

# GENERAL TERMS AND CONDITIONS FOR PROVISIONING OF SOFTWARE

Edition: 03/2019

THIS END USER LICENSE AGREEMENT ("AGREEMENT" OR "EULA" OR "GTC") IS A LEGAL AGREEMENT BETWEEN YOU (ALSO REFERRED TO AS THE "CUSTOMER") AND TRANSWARE AG („TRANSWARE“) THAT GOVERNS THE USE OF AND YOUR OBLIGATIONS FOR THE SOFTWARE DISTRIBUTED UNDER THIS EULA.

This EULA shall supersede any additional or inconsistent provision in any deviating CUSTOMER terms and conditions and all such additional or inconsistent provisions are hereby expressly rejected and shall not be binding upon TRANSWARE. CUSTOMER hereby agrees that TRANSWARE's failure to specifically object to any such provision submitted by CUSTOMER shall not constitute an acceptance by TRANSWARE thereof nor shall it constitute an acceptance by TRANSWARE of any waiver of, or modification to, the provisions hereof.

## 1 Definitions

The following definitions shall apply to this agreement:

**SOFTWARE** means, collectively, software developed and distributed by TRANSWARE including DOCUMENTATION

**PRODUCT** is a packaged SOFTWARE that may comprise THIRD PARTY COMPONENTS.

**THIRD PARTY COMPONENTS** are software or software components which IP rights are not owned by TRANSWARE. The use of THIRD PARTY COMPONENTS is subject to the acceptance of respective license terms.

**LICENSE** means the right to use a PRODUCT distributed by TRANSWARE to the extent granted under this EULA.

**PROTECTION** means electronic key or electronic key file for a PRODUCT.

**ACTIVATION** means the registration of PROTECTION and activation of the PRODUCT for use.

**MAINTENANCE** means support and update/upgrade services for the SOFTWARE. MAINTENANCE may be purchased for PRODUCTS separately if available or may be part of specific license types for PRODUCTS. MAINTENANCE is governed by the GTC for Software Maintenance.

**LICENSE CERTIFICATE** means the license document that may be delivered by TRANSWARE to CUSTOMER evidencing CUSTOMER, CUSTOMER's LICENSE and - where applicable - MAINTENANCE for PRODUCTS.

**CUSTOMER** means the licensee as identified on the LICENSE CERTIFICATE and in this EULA. CUSTOMERS may only be legal entity. Consumers may not be CUSTOMERS in the sense of this EULA.

**AUTHORIZED END USER** abbreviated as **USER** means any single natural person who has been assigned a LICENSE and who is authorized by CUSTOMER to use the PRODUCT in accordance with the EULA.

**DOCUMENTATION** provides information for use of SOFTWARE like functionalities, installation preconditions and accompanies the SOFTWARE in the PRODUCT.

**INSTANCE** means the PRODUCT installation in a physical or virtual operating system environment.

**ROLE** is the way in which a PRODUCT is used in an INSTANCE. ROLES are production, quality assurance, development and training.

**PRICE(S)** means the current retail prices for LICENSEs plus VAT and all other applicable taxes, duties and customs.

## 2 Purchase by quote

### 2.1 General remarks

TRANSWARE sells PRODUCTS to CUSTOMERS in different ways. CUSTOMERS may request individual quotes for specific requirements or services in writing (including email) and place an order by issuing a purchase order document that refers to the quote. With acceptance of the purchase order by TRANSWARE a contract under the acceptance of this EULA is concluded between TRANSWARE and CUSTOMER. With conclusion of the contract CUSTOMER is obliged to fulfill its obligations according to this EULA.

### 2.2 Payment

Once TRANSWARE has confirmed a purchase order CUSTOMER shall pay all applicable invoices of TRANSWARE within the payment terms indicated on the relevant invoices.

CUSTOMER shall pay interest to TRANSWARE on any and all amounts that are at any time overdue and payable to TRANSWARE in the amount of 8 percentage points above the base interest rate of the European Central Bank.

