

General conditions

for Term-Based Licence of ScriptRunner Software GmbH software products (Hereinafter „ScriptRunner“)

§1 AREA OF APPLICATION

(1) These conditions apply to the licensing of software products, created and distributed by ScriptRunner itself (hereinafter: the “software”) by ScriptRunner to end customers (hereinafter: „customer”). They do not apply to the purchase of software or to other services, such as installation, integration, parameterisation and customisation of the software to meet the client’s needs.

(2) These General Terms and Conditions, in the version valid at the time of the awarding of the contract, shall apply exclusively to the business transactions between the parties, unless the parties agree otherwise in writing. Other conditions do not form part of this contract, even if ScriptRunner does not expressly contradict them in individual cases.

§2 OFFER, CONCLUSION OF CONTRACT, SERVICES

(1) All advertised ScriptRunner products and services advertised are subject to change and are not binding. The customer is bound to his commitments in respect of his orders from ScriptRunner for a period of 30 days unless the order provides for longer commitment periods.

(2) A contract is only concluded by sending a link to download the software over the internet and by the sending of the activation key via e-mail by ScriptRunner.

(3) ScriptRunner supplies the software in executable form (as an object program). The customer is not entitled to be provided with the source code.

(4) The customer receives a user guide in electronic form. The customer is entitled to receive further documentation only if this has been expressly agreed between the Parties. The provisions of these General Terms and Conditions for software purchase apply to the documentation accordingly.

§3 PROPERTY RIGHTS, RIGHT TO USE THE SOFTWARE

(1) The software including the associated documentation is protected by law. The copyright, patent, trademark and all other ancillary copyright rights to the software belong exclusively to ScriptRunner.

(2) ScriptRunner grants the customer a non-exclusive,

nontransferable right to use the software for the duration of the contract only, unless otherwise agreed. The licensed scope of the proper use of the software is obtained from the customer’s order. The customer is entitled to exceed the number of software licences specified in the contract by up to a maximum of 20% („Permitted Licence Exceedance”). If the customer wants to use a greater number of software licences than that stipulated in the contract plus the permitted number of licence exceedances, he must purchase the number of licences which he actually requires. The extended right of use arises with the full payment of additional royalties.

(3) The customer is entitled to use the software for his own purposes and for the purposes of affiliated companies (see §§ 15 ff of the German Companies Act (AktG); Together the „Customer Group”). If an associated company leaves the customer’s Group, the customer shall inform ScriptRunner in writing without delay. The customer must ensure in this case that no further use of the software will be made by the company after it has left the Group.

(4) The Customer undertakes to ensure, by taking the appropriate technical and organisational measures, that the intended use of the software is ensured.

(5) The customer is entitled to install the software, under the contractual restrictions of use, on his network or on third party leased IT infrastructure (Infrastructure-as-a-Service or Platform-as-a-Service). Any other form of use requires the prior written consent of ScriptRunner.

(6) The customer is entitled to make copies of the software - backups, to the extent necessary for safe operation. The backup copies must be kept safe. Copyright marks and trademarks may not be deleted, modified or suppressed. Copies which are no longer required must be deleted or destroyed. Copies must be deleted at the end of the contract period in accordance with § 10 para. (1).

(7) The customer may decompile the software’s interface information only within the legal and copyright limitations and only when he has informed ScriptRunner in writing of his intention to decompile this information and asked for transfer of the necessary interface information to be provided within a period of two weeks without success. The provisions of § 12 of these General Terms and Conditions shall apply to all the knowledge and information that the customer receives via the software as part of the de-compiling process. Before any involvement of third parties is made, the customer must provide ScriptRunner with a

written statement of undertaking by the third party that it will be directly liable to ScriptRunner for adhering to the regulations contained in §§ 3 and 12 of these General Terms and Conditions.

