strictly non-binding indicative times, unless they are expressly agreed upon in writing as fixed dates.

The version of the contracted software delivered to the customer will normally be the standard version. An enhancement or adaptation of the standard software shall only be made if this has been specified in writing in the order.

The customer undertakes to provide all the assistance required for the contractual implementation of the software. This includes in particular enabling access to the hardware and making test data and computing time available free of charge in accordance with ELO's requirements and providing free support from a competent employee who will carry out the necessary tests and check adaptations.

ELO reserves the right to adapt the specifications of the licensed product, for example, to technical developments, amendments in law or future market requirements.

A printed version of the operating manual shall be included in the delivery. This shall serve as a means for learning to use the program and provide answers to questions in this regard. The operating manual may only be used by the customer for the agreed purpose.

In case of loss of the software or the manual ELO shall deliver a replacement copy at cost price.

ELO shall warrant the smooth running of the software only on the approved hardware systems. Approval shall be deemed granted with the installation of the program on a hardware system by ELO.

### 2. Acceptance in case of enhancement and adaptation of standard software

Following installation and testing, ELO shall inform the customer in writing of the full operability of the software components enhanced and/or adapted in comparison with the standard version and shall request the customer to accept these parts.

The customer may then test the software. If the software is fit for acceptance, the customer shall confirm acceptance in writing to ELO without delay, but no later than within 30 days after written notification by ELO.

If the customer fails to confirm acceptance during this period, acceptance shall nevertheless be deemed granted.

The receipt of the notification letter by the customer shall be decisive in determining the start of the acceptance period. If the customer pays the remuneration due after commissioning of the delivered software without raising a complaint, this shall be taken as granting acceptance of the software.

The customer shall have no right to refuse acceptance on the grounds of insignificant defects.

The customer shall ensure that the data protection requirements for the use of the delivered software at the place of operation are met. If data protection requirements are not in place, this shall not entitle the customer to refuse acceptance.

## 3. Warranty

ELO shall warrant for a period of twelve months from the time of handover that the functionality of the software is essentially consistent with the description in the manual and/or the documentation. If the customer is a consumer in the meaning of the German Civil Code (Bürgerliches Gesetzbuch) the warranty period shall be two years.

Liability for a specific appearance and workmanship shall only exist insofar as this is expressly agreed in writing.

ELO advises the customer that it is not possible according to the current state of technology to create computer software completely free of errors.

The customer shall examine the standard software immediately after delivery and notify the vendor in writing without delay of any obvious errors.

If an error occurs in the software the customer must report this to ELO in writing within two weeks. In the context of the written notification of defects, the defect and its manifestation must be described in sufficient detail to permit an investigation of the defect (e.g., by submitting a fault report) and that a user error can be excluded (e.g., indication of the work steps). If the customer is a merchant, the provisions of § 377 of the German Commercial Code (HGB) on the duty of inspection and notification under commercial law shall apply in addition, even if an instruction in the operation of the system has not been provided.

If the notification of defects is found to be justified, the customer shall set ELO an appropriate period for rectifying the defect. The customer shall inform ELO about his preferred type of rectification - improvement of the delivered article or delivery of a new, defect-free replacement. ELO shall, however, have the right to refuse the chosen type of rectification if this can only be carried out at a disproportionately high cost for ELO and provided that the other type of rectification would not lead to considerable disadvantages for the customer. ELO may also refuse rectification altogether, if it can only be achieved at disproportionately high cost.

ELO shall be entitled to two rectification attempts within the period set by the customer to remedy the same or a directly connected defect. If both rectification attempts fail, the customer may either withdraw from the contract or reduce the licence fee. The right of withdrawal or licence fee reduction may be exercised already after the first failed rectification attempt, if the customer cannot be expected to go through a second attempt during the set rectification period. If rectification under the preconditions outlined above is refused, the customer shall be entitled to exercise immediately his right of fee reduction or withdrawal.

Withdrawal from the contract on account of an insignificant defect shall be excluded.

In the event of a defect resulting from an incorrect or not updated driver, the customer shall grant ELO the right to deliver a functioning driver within ten days from sending notification of the defect to ELO.