### 2.3 License certificate

As proof of evidence for the CUSTOMER's purchase of a PRODUCT TRANSWARE provides to CUSTOMER a LICENSE CERTIFICATE that comprises all information that identify the CUSTOMER, the LICENSE, the PRODUCT and the rights that are granted to the CUSTOMER for the PRODUCT.

### 2.4 Taxes and Duties

The license fees charged by TRANSWARE to CUSTOMER outside of Germany do not include, and all payments to TRANSWARE by CUSTOMERS outside of Germany must be free and clear of, and without reduction for, any excise, use, value-added or other taxes, duties or levies of any kind. CUSTOMER shall be responsible for any and all taxes of any kind, including, without limitation, sales and value added taxes.

For all orders except from Germany tax reversed liability applies to CUSTOMER.

## 3 Purchase in the web shop

For standardized SOFTWARE TRANSWARE offers PRODUCTS in a web shop. The following chapters set forth the applicable provisions for agreements concluded via the web shop.

### 3.1 Products and offers

TRANSWARE's presentation of PRODUCTS in the web shop is not a legally binding offer, but a request for an order. DOCUMENTATION of the PRODUCT is neither an assurance nor guarantee and is subject to changes at TRANSWARE's sole discretion.

PRODUCTs are expressly listed with a DOCUMENTATION including a description of functionalities of the SOFTWARE, license information and system requirements. By placing an order, CUSTOMER agrees that it has read

the DOCUMENTATION and that it understands the nature of the PRODUCT. It is CUSTOMER's responsibility to determine whether the purchase and use of the PRODUCTS is suitable and fitting to the intended use.

All offers are valid as long as PRODUCTS are listed in the web shop, unless otherwise stated. Errors and omissions are reserved.

## 3.2 Order process and conclusion of purchase contract

### 3.2.1 Product selection and shopping cart, GTC

The CUSTOMER may select PRODUCTS and their quantity and put them in a so-called shopping cart via the [ADD TO CART] button. The selection of products in the shopping cart may be modified at CUSTOMER's choice. The shopping cart content may be listed at any time by a specific [Cart] icon. It is CUSTOMER's sole discretion to finish the PRODUCT selection and to either abort the process at this point or to proceed with the checkout to continue the order process. These GTC must be accepted at this stage. CUSTOMER is offered to review and accept the GTC by selecting the option [Click here to read the General Terms and Conditions and check the box to accept them]. The checkout process is initiated by a [PROCEED TO CHECKOUT] button that shows the present content of the shopping cart once again with the possibility to update the quantity of chosen PRODUCTS or to discard the selection.

### 3.2.2 Account details

In the next step of the order process CUSTOMER's billing details have to be entered. As an option CUSTOMER may apply for a website account registration or enter details just for the current order process. With the [Register and check out] button a website account is created while the [Checkout as Guest] button executes the checkout without registration.

### 3.2.3 Confirmation of Selection and Purchase

In the next step of the order process the billing details and the shopping cart content is listed and may be modified by CUSTOMER. By pressing the [CONFIRM PURCHASE] button the CUSTOMER makes a binding request to purchase the PRODUCTS in the shopping cart according to the GTC and the selections that the CUSTOMER has chosen in the order process. A valid purchase contract between CUSTOMER and TRANSWARE is concluded upon successful completion of the electronic payment process.

### 3.2.4 Payment processing

Payment processing is next in the order process. Advance payment (e.g. via credit card) is a common payment method in web shops. Access to download links for the purchased PRODUCTS and PROTECTION will only be provided upon successful completion of the payment transaction. The CUSTOMER may choose from the available payment options displayed in the web shop and will be guided to provide all information required to process payment in the chosen category. TRANSWARE may change available payment options from time to time.

### 3.2.5 Purchase and payment confirmation

Once the payment is successfully executed, TRANSWARE confirms the purchase and receipt of the payment to the CUSTOMER by an email including password protected download links for the purchased PRODUCTS.