(8) The customer is entitled to make the software, together with the necessary hardware, available for use by a third party under an IT system leasing arrangement, in compliance with the contractual restrictions of use. In this case, the customer must provide ScriptRunner with a written statement of undertaking by the third party that it will be directly liable to ScriptRunner for adhering to the regulations contained in §§ 3, 12 Para. (1), 13 Paras. (1) and (3) of these General Terms and Conditions. The customer is obliged to inform ScriptRunner in writing of the name of the third party to whom the software was passed as part of the lease, as well as of the scope of usage rights granted. In the event of an infringement of the customer against this Paragraph (8), he will be liable to pay a contractual fine to ScriptRunner equivalent to half of the amount that the third party would have had to pay according to the then current price list for the software at ScriptRunner and this amount must be equivalent to at least half of the remuneration agreed for the provision of the software, unless the customer is not responsible for the infringement.

(9) All other acts of exploitation are not permitted without prior written consent of ScriptRunner.

(10) Copies of the user manual may not be created for commercial purposes.

(11) The Software may include open source software components, insofar as this does not preclude the contractual use of the software. For open-source software components, which ScriptRunner shall provide to the customer, the respective open source licence terms, which are listed in the "License" subfolder of the installation directory, shall apply. The following open source licence terms may apply:

- Apache License 2.0 <http://www.apache.org/licenses/LICENSE-2.0>
- BSD License <http://opensource.org/licenses/BSD-3-Clause>
- MIT License <http://opensource.org/licenses/mit-license>
- SIL Open Font License <http://scripts.sil.org/OFL>

§4 PRICE

Unless otherwise agreed by the parties in writing, the prices contained in ScriptRunner's price list which is in force at the time of the conclusion of the contract shall apply. All prices are exclusive of VAT at the current statutory rate.

§5 PAYMENTS

(1) Unless otherwise agreed, the remuneration for the right of use of the software for the agreed period of usage will be in-

voiced in advance. In the event of a permitted licence exceedance and a subsequent extension of the contract, the calculation basis for the contractual reimbursement due will be increased from the number of licences originally agreed in the contract to the actual number of licences used.

(2) All periods for payment begin with the date of invoice. Unless otherwise agreed, the invoice amount is due for payment without deductions within 14 days from the date of the invoice.

(3) If the customer is in default with regard to a payment, whether wholly or partly, ScriptRunner shall be entitled to charge, from the relevant date onwards, interest calculated at the statutory interest rate of 9% per annum above the base rate of the ECB. The right to claim further damages is reserved.

(4) With the exception of set-offs against undisputed or legally determined demands of the customer, set-offs are only permitted with the express written consent of ScriptRunner.

(5) The customer's right to exercise any right of retention against claims by ScriptRunner is excluded, unless the customer's counter-claims are either undisputed or legally established.

§6 THE CUSTOMER'S DISPOSITIONS

(1) The customer is expressly prohibited from making pledges, security transfers and security assignments in relation to the software owned by ScriptRunner or to claims assigned to ScriptRunner.

(2) In the same way, the customer is expressly prohibited from conclusion and implementation of blanket assignment contracts, so-called factoring agreements (transfer of receivables to a factor company or to a third party as a hedge, so-called recourse factoring), in so far as such a contract applies to claims assigned on the basis of these General Terms and Conditions. The customer is obliged to inform ScriptRunner, if at the date of his entering into business relationships with ScriptRunner or of the acceptance of these Terms and Conditions, a business agreement of the type specified in the preceding clause has already been concluded by him with a third party.

(3) The customer is obliged to inform ScriptRunner of any third party access to software which is the property of ScriptRunner or to the claims assigned to ScriptRunner immediately and to support ScriptRunner in the protection of their rights in any way possible. In particular, in the event of any attachment of the customer's property, the customer must inform the executory officer that the attached software is owned by ScriptRunner. If the software is damaged as a result of third party access, the customer has to pay the ensuing costs.

