

# General Terms and Conditions of .riess engineering europe gmbh .riess General Terms and Conditions-GENERAL



## I. Scope, supplementary contractual terms

1.1 The General Terms and Conditions of riess engineering europe gmbh (.riess) - .riess-General Terms and Conditions-GENERAL apply to all contractual relationships with customers in connection with deliveries and services provided by .riess and form part of the contract, unless agreed otherwise between .riess and the customer in a written separate agreement. .riess-General Terms and Conditions-General apply also to all future business relationships with the same customer without that .riess would have to inform that customer correspondingly in each individual agreement.

1.2 These .riess-General Terms and Conditions-General apply exclusively. Any deviating, contradicting or supplementing general terms and conditions of a customer will only form part of a contract to the extent that .riess expressly approves them in writing. This requisite approval applies in any case and in particular in those instances, where .riess knows the general terms and conditions of the customer and proceeds with a delivery or service to the latter without reserve.

1.3 Only the general management of .riess shall be entitled to agree to such conditions of delivery or service of any type whatsoever, which deviate from these General Terms and Conditions.

1.4 .riess-General Terms and Conditions-General are completed by the conditions for licensing of software -riess-General Terms and Conditions-SOFTWARE, by conditions for software maintenance -riess-General Terms and Conditions-SOFTWARE MAINTENANCE-, and by conditions for provision of consulting, development and other services -riess-General Terms and Conditions-Services. For the scope of these conditions, in particular the above provisions shall apply by analogy.

## II. Initiation and conclusion of contract, written form

2.1 Offers from .riess are subject to change and unbinding. This applies analogously to those instances, where .riess submits to the customer catalogues, product descriptions or technical documents to which .riess reserves intellectual property rights or copyrights. Furthermore, the regulations of these General Terms and Conditions and especially the liability limitations set out under sections 7.2 et seq. shall apply to all pre-contractual obligations.

2.2 Any order of software programs and/or commissioning to carry out other services, which are issued by the customer, shall be deemed a binding contractual offer, unless provided otherwise in the order and/or the commissioning or in other agreements. .riess shall be entitled to accept such contractual offer within four weeks from its receipt by .riess. The acceptance can either be made in writing, e.g. by an order confirmation or by delivery of software programs and/or provision of other services to the customer.

2.3 Any termination, reminder, granting of periods and other legally relevant declaration of the customer must be made in writing in order to be effective. This shall also apply to the waiver of this written form requirement. There are no oral side agreements.

## III. Delivery, shipment, passing of risks

3.1 Software programs or other goods will be supplied ex-warehouse, from where the place of performance is. At customer's request, software programs or other goods will be shipped to another destination. In case that no collection by the customer and/or third parties is agreed to and that there are no specific instructions issued by the customer, .riess shall be entitled to specify at its own discretion the type of shipment, and in particular shipment company, shipment route, packaging, etc. Transport insurance will only be taken out upon the express request and at the expense of the customer.

3.2 The risk of accidental loss and/or of deterioration of goods shall pass to the customer upon their surrender. Surrender shall be tantamount to customer's default in accepting. In case of a shipment, the risk of accidental loss and/or of deterioration of goods shall pass to the customer upon handing over to the forwarder, the carrier or to any other person or agency designated to execute the shipment.

3.3 Delivery terms shall only be binding where .riess has confirmed them as binding in writing. Where binding delivery terms have been agreed to, .riess shall not be in default without a written reminder of the customer.

3.4 Adherence to such terms implies that the customer provides information required for delivery in time and performs its respective obligations to cooperate. In case that this condition is not met, delivery terms will be extended accordingly. This shall not apply to those instances, where a delay is attributable to .riess.

3.5 In case that a non-compliance with delivery terms is the result of an incident of Force Majeure, delivery terms will be extended accordingly.

3.6 .riess shall be entitled to perform partial deliveries or services. This does not apply when customer is not interested in such partial delivery or service.

## IV. Remuneration, payment conditions

4.1 The price of a delivery, license and/or service depends on the offer and/or order confirmation submitted by .riess. Travel expenses and costs will be invoiced separately, unless agreed otherwise in writing. The prices are quoted net, ex warehouse, without deduction, and plus the statutory value-added tax applicable on the date of the invoice.

4.2 .riess expressly reserves the right to refuse cheques or bills of exchange. They shall only be accepted as provisional performance. Any and all discounting and bill charges shall be borne by the customer and be due immediately.