### 3.2.6 Download and ACTIVATION

According to the DOCUMENTATION PRODUCTS require no, one or two step ACTIVATION.

For PRODUCTS with one step ACTIVATION, PROTECTION is delivered with a second personalized email within one business day. PRODUCTS with two step ACTIVATION require that CUSTOMER installs the PRODUCT to generate a PROTECTION request that the CUSTOMER needs to send to TRANSWARE by email. CUSTOMER will receive a second personalized email with a download link for the PROTECTION of the PRODUCT within one business day.

ACTIVATION is completed in one and two step ACTIVATION with the registration of the PROTECTION in the PRODUCT. ACTIVATION and the validity of the PROTECTION are mandatory for making use of of the PRODUCTS.

### 3.2.7 Download links

The download links for the PRODUCT are password protected and will be delivered with the purchase and payment confirmation email sent to CUSTOMER.

Download links for PROTECTION are custom, unique and password protected and remain valid for 5 days. In case CUSTOMER has not executed the download link provided within the 5 days term of validity CUSTOMER may attend TRANSWARE for further advice.

To get support in case of downloads interruption and/or execution failures the CUSTOMER shall contact TRANSWARE not later than 7 calendar days after the the successful completion of the payment transaction.

The use of all download links are technically monitored and documented by TRANSWARE. TRANSWARE reserves the right to evaluate technical logs to evidence CUSTOMER claims in this respect.

Due to the cases described above TRANSWARE is entitled at its sole discretion to take any further measures.

## 3.3 Prices

Actual PRICES for PRODUCTS are indicated on the online platform of TRANSWARE. TRANSWARE expressly reserves the right to modify the PRICES from time to time. PRICES for a CUSTOMER purchase are determined at the time of checkout of the cart and each CUSTOMER's order shall be charged according to prices current at the time of purchase.

# 4 Licenses

## 4.1 License Type Definitions

CLIENTS are dedicated computers, workstations, notebooks, virtual machines or terminal server sessions.

The PERPETUAL LICENSE represents the timely unlimited right to use the PRODUCT. If MAINTENANCE is available for a PRODUCT it may be concluded separately between CUSTOMER and TRANSWARE. With the purchase of MAINTENANCE CUSTOMER accepts the GTC for Software Maintenance.

The FIXED TERM LICENSE represents the timely limited right to use the PRODUCT including MAINTENANCE. With the purchase of a FIXED TERM LICENSE CUSTOMER accepts the GTC for Software Maintenance.

For both, PERPETUAL LICENSES and FIXED TERM LICENSES, the following license types may apply:

- i) NODE LOCKED is SOFTWARE that may be subject to a PROTECTION bound to the CLIENT where the SOFTWARE is installed.
- ii) NAMED LICENSES is a node-locked license for an individual USER; it authorizes the USER to use the PRODUCT on a specific CLIENT. For each USER of the PRODUCT one NAMED LICENSE is required. The use of a NAMED LICENSE by different individual USERS is not permitted.
- iii) FLOATING LICENSES means a number of LICENSEs for PRODUCTs that grant the CUSTOMER the flexible dedication of LICENSEs to USERS under control of a service. Within the count of purchased LICENSEs and upon USER request the service allocates subject to availability one LICENSE to one USER for a limited period of time. The request may be executed by USERS repeatedly within the term of the FLOATING LICENSE and within the count of available LICENSEs at any given time.