§7 WARRANTY

(1) ScriptRunner guarantees that the software shall be free of defects for the duration of the contract. A minor defect is irrelevant here. ScriptRunner indicates that in the current level of the technology it is not possible to create software that works perfectly in all applications. The purchase object is therefore a software program that is functional and which, in its essential and overriding functions, can be used for the purposes contained in the program descriptions and operating manuals. Insignificant deviations from this standard shall not constitute defects. The prerequisite for warranty claims is the reproducibility or detectability of defects.

(2) The warranty shall not apply if the customer himself modifies the software without the consent of ScriptRunner or has it modified by third parties, or uses the software in a software system environment other than the specified one, unless the customer proves that the defect is not caused by the modification or by the use in the unauthorised system environment.

(3) Should the software display a defect within the meaning of Para. (1), ScriptRunner will remedy this within a reasonable period. The remedying of a defect includes the delivery of a printed or printable correction instructions for documentation, to the extent necessary. ScriptRunner shall have the right to at least three attempts to remedy a defect.

(4) The customer must set up for ScriptRunner remote access to all the IT systems on which the software is run so that ScriptRunner can take the necessary corrective measures.

(5) ScriptRunner shall be liable for defects in the software that are already present at the time it is provided, only if ScriptRunner is responsible for these.

(6) The warranty always applies only to the most recent version of the software available via download. A new version of the software must be accepted by the customer. Insofar as ScriptRunner decides on subsequent performance, ScriptRunner must support the customer to the appropriate and reasonable extent possible. This includes e.g. a detailed error description and the use of the relevant third party support for the operating systems used, software applications and third-party components used that are not software products, but can be used together with these. The customer must grant ScriptRunner, in particular, adequate time and opportunity to execute supplementary performance.

(7) The customer will reimburse ScriptRunner for any additional expense incurred as a result of the inadequate nature of the customer's duty to cooperate in the provision of the contractual services. This does not apply if the customer can prove that he is not responsible for the failure to provide the contractual cooperation with ScriptRunner. If the outcome of the analysis is that a reported customer issue does not stem from a defect in

the software, ScriptRunner shall be entitled to charge the customer for the resulting expense incurred in error analysis, unless the fact that there was no defect could not be recognised by the customer.

§8 INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS

(1) If a third party makes claims against the customer because of an infringement of intellectual property rights by the software and if the use of the software is hereby impaired or forbidden, ScriptRunner shall give an assurance that it will provide a legally valid way to use the software or an alternative equivalent software.

(2) The prerequisites for any acceptance of liability under Para. (1) are that the customer immediately notifies ScriptRunner of any claims by third parties, the alleged copyright violation is not accepted and that any dispute, including any extra judicial settlement, is either handed over to ScriptRunner to pursue or, at ScriptRunner's choice, is pursued by the customer in agreement with ScriptRunner. If the customer ceases to use the software for reasons of effecting a reduction of damage or any for any other important reason, it is obliged to inform the third party concerned that the discontinuation of use does not imply any acknowledgement of an infringement of any intellectual property right.

(3) If the customer is responsible for the alleged infringement itself, claims against ScriptRunner are excluded.

§9 THE CUSTOMER'S OBLIGATIONS TO CO-OPERATE

(1) The customer shall support ScriptRunner in every respect in the fulfilment of the contractual obligations. He should, in particular and to the maximum extent possible, use his best efforts to support ScriptRunner in finding the cause of the error and, if necessary, require his employees to cooperate with third parties authorised by ScriptRunner. Included in the support services to be provided will also be the use of the relevant support provided by third parties for the operating systems in use, application software systems and third-party components used that are not ScriptRunner software products but which can be used in conjunction with these.

(2) ScriptRunner may require that the customer's contact provide evidence of the training of his employees in the use of the software. Error messages must be communicated by the contact person or in his absence by his deputy.

(3) When error messages are generated, the customer must make detailed observations of the symptoms which have occurred, the system and the hardware environment observed and describe the error in as much in detail as possible to Scrip-

ScriptRunner. The contractually agreed error messages must include in particular:

- A detailed description of the fault on the basis of the template stored in the ticket system,
- Wording of any error messages,
- Screen shot of the error condition,
- Steps to reproduce the error condition,
- Number of affected workstations,
- Application Protocols,
- Hardware environment used, including all third-party software used.