4.3 All payments will be due within 14 days from receipt of an invoice and shall be paid without deduction, unless agreed otherwise in writing. Customer will be in default of payment once this period has expired. If customer is in default of payment, the interest on arrears will amount to 8 percentage points per year above the applicable base rate pursuant to Art. 247 BGB [Civil code].

4.4 .riess reserves the right to adjust prices adequately in case that costs increase or decrease after conclusion of the contract. Upon request, .riess shall produce evidence of the same to the customer.

4.5 The customer shall only have a right to set off, to the extent that his counter claims have been legally established as final and absolute or if they have been accepted in writing by .riess. Moreover, the customer may only assert a right of retention, where his claim according to which he retains a payment is based on the same contractual relationship and has either been legally established as final and absolute or been accepted by .riess. Customer may not assert a right of retention against .riess on the grounds of partial performance under the terms of Art. 320, sect. 2 BGB.

4.6 In case that the customer is in default of payment of significant amounts, .riess shall be entitled to provisionally suspend further services arising from the same contractual relationship to which .riess is bound and to request immediate payment of all unpaid amounts arising out of this relationship. This means that .riess will not longer be bound to possible agreed deadlines and/or delivery periods for outstanding deliveries and services.

## V. Retention of Title and Rights

5.1 Until full payment of any existing and future claims resulting from an ongoing business relationship, .riess reserves all rights to the related deliveries and/or services. This shall apply in particular to all material supplies but also for other rights, such as the right to use software programs.

5.2 Prior to full payment of the secured claims, deliveries and/or services from .riess must not be pledged to third parties nor be assigned as security. If these are pledged or otherwise encumbered by third parties, customer shall inform the latter immediately on the property rights of .riess and shall notify .riess promptly by telephone, fax or email and then in written per regular mail. In the event that such third party is not able to bear the judicial and extra-judicial costs arising to .riess from such assertion of rights, customer shall be liable for all damages sustained by .riess.

5.3 In case that customer is in breach of a contract, particularly in the event of non-payment of the remuneration when due, .riess shall have the right to cancel the contract in accordance with the statutory provisions and to request return of the goods according to the retention of title and to the cancellation and to revoke possible rights conferred to customer such as a right to use software programs. These rights of .riess shall also exist then, when secured claims are already barred.

5.4 Customer is obliged to treat the delivered object with care, and upon request of .riess to insure it properly against damages for the duration of the reservation of title. Customer assigns to .riess already now any claims it may have against the insurance company.

5.5 To the extent that .riess shall be entitled to assert a reservation of title, customer shall grant to .riess the right to collect reserved goods and to this end grant to .riess the irrevocable and unlimited right to access its business premises and site during regular business hours.

## VI. Duty to inspect and to give notice of defects, customer's duty to cooperate

6.1 With regard to all deliveries and services from .riess, customer acknowledges its duty to inspect and to give notice of defects arising from Art. 377 HGB [Commercial Code].

6.2 With regard to customer's right of retention for possible defects, the above subsection 4.5 shall apply by analogy. In case that the existence of a defect is legally undisputed or that it has been recognized by .riess, the scope by which a right of retention is asserted must be adequate to the established defects. In case of unjustified notices of defects, .riess shall be entitled to claim from the customer indemnification for all losses thereby incurred.

6.3 In order to avoid damages, the customer must make sure that its data base is periodically saved according to the state-of-the-art.

6.4 With regard to the services to be performed by .riess, the customer will, if necessary, cooperate free of charge. This cooperation includes in particular that the customer will submit to .riess relevant information, for example with regard to its targets and requirements, in good time and without further request. Moreover customer will provide in good time the equipment required for the installation or operation of the deliveries and/or services.

## VII. Liability

7.1 Liability of .riess depends on legal provisions, unless nothing to the contrary is stated hereinafter.

7.2 Towards the customer .riess shall be liable for acts of wilful misconduct, intent, and gross negligence. In addition, .riess will also be held liable for the following cases resulting from simple negligence:

- for damages resulting from injury to life, body, or health;
- in case of a breach of material contractual obligations (substantial obligations); such a breach includes those instances, where only the execution of the accepted contractual obligation enables the proper execution of the contract and/or where its breach would seriously compromise the fulfillment of the purpose of a contract. In that case, however, the liability of .riess will be limited to the typical foreseeable damages and to a maximum amount of 200,000.00 EURO, or in case that the value of the contract concerned exceeds this amount, to the order value

This shall in no event affect the customer's claims arising from guarantees accepted by .riess or from the product liability law. The above provisions shall not imply a change of burden of proof to customer's disadvantage.