- iv) CONCURRENT LICENSES allow CUSTOMERS to install PRODUCTS on an unlimited number of CLIENTS. The maximum simultaneous use of PRODUCTS by USERS is limited to the number of CONCURRENT LICENSES which is under control of a service. All PRODUCTS under a CONCURRENT LICENSE must run in the same network. For CONCURRENT LICENSES the control service is NODE LOCKED.
- v) SERVER LICENSE is defined for each dedicated server hardware or virtual machine on which the SOFTWARE executable is running. SERVER LICENSEs may be NODE LOCKED. The SERVER LICENSE does not comprise USER LICENSEs but may be combined with the license types described above to enable CUSTOMERs limited or unlimited use of PRODUCTS according to their specific requirements.
- vi) SITE LICENSE is defined as an unlimited number of LICENSEs with the restriction that all USERs of the LICENSEs must reside in a specific geographical area or country like EMEA. For SITE LICENSEs the number of installations and access to the SOFTWARE on CLIENTS within the restriction is not limited.
- vii) VIEWER LICENSE for the SOFTWARE is defined for each USER in a network with access to the SOFTWARE independent from the extent or grade of use. The measure of the USER number can be specific for the technical environment of a CUSTOMER.
- viii) DEMO LICENSEs are available royalty-free upon demand and shall be solely granted for test and evaluation purposes on a one per CUSTOMER basis for a certain period of time without prolongation option. DEMO LICENSEs may be functionally restricted and their productive use or use for business purposes is not permitted. Any warranty whatsoever is expressly excluded.

## 5 Rights and limitations of use

### 5.1 Rights

Within the scope of the respective license type, TRANSWARE grants a non-exclusive simple right to use the PRODUCT either for a fixed term or perpetually and according to the actual technical system prerequisites. Rights granted by TRANSWARE are determined according to the provisions, subject to these provisions and CUSTOMER's continuing compliance herewith, and subject to the license type chosen by CUSTOMER. TRANSWARE hereby grants CUSTOMER the following non-exclusive and non-transferable rights to:

- i) install and use as many copies of the PRODUCTS as authorized by the LICENSEs purchased.
- ii) transfer LICENSEs between USERS or CLIENTS no more frequently than once every ninety (90) days
- iii) create copies of the PRODUCT for security backup only and
- iv) operate the PRODUCT in a production ROLE plus in the ROLE of quality assurance. Other ROLES like development or training may be chargeable and require prior consent of TransWare. All use of PRODUCTS in ROLES requires PROTECTION which is reflected in the LICENSE CERTIFICATE.

CUSTOMER shall not rent, lease, time share, sub-license, distribute, resell, sell or transfer the LICENSEs. Except otherwise permitted by the applicable law, CUSTOMER shall not, copy, reproduce, display, decompile, reverse engineer, disassemble, modify or separate the component parts of the PRODUCT. Where CUSTOMER has a statutory right to disassemble or decompile the PRODUCT for the purpose of obtaining information needed to achieve interoperability with other programs, CUSTOMER agrees that such right may not be exercised unless TRANSWARE fails to respond within sixty (60) days after receipt of a written request to provide the necessary information.

CUSTOMER shall not upload, host, use or access the PRODUCTS via a timesharing, service bureau, virtualization, application hosting or other remote access arrangement and shall not use the PRODUCT to provide hosting, service bureau or application provider services without a specific agreement agreed upon with TRANSWARE and mutually approved in writing.

All rights not specifically granted hereunder are expressly reserved by TRANSWARE.

## 5.2 Right to change

The use of the PRODUCT may require ACTIVATION and PROTECTION provided by TRANSWARE. TRANSWARE is free to introduce, change and replace ACTIVATION and PROTECTION at its sole discretion.

## 5.3 Multiplexing and virtualization

The use of the PRODUCTS in multiplexing scenarios like software and hardware pooling, virtual machines or terminal server requires the use of sufficient LICENSEs as required by the license types for such environment and the corresponding relevant number of USERS.

## 5.4 Over use

Over-use is given whenever the constellations defined in section 4.1 are exceeded or avoided. As a matter of principle, over-use constitutes a breach of contract by the CUSTOMER. If the CUSTOMER has understated its use of the PRODUCTS, CUSTOMER shall immediately notify and purchase from TRANSWARE sufficient LICENSEs to support the actual use.