Incompatibilities between hardware and accessories shall only constitute an entitlement to a change if a fault in the existing hardware can be detected and accessories from other manufacturers cannot be used.

ELO shall be entitled to install a workaround, provided that it is actually impossible or economically unreasonable to fix the fault, if this leads to a suitable solution of the problem.

ELO does not guarantee that the software corresponds to special requirements of the customer or is able to work with programs of the customer or on hardware already installed at the customer.

If the customer has asserted a warranty claim against ELO and if it becomes clear that either no defect exists or the defect asserted does not constitute a warranty obligation of ELO, the customer must reimburse ELO for all costs incurred, unless the claim against ELO is based on gross negligence or intent on ELO's part.

Immediately after installation, defect rectification, maintenance or other work carried out in the EDP system by ELO, the customer shall check whether the data back-up is still functioning and record the result in writing. The customer shall make sure that data back-up is ensured by a reliable, prompt and comprehensive data routine.

#### 4. Liability limitations and limitation period

ELO shall be liable according to the statutory provisions in cases of deliberate intent and gross negligence. Where minor negligence is concerned, ELO shall only be liable in cases of breach of a major contractual duty (cardinal duty) or in cases of default or impossibility. Where ELO is held liable due to minor negligence, liability shall be limited to the losses which are foreseeable or typical in such a case. This limitation in cases of liability due to minor negligence shall also apply in the case of an initial incapability on ELO's part. Liability for the non-existence of promised features, fraudulent intent, personal injuries, defects in title as well as liability according to the German Product Liability Act (Produkthaftungsgesetz) and the Federal Data Protection Act (Bundesdatenschutzgesetz) shall remain unaffected.

If liability claims are asserted against ELO, any possible contributory negligence on the part of the customer must be adequately taken into account, in particular with regard to insufficient error reporting or inadequate data back-up. Inadequate data back-up shall exist in particular if the customer has failed to take precautions by implementing appropriate, state-of-the-art security measures against external influences, in particular against computer viruses and other phenomena by which individual data or the entire stock of data is put at risk.

The limitation period for non-cardinal breaches of contract shall be two years.

#### 5. Confidentiality, data protection

ELO and the customer undertake to treat as confidential all business and operational secrets of the other party for an unlimited period of time and not to forward these to third parties or use them in any other way. The documents, drawings and other information which the other party received as a result of the business relationship must not be used by this party for any other than the relevant contractual purpose.

The customer undertakes to mark all confidential information as "confidential".

#### E. Rights after end of use

##### 1. Return of objects

Upon termination of the contract, all objects provided to the customer by ELO for their use, in particular all rented or leased hardware, must be returned and the customer must pay for transport and insurance in this case.

##### 2. Software

Software which has been provided with limited rights of use must be returned together with the data media, if it is stored on data media which belong to ELO, and in all other cases, it must be deleted on the data media owned by the customer and the deletion log must be handed over to ELO.

##### 3. Documentation

The originals of all documents which are part of the documentation, including source programs and development documentation, must be returned together with all copies thereof.

##### 4. Confirmation of complete return

Upon request, ELO shall be entitled to the submission of a formal confirmation that all duties to return items have been met fully and in accordance with the contract.

#### F. Collateral provisions

##### 1. Applicable law, place of performance and place of jurisdiction

The entire business relationship with ELO customers shall be subject exclusively to the laws of the Federal Republic of Germany. If these laws refer to foreign law, such references shall be invalid. The application of the UN Convention on Contracts for the International Sale of Goods (UNCITRAL) shall be expressly excluded.

The place of performance for goods and services shall be the place contractually agreed as the address of performance, the place of performance for payments shall be the place where the payment office specified in the invoice is located.

The place of jurisdiction for both parties shall be Stuttgart; ELO shall be entitled, however, to choose the place of jurisdiction of our partner for asserting our own claims.

If the contracting party is not a fully qualified merchant, the statutory provisions shall apply.

##### 2. Severability clause

If individual provisions of these contractual terms and conditions or of any other individual agreements which may have been concluded is invalid, in full or in part, this shall not affect the validity of the remaining clauses. The ineffective clause shall be replaced by another clause that most closely approximates to the economic intent of the ineffective provision and is itself effective.