If error messages are not in the contractually agreed format, the deadlines for the reaction times in accordance with § 4 Para. (5) do not start to run.

(4) The customer must, at the request of ScriptRunner, set up remote access to all IT systems on which the software is running, insofar as this is necessary for the performance of the contractual services.

(5) The customer is required to install the software corrections received directly from ScriptRunner or provided via by the internet, following any specific further instructions, if necessary and to comply with any detailed instructions and suggestions provided by ScriptRunner for the detection and correction of faults.

(6) The customer is obliged to ensure proper data backup. In particular, he is obliged to make a backup immediately before the setting up or implementation of maintenance services and to keep all data used or generated in connection with the software available in machine-readable form as a backup copy. This will enable a reconstruction of any lost data to be made at a reasonable cost.

(7) The obligations to cooperate described above form essential contractual obligations. If the customer infringes his obligations to cooperate, he must compensate ScriptRunner for the resulting additional expenditure incurred, in accordance with the prices contained in ScriptRunner's current price list, unless the customer is not responsible for the infringement of the duty to cooperate.

(8) If the outcome of the analysis is that a reported customer issue does not stem from a defect in the software, ScriptRunner shall be entitled to charge the customer for the resulting expense incurred in error analysis, unless the fact that there was no defect could not be recognised by the customer.

§10 LIABILITY

(1) ScriptRunner will pay damages and compensation for futile expenses, for whatever legal reason only to the following extent:

- The liability for acts of deliberate intent and in respect of guarantees is unlimited.
- In cases of gross negligence, ScriptRunner is liable to the amount of predictable and typical foreseeable damage at the time of the conclusion of the contract.
- In the event of a negligent breach of a material obligation whose fulfilment is absolutely essential for the proper performance of this contract and on which the customer regularly relies and may rely and whose infringement will put the achievement of the contractual purpose at risk (cardinal obligation), ScriptRunner will be liable in the amount of typical damage, foreseeable at the time of the conclusion of the contract up to a maximum, however, of
 - up to 10,000 EUROS per incident, but not exceeding 50,000 EUROS per contract for material damages,
 - up to 10% of the total value of the contract, but up to a maximum of 100,000 EUROS per contract for financial losses.
- In all other cases of negligent breach of duty, liability is excluded. Liability for negligence is also excluded for consequential damages, especially for lost profits.
- In cases of violation of life, body and health and claims arising from the German Product Liability Act, the statutory provisions shall apply without restrictions.
- In cases of data loss, ScriptRunner shall be held liable only for that expenditure which would have been required for proper data backup by the customer to ensure the restoration of data.

(2) The expiration of the claims by the customer arising from § 7 is conclusively settled. Otherwise, claims for damages or claims for reimbursement of expenses come under the statute of limitations after two years; this does not apply, however, to claims for damages and reimbursement arising from acts of deliberate intent, gross negligence, claims under guarantee, acts of fraudulent intent, cases involving injury to life, body and health and claims made under the German Product Liability Act.

§11 DURATION, TERMINATION

(1) Unless contractually agreed otherwise, Term-Based licence agreements have a term of three (3) years.

(2) The right to termination for good cause remains unaffected. ScriptRunner shall have the right to terminate the contract for a material reason in particular in the following cases:

If the customer is in arrears in his payment of part of the contrac-

tual remuneration which is equivalent, on a pro rata basis, to two month's payments for a period of more than two months.

- If the customer stops payments, insolvency proceedings or comparable statutory proceeding are instituted by him or legitimately by ScriptRunner or another creditor, if such a procedure is opened or its opening is rejected for lack of assets.
- If the customer infringes any of his contractual obligations, which are not merely insignificant, in particular these General Terms and Conditions of Business, and if the customer does not desist from this infringement within a reasonable period after receiving a warning from ScriptRunner.
- After application for the opening of insolvency proceedings against the customer's assets ScriptRunner cannot terminate the contract because of a delay in the payment of compensation which occurred in the period before the application for the opening of insolvency proceedings, or due to a deterioration in the financial condition of the customer.