## 5.5 License Audit

TRANSWARE is entitled to carry out a software license measurement to check the software licenses used by the CUSTOMER at most once a year or on justified grounds. The aim of the measurement is to determine the use of TRANSWARE software products licensed by the CUSTOMER in accordance with orders and contracts. TRANSWARE is entitled to set up its software in such a way that the usage information of a software installation relevant for licensing is recorded. TRANSWARE will not evaluate personal user data to measure performance or behavior. TRANSWARE warrants that all logged data will be treated confidentially and only collected for the purpose of license verification. The audit is carried out solely by TRANSWARE on the basis of a measurement report, the CUSTOMER does not incur any costs for the measurement and the software operation is not impaired. The CUSTOMER undertakes to support a measurement according to the specifications of TRANSWARE, in particular to provide a measurement report within 4 weeks after request by TRANSWARE. Only TRANSWARE tools may be used for the measurement. If the measurement results in an increased degree of utilization compared to license agreements, TRANSWARE is entitled to adjust the number of licenses and maintenance costs accordingly and to charge the CUSTOMER retroactively from the determined time of use.

## 5.6 Ownership

Save and except for the LICENSEs granted to CUSTOMER, no title to, or ownership of, or any other proprietary rights in the PRODUCT, DOCUMENTATION or any TRANSWARE intellectual property or technology are transferred to CUSTOMER.

## 5.7 Compliance

CUSTOMER shall comply with applicable export laws and regulations of any agency of CUSTOMER's country of residence.

## 6 Term and Termination

### 6.1 Term

This EULA is effective as of the purchase date and shall in case of PERPETUAL LICENSES continue for an indefinite period of time, in case of FIXED LICENSES until the earlier of (a) the termination of this agreement in accordance with its terms and conditions, and (b) the expiration of the CUSTOMER's LICENSE as outlined on the LICENSE CERTIFICATE.

### 6.2 Termination of agreement.

In case of FIXED TERM LICENSES TRANSWARE reserves the right to terminate this agreement immediately upon notice to CUSTOMER if CUSTOMER is in material breach of this agreement. Upon termination for breach, rights granted to each USER to use the PRODUCTS shall also terminate and, at TRANSWARE's request, CUSTOMER shall promptly, at its own costs and expenses, return or destroy any TRANSWARE proprietary information and the PRODUCT, in all forms, including, without limitation, all summaries, copies and excerpts and those in the possession or control of its employees. At TRANSWARE's option and request, CUSTOMER shall provide written certification of its compliance with this section through its senior management. For greater certainty, failure of TRANSWARE to make such request shall not entitle CUSTOMER, or any USER, to make any further use of TRANSWARE proprietary information or SOFTWARE, or otherwise extend CUSTOMER's or any USER's rights set out herein, after expiration or termination of this agreement; and CUSTOMER specifically agrees to cease any further use, and to require each USER to cease any further use thereof unless TRANSWARE and CUSTOMER have signed a written agreement for such use.

## 7 Mal-Performance, Defects and Indemnities

### 7.1 Notice

The CUSTOMER shall give TRANSWARE written notice of defects and mal-performance regarding the respective SOFTWARE provided under this EULA. Such notice shall include a reasonable description of the defects and/or the claimed mal-performance.

### 7.2 Fixed Term Licenses

In case of a FIXED TERM LICENSE TRANSWARE shall be entitled to remedy the notified defects or the claimed mal-performance through repairs or replacement free of charge. In the event remedies are unreasonable or TRANSWARE decides to waive its right to remedy, the CUSTOMER shall be entitled to a reasonable reduction of the respective PRICE provided that the CUSTOMER has given written notice according to section 7.1 and has announced its right to a reduction of compensation in writing.

### 7.3 Perpetual Licenses

In case of a PERPETUAL LICENSE TRANSWARE shall be entitled to remedy the notified defects or the claimed mal-performance of the SOFTWARE through repairs or replacement free of charge within a reasonable timeframe. In the event a remedy fails within such reasonable timeframe the CUSTOMER shall set TRANSWARE a reasonable deadline for a final attempt to remedy defects and/or mal-performance. If such final attempt to remedy fails, the CUSTOMER may rescind the Agreement and/or claim damages, whereas the restrictions in section 8 shall apply.