7.3 In case of a breach of duty which is not based on a defect and if other legal circumstances for a withdrawal are met, customer may only withdraw if this breach is attributable to .riess. Any withdrawal shall be excluded in cases of minor breaches of duty.

# General Terms and Conditions of .riess engineering europe gmbh .riess General Terms and Conditions-GENERAL



**7.4** .riess shall not be liable for a loss of data in case that such a loss would not have occurred had the data been properly back-upped by the customer. As a general rule data are deemed properly back-upped when the customer saves them daily in machine-readable form and is able to prove it and where the recovery of such data is reasonably possible. The liability of .riess for a loss of data shall be restricted to the typical recovery efforts required in case of proper back-up of data, unless such loss is the result of gross negligence or intent on the part of .riess.

**7.5** Likewise, .riess shall not be liable for software faults resulting from a modification of the conditions of use or operating, from operating errors, from changes to software programs, such as modifications, adjustments, connections with other programs and/or another form of use which is contrary to the contract, unless the customer proves that such error existed already at the time of delivery made and/or of the service performed and where they are not directly caused by one of the above events.

**7.6** To the extent that the liability of .riess is excluded or limited this shall also apply to personal liability of the staff and employees of .riess. As a general rule, the objection of a contributory default on the part of customer (e.g. under section VI.) remains unaffected.

**7.7** To the extent that claims for damages are excluded or limited under the above sections, such exclusion or limitation shall also apply to concurrent claims based on illicit action and to claims for compensation of costs pursuant to Art. 284 BGB.

## VIII. Limitation

Claims for defects and for damages of the customer - for any legal reason whatsoever - expire after one year following the warranty period or otherwise from that time at which they arise. This shall not apply to those cases where legal regulations provide for shorter periods. Legal expiration periods, however, shall apply to the following circumstances:

- For defects where .riess has fraudulently concealed a defect or granted a warranty for a certain property;
- for claims for damages resulting from injury to life, body or health;
- for other claims for damages arising from an intentional or grossly negligent breach of duty;
- for claims for damages arising from a breach of material obligations (substantial obligations);
- for other claims for damages pursuant to the product liability law.

## IX. Granting of periods, threatening with claims for damages, withdrawal and termination

**9.1** In case that the customer is legally entitled to claim damages in lieu of performance or reimbursement of expenses after that a grace period granted by it expires without result, another such granting of another period shall state the customer's express threat to assert such rights in case that this period, too, will expire without result.

**9.2** The above subsection 9.1 shall apply by analogy if the customer is legally entitled to withdraw from a contract with .riess or to terminate such contract for good cause with immediate effect and to the extent that a granted appropriate period expires without result.

## X. Secrecy, confidentiality, data protection

**10.1** To the extent that the parties exchange confidential commercial or technical information or that one party gains access to such information from the other which is normally treated as business secret, such as customer data, the parties commit to treat it strictly confidentially and to not disclose it to third parties without the approval of the other party and to not use or reproduce it beyond the purpose of the execution of this contract. Excluded from this mutual obligation of confidentiality is such information, which

- a. is demonstrably public knowledge or which becomes public knowledge without action by one of the parties;
- b. is disclosed to one party through another source which is not bound by such secrecy obligation to the other party;
- c. has to be disclosed by one party pursuant to compulsory legal provisions and in particular towards courts, law enforcement agencies and authorities.

**10.2** Upon request of the disclosing party, the other party shall promptly return all physically transmitted confidential information to it or destroy it at the disclosing party's discretion without keeping copies or recordings.

Own recordings, compilations and analyses containing confidential information must be returned promptly upon other party's request; and electronically transferred and/or saved confidential information shall be deleted.

Upon request, the implemented destruction/deletion has to be confirmed to the other party in writing. However, the above provisions from this section shall not apply for copies which one party keeps for demonstration purposes in a confidential storage.

**10.3** This secrecy obligation shall survive the contractual relationship between the parties for a period of 5 years.

**10.4** In order to answer questions or to solve issues with customers in connection with the software research files licensed by .riess, .riess may under certain circumstances disclose business secrets such as customer data to licensors. In that case .riess will subject the licensor to this secrecy obligation.

**10.5** Moreover, the customer shall treat the details of the contracts with .riess and in particular price conditions secretly.

**10.6** In addition, the parties commit to comply with the applicable data protection provisions.

## XI. Miscellaneous

**11.1** The legal relationship between .riess and the customer is subject to the law of the Federal Republic of Germany under the exclusion of the conflict of laws provisions and the United Nations Convention on Contracts for International Sale of Goods (CISG).

**11.2** To the extent that the customer is businessman, a legal entity of public-law or a special fund under public law, exclusive venue for all disputes arising from or in connection with the contractual relationship shall be at Karlsruhe. .riess shall however also be entitled to take legal action at the seat of the customer.

**11.3** Should one or several stipulations of these General Terms and Conditions be or become invalid, this shall not affect validity of the remaining provisions. The invalid stipulation shall be replaced by such clause which comes as close as possible to the economic purpose of the ineffective one.

# General Terms and Conditions of .riess engineering europe gmbh for the provision of consulting and other services .riess-General Terms and Conditions-SERVICES



## I. Scope

The following General Terms and Conditions of riess engineering europe gmbh (.riess) - for the provision of consulting and other services, .riess-General Terms and Conditions-SERVICES apply to all contractual relationships with customers in connection with consulting and other services provided and form part of the contract, unless agreed otherwise between .riess and the customer in a written separate agreement. These .riess-General Terms and Conditions-SERVICES complete the General Terms and Conditions of .riess, - .riess-General Terms and Conditions-GENERAL -, which next to .riess-General Terms and Conditions-SERVICES form also part of the contract.

## II. Consulting and other services provided by .riess

2.1 Based on individual customer orders, .riess will provide diverse consulting and other services in connection with selection, introduction, installation, use and individual adaptation of software programs. The scope of consulting and other services to be provided by .riess will be defined in relevant offers and/or order confirmations issued by .riess. These .riess-General Terms and Conditions-SERVICES shall in particular apply to the following services provided by .riess:

- Determining the precise software requirements of the customer taking into account customer-specific hard and software environment;
- Project support and consulting during the introduction of software programs;
- Implementation of pilot applications of relevant software programs at customer's site;
- Consulting on installation and introduction of software programs selected by the customer;
- Supporting the customer in realization and optimization of operational availability of the software programs;
- Consulting on adaptation and extension of software programs;
- Training of end users of the customer e.g. through standard courses, workshops, tutorials on the optimized use of software programs.

2.2 The above consulting and other services will only then be provided by .riess pursuant to differing terms and conditions if expressly agreed to with the customer in writing.

## III. Scope and provision of the services

3.1 The precise targets, scope of tasks involved and the approach will be mutually determined between the customer and .riess and then fixed in writing.

3.2 To the extent that .riess provides support services in connection with projects, customer shall check regularly whether the project targets are met, which are agreed to in writing. Customer will solely assume the project management and responsibility. .riess and the customer will mutually agree to the type and representation of the results and/or the documentation and recording of the project works and timelines; and in doing so define tasks to be performed by .riess.

3.3 .riess will have to deploy skilled staff and assist and control them continuously during the execution of an order. .riess will decide at its own discretion which employees to assign or to replace.

3.4 To the extent that also employees of the customer support a project, the customer will make sure that its employees will be managed by an appropriate employee. Customer shall inform .riess prior to the start of a project support on both, the commercial and technical persons in charge.

3.5 If .riess assists the customer with adaptations and extensions of the software programs according to customer's instructions, .riess shall owe the activity itself but not the warranty and version upgrades related to it, unless agreed to expressly in writing.

3.6 .riess will provide consulting and other services regularly during normal business hours and outside the bank holidays from Monday through Friday between 8:00 am until 5:00 pm.

## IV. Remuneration, invoicing

4.1 Consulting and service contracts will be charged pro rata temporis. The time to be remunerated by the customer includes - next to the activities of the employees of .riess - also their participation in negotiations, project meetings as well as possible preparatory or concluding works of employees outside the customer's premises, for example at one of the sites of .riess.

4.2 The customer may countersign services done by .riess on activity reports. Invoices will be based on such reports and will be prepared, once a service has been done or once per month if the services will be performed for a period of more than 1 week. For individual, unique activities, which are not too extensive, such as installation support, introduction or training, .riess will send out the invoice immediately after their provision. Special exemptions to this rule are settled in the relevant offers and/or order confirmations.

4.3 To the extent that order confirmations state only an expected duration, this shall only be deemed an estimate. During the provision of the services it may become necessary to exceed such durations. In this case, .riess will promptly inform the customer on this requirement to exceed the initially expected duration and state the reasons. To the extent, that the customer wishes to determine a binding upper limit for the required project duration, this must be specified in an express written agreement.

4.4 If services cannot or not fully be provided for reasons, for which the customer is not responsible, .riess may however charge them but without those costs, which did not arise such as travel expenses.

## V. Disruptions in the performance

With regard to the performed services, .riess will be liable for the timely and proper provision of the services but not for an economic or other result expected by the customer.

## VI. Customer's duty to cooperate

6.1 If necessary, the customer will provide to the employees of .riess, working at its premises, suitable rooms in which it shall also be possible to store documents, tools and storage mediums.

6.2 If necessary, the customer will provide to .riess all required working means in sufficient quantity and without any extra charge and will grant to the employees of .riess access to the information they need to perform their tasks and submit to them the required information in good time.

6.3 To the extent that .riess installs software programs for test purposes in connection with the consulting services, customer will have to set up before suitable hardware and software environment. Prior to commissioning, customer will have to check every function of such software programs under customer-specific hardware and software environments. After successful testing, customer will make sure that every software program provided by .riess for such test purposes and which will no longer used, will be removed from its hardware environment without delay. Possible copies will have to be destroyed and/or handed out to riess.

6.4 .riess shall not be liable for a loss of data in case that such loss would not have occurred had the data been properly back-upped by the customer. The data shall be deemed properly back-upped when the customer saves them daily in machine-readable form and is able to prove it and where the recovery of such data is reasonably possible.

## VII. Rights of use to services, documents, intellectual property rights

7.1 The customer shall be entitled to use the services provided by .riess for the purpose agreed to in the contract. .riess may use the services for other purposes, unless this would constitute a breach against secrecy obligations. The preceding rule shall apply in particular to all documents and other materials set up by .riess in connection with the provision of services for the customer.

Customer's rights to use customer-specific developed programs or program enhancements shall be limited to the purpose of its own use and do not imply the right to a commercial utilization and not the right to sell programs or program components to third parties.

Especially for development services, all rights of use for all types of use are created for and remain with .riess. The customer is granted a temporally and geographically unrestricted, non-exclusive right to use the programs or program components and/or the extensions of .riess software programs (contractual software).

Programs or program components and/or extensions of .riess software programs (contractual software) will be provided in the object code. Extensions programmed in SAP will be executed in ABAP and be provided as transport.

7.2 Insofar as the consulting work results may be protected by a property right of any type, such as patents or utility models, .riess shall exclusively be entitled to such rights insofar as they are created solely by activities of employees of .riess. In this case .riess grants to the customer a royalty-free, unlimited, non-exclusive right of use, which may only be transferred with the consent of .riess.

## VIII. Applicability of the .riess-General Terms and Conditions-GENERAL

The general provisions for the conclusion of contracts, supplies, remuneration and payments, retention of title and rights, liabilities, limitation and legal venue, etc. as set out in the General Terms and Conditions of .riess - .riess-General Terms and Conditions-GENERAL - shall apply analogously to the contractual relationships in connection with the provision of consulting and other services.

# General Terms and Conditions of .riess engineering europe gmbh for licensing of software .riess-General Terms and Conditions-SOFTWARE



## I. Scope

The following General Terms and Conditions of riess engineering europe gmbh (.riess) - for licensing of software, .riess-General Terms and Conditions-SOFTWARE apply to all contractual relationships with customers in connection with licensing of software programs and form part of the contract, unless agreed otherwise between .riess and the customer in a written separate agreement. These .riess-General Terms and Conditions-SOFTWARE complete the General Terms and Conditions of .riess, - .riess-General Terms and Conditions-GENERAL -, which next to the .riess-General Terms and Conditions-SOFTWARE form also part of the contract.

## II. Services by .riess

**2.1** .riess will license to the customer software programs - contractual software - designated in the order confirmation and/or a software license certificate / licensing contract in machine-readable form - as object code - together with the relevant product description and - if available - further documents such as manuals, help files and other technical documentation or information. Depending on the available options and/or customer's request, contractual software either will be supplied on a data carrier or via remote transfer.

**2.2** In case that .riess transmits the contractual software by remote transfer to the customer, .riess will upon request warrant the availability of the contractual software on a server for download by the customer.

**2.3** The product description and/or other documentation of software programs will detail functions and performance which may be achieved by the contractual software in case of its use in compliance with these provisions.

**2.4** Unless agreed otherwise, obligations of .riess in connection with licensing of contractual software do not imply the delivery of new program versions of the contractual software, installation of software, customizing, trainings nor other consulting services or works beyond the licensing of software programs.

## III. Customer's duty to cooperate

**3.1** The order confirmation issued by .riess and/or relevant documentation of contractual software will bindingly set out the required hardware and software environments ensuring a proper and smooth performance of the contractual software. Customer will have to set up suitable hardware and software environment and ensure its readiness.

**3.2** Prior to the operative use of the software, customer will thoroughly check the contractual software for deficiencies and for its usability in a given situation. This applies also to software the customer receives in connection with supplementary performance or with a software maintenance contract.

**3.3** The customer shall be obliged to prevent unauthorized access to the contractual software and to its documentation by taking appropriate steps. In case of a delivery of original storage mediums customer will protect them against unauthorized access through third parties at a secured location.

**3.4** Customer shall bear the disadvantages and additional costs resulting from a breach against one of the above obligations.

## IV. Granting of rights

**4.1** In the relationship with the customer, .riess shall be entitled to all rights to the contractual software - particularly copyright, rights to inventions and technical property rights, even if software has been developed according to the specifications or with cooperation of the customer. This shall also apply to any software, work results and information submitted by .riess to the customer in the context of preparation or implementation of the contract or for subsequent performance and software maintenance. With regard to the contractual software, customer shall only be authorized as provided for hereinafter.

Unless explicitly agreed otherwise in writing, .riess grants to the customer an unlimited, non-exclusive and non-transmissible right to use the software upon the terms of these .riess-General Terms and Conditions-SOFTWARE. This right of use is granted subject to the full payment of the contractual software.

In case that formerly licensed contractual software is substituted for the customer, e.g. due to subsequent performance or software maintenance, customer's right of use for the older software will expire within two weeks from the time customer starts the productive use of the new software.

**4.2** Customer may copy the contractual software to the extent that this is necessary for the defined use of the contractual software. This includes the installation of the contractual software from the original storage medium to the mass memory of the hardware to be used and loading of the contractual software to the RAM. In addition customer shall be authorized to create a backup copy, which must be identified as such. It may only be used for archiving purposes and not be handed over to third parties. A simultaneous use of original and backup copy is prohibited. Further duplicates must not be created. The product description and/or other documentation may be printed out or copied for a compliant use of the contractual software but print-outs or copies must not be handed over to third parties. Any further duplication of the contractual software and/or of the product description or of other documentation by the customer or a provision of the contractual software to third parties shall only be permitted with the express approval of .riess.

## V. Limitations of the right of use

**5.1** Customer is not entitled to use contractual software beyond contractual scope, unless this is absolutely necessary to correct deficiencies and to the extent that .riess is in default of such elimination of a deficiency. If the correction offers grounds to believe that important

program functions and processes could be disclosed, customer may only involve such third parties with the correction of a deficiency, which are not competitors of .riess.

**5.2** Moreover, customer must not analyse, reassemble, process, or modify the software in any other form whatsoever. Any reverse translation into other code forms- the decompilation - and other types of re-development of the various production stages of the contractual software - Reverse-Engineering - shall be prohibited, except according to the following provision. Customer may decompile the object code to the extent that this is required to ensure the interoperability with other software programs and that the customer has not yet received the necessary information and that these decompilation works are limited to the parts of the original software program.

**5.3** The customer must not remove, alter or obliterate notes regarding intellectual property and copyrights, labels, brandings or marks from .riess or other manufacturers applied to the contractual software and/or the product description.

**5.4** For test purposes (testing) .riess software may be provided for a test period (test stage) specified in written but exclusively for the purposes of presentation or to check its suitability for a use by the customer and its affiliated undertakings pursuant to Art. 15 AktG [Stock Corporation Act]. Particularly a productive use and/or its preparation and the use for training purposes shall be prohibited. The final characteristics of the software depend on the documentation, technical data, sales brochures, marketing information and quality specifications, which shall however not constitute a binding statement of works.

Unless agreed otherwise hereinafter, the obligations of .riess in connection with the provision of contractual software for test purposes do not imply the delivery of documentation, of new program versions (software updates), the installation of software, customizing, customer-specific adaptations, trainings nor other consulting services or works beyond licensing of the software programs. Such services must be laid down in a separate agreement and will be charged upon delivery according to the .riess prices and conditions list.

The authorization to use .riess software for testing shall be restricted to test systems (non-productive and non-commercial use), or also to the agreed number of clients, servers, locations and/or agreed projects. No licensing fees are to be paid during the test stage.

If the customer wishes to extend the use of .riess software during test stage, e.g. to a larger number of clients and/or servers and/or locations and/or projects, this shall be subject to fees. .riess will submit to the customer a corresponding offer.

**This right of use shall end in parallel to the end of the test stage. Any other use of the software shall be subject to fees. Alternatively, all deliveries, the software installed and all possible back-up copies will have to be deleted. The customer will in writing confirm the fulfilment of this obligation to .riess.**

## VI. Fees

**6.1** The fees for licenses are comprised of a one-time licensing fee which will be due upon the licensing of the contractual software and of annual maintenance service royalties. Depending on the contractually agreed settlement periods, monthly, quarterly, half-yearly, yearly, the periodical maintenance service royalty will be charged for the first time on the first day of the month following the purchase of the contractual software. The next invoices will then be produced to the beginning of the agreed settlement period. The continued provision of the services through .riess will be conditional on the timely payment of the software maintenance royalties.

**6.2** In order to compensate for cost increases, .riess shall be entitled to review the periodical software maintenance royalty subject to three months' prior notice with effect to the beginning of a service year. In this case the customer shall be entitled to terminate the software maintenance upon one month's notice with effect to the beginning of the next service year and if the royalties are increased by more than 5 %. Otherwise, further regulations arising from sections 8.1 et seq. shall apply accordingly.

## VII. Warranty

**7.1** Customer's rights in case of defects of the contractual software are subject to the applicable statutory provisions, unless stipulated otherwise hereinafter.

**7.2** The contractual software is warranted for a period of one year. This period of one year shall start upon the delivery of the contractual software to the customer. The legal warranty period shall, however, apply there, where .riess has fraudulently concealed a defect or granted a warranty for a certain property of the contractual software.

**7.3** .riess warrants that the use of the contractual software will comply with the statement of works and that it will be free from software bugs that might more than insignificantly impair the contractual software's fitness for the contractually agreed purpose. Insignificant deviations from the statement of works shall not be deemed a deficiency. The customer knows that according to the state-of-the-art software as complex as it is cannot be absolutely free from deficiencies.

**7.4** The customer is obligated to inform .riess promptly and in writing on possible software bugs, stating the outcome of such bugs, their consequences and circumstances under which they occur. Warranty claims shall only exist there, where the notified defect is reproducible or where it can be repeated using outputs created by machines.

**7.5** .riess will rectify duly notified deficiencies either by way of subsequent performance or substitute delivery. .riess will initially decide about the way of rectification, either per subsequent performance or by substitute delivery. This shall not affect the right of .riess to refuse the chosen type of subsequent performance under the statutory conditions. To the extent that this can be reasonably expected from the customer, .riess shall, for the purpose of rectification, be entitled to provide the customer with a new version of the contractual software e. g. an "update", "service release/patch", which will be free from a notified deficiency and/or where the latter has been removed.

**General Terms and Conditions  
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for licensing of software  
.riess-General Terms and Conditions-SOFTWARE**



7.6 If such subsequent performance fails or cannot be reasonably expected from the customer, or if it is not possible or if .riess lawfully or unlawfully refuses it or if the subsequent performance is not realized within a rectification period to be granted by the customer and/or if it is not necessary pursuant to the statutory provisions, the customer may withdraw from the contract or reduce the purchase price. This right of withdrawal shall, however, not exist in case of insignificant deficiencies. The declaration of the withdrawal and/or the reduction will void the customer's claim to the delivery of the contractual software which is free from software bugs.

7.7 .riess shall not be liable there, where faults of the contractual software result from a modification of the conditions of use or of operation, from operating errors, from changes to the software programs, such as modifications, adjustments, connections with