(3) If ScriptRunner terminates the contract for a material reason because of a breach of a contractual obligation by the customer, ScriptRunner reserves the right to make a claim for damages for at least the sum equivalent to the agreed remuneration up to the date on which the customer should have been able to properly terminate the contract, minus the expenses saved by ScriptRunner as a result of the termination. This does not apply if the customer can prove that he is not responsible for the failure to fulfil his contractual obligation. In principle, ScriptRunner will deduct a lump sum of 10% of the amount owed for expenses saved from the customer's remuneration. The customer is permitted to prove that the saving is greater than 10%.

(4) Notices of termination by either party must be made in writing to be effective.

§12 LEGAL CONSEQUENCES OF TERMINATION, CANCELLATION, RESTRICTION

(1) At the termination of this Term-Based License Agreement, the customer must provide ScriptRunner with a written confirmation he has destroyed all copies of the software (in whatever condition they were).

(2) The software has a hard coded program lock which makes it impossible for the customer to use the software after the expiration of the relevant contract period in accordance with § 10 Para. (1) (minimum term or extended term). If the contract is not validly terminated, ScriptRunner will send the customer a new Activation key via e-mail for each renewal period.

§13 CONFIDENTIALITY, DATA PROTECTION

(1) Both ScriptRunner and the customer are obliged to maintain confidentiality in respect of each other's confidential information, trade and business secrets, which they obtain during the performance of this contract. In particular, they agree not to divulge such confidential information to third parties or to exploit it otherwise than for the contractual purposes.

(2) Insofar as in the course of service delivery ScriptRunner processes personal data for which the customer is the responsible authority, or if access to such personal data cannot be excluded, the contractual partners will in advance conclude an agreement on order data processing, which shall conform with all the relevant statutory requirements.

§14 ACCOUNTING AND REPORTING OBLIGATIONS

(1) The customer agrees to make available to ScriptRunner upon its written request and by the 5th day of the calendar month following the date of the written request, a copy of the current overview statement of the total number of its licence parameters (users, instances, connectors, virtual machines, etc.) or the total number of its end customers and access to information about any existing sub-licence agreements (statement).

(2) If the statement shows that the number of parameters listed in the statement exceeds the agreed scope of the licence, ScriptRunner is entitled to send binding invoices to both parties for the difference payable.

(3) Where there are irregularities in the licensing records, the customer is obliged to grant ScriptRunner access to inspect its books as well as the computer systems on which the software is used. These inspections may be performed, at the customer's request, by persons who are obliged to maintain professional confidentiality (tax consultants, accountants, lawyers, technical consultants, etc.) and following the expiry of an advance notice period of 5 days, during normal office hours and at the expense of ScriptRunner.

(4) If a review determines that either the customer is in material breach of contractual agreements or that the licence payments made to ScriptRunner were more than 5% too low because of mistakes in accounting procedures, the customer must bear the costs of the review. ScriptRunner expressly reserves the right to make further claims for damages or loss.

§15 MISCELLANEOUS

(1) A waiver of any rights or claims or procedural require-

ments in individual cases or in repeated case contains no relevant waiver for the future.

(2) The place of performance for all obligations arising from the performance or construction of this contract is Karlsruhe.

(3) If the customer is a merchant, legal entity under public law, or public law special fund, the parties agree to be bound by the jurisdiction of the District Court of Karlsruhe. However, ScriptRunner is entitled to sue the customer at its general forum for this jurisdiction.

(4) The legal relationship between the customer and ScriptRunner will be governed exclusively by the provisions of the law of the Federal Republic of Germany law, without giving effect to the principles of conflict of laws and to the exclusion of the UN Convention on the International Sale of Goods.

As of: April 2020

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