### 7.4 Indemnification

TRANSWARE shall – on demand – indemnify the CUSTOMER from and against all losses, damages, liabilities, expenses, proceedings and costs (including reasonable attorney's fees) arising out of

- TRANSWARE's willful (intentional) misconduct in connection with this agreement;



- Claims brought or made against CUSTOMER by any third party for breach of any third party intellectual property right in relation to any intellectual property which was provided to the CUSTOMER by TRANSWARE. The CUSTOMER shall give TRANSWARE prompt notice of each such claim and reasonable cooperation in connection with the defense of such claim. Sole control of defense and/or settlement of those claims will reside with TRANSWARE.

## 7.5 Statute of Limitations

Claims according to section 7.1 to 7.3 shall become statute-barred 12 (twelve) months after the download or any other way in which the SOFTWARE is provided, whichever may come first.

## 8 Liability Limitation.

TRANSWARE shall be liable for losses regardless of the legal foundation, including default, defective performance or non-contractual liability,

i) without limitation of the amount of damages for wilful intent or gross negligence by TRANSWARE or its executive employees, for gross organisational fault, and regardless of the degree of fault in cases of injury to body, life or health for which TRANSWARE is responsible, as well as in case of a guarantee for the condition of the SOFTWARE by TRANSWARE.

ii) limited to the typical foreseeable loss under the contract in cases of culpable breach of material contractual duties, as well as in cases of wilful intent or gross negligence by vicarious agents of TRANSWARE, insofar as case a) does not apply.

iii) further damages shall be excluded.

Liability under product liability law remains unaffected.

The CUSTOMER must accept a contributory fault on its part. If data are lost, TRANSWARE shall be liable for no more than the costs of reproducing data from backups, as well as for reconstructing data which would have been lost even if backups had been produced regularly and correctly by the CUSTOMER. The CUSTOMER is responsible for producing the backups.

Except as otherwise provided by applicable law any claims arising out of this section shall become statute-barred two (2) years after the cause of action has arisen.

## 9 Miscellaneous

### 9.1 Binding Effect/Assignment

This agreement is binding upon the parties' respective representatives, successors and assigns; however, CUSTOMER shall not assign or transfer, whether by operation of law or otherwise, this agreement, the use of the SOFTWARE, or CUSTOMER's rights and obligations under this agreement, without the prior written consent of TRANSWARE. TRANSWARE shall be entitled to assign this agreement to any purchaser of TRANSWARE's rights to any of the SOFTWARE.

### 9.2 Remedies

Nothing in this agreement is intended to waive or limit any remedy available to TRANSWARE at law or in equity, including without limitation any remedy available under international copyright laws.



### 9.3 Additional Provisions

If any portion of this agreement is held to be unenforceable, the remainder of this agreement shall be valid and enforceable.

A delay or failure by a party in exercising its rights and remedies provided for in this agreement is not and will not be a waiver of any right.

No amendment or waiver of this agreement will be binding unless it has been assented to in writing or text form by both parties.

Nonperformance is excused to the extent it is rendered impossible by fire, flood, acts of terrorism, earthquake, governmental acts or orders or restrictions, failure of suppliers, power failure, strikes or other circumstances in which failure to perform is beyond the control and not caused by the negligence of the nonperforming party (force majeure).

All notices must be addressed to the president of the party and either sent registered or certified mail, return receipt requested or by commercial courier service with signature verification of receipt, or served personally.

### 9.4 Governing Law

The parties agree that the United Nations Convention on contracts for the International Sale of Goods is excluded from application to this agreement. The governing law shall be that of the Federal Republic of Germany without regard to conflict of laws principles. This section shall survive the termination or expiration of this agreement. The legal venue is the competent court at TRANSWARE's registered office.

### 9.5 Privacy policy

TRANSWARE processes CUSTOMER data according to legal requirements. Personal data requested by TRANSWARE in the purchase and payment process are treated as confidential and are not disclosed to third parties as further described at <https://www.transwareag.com/privacy.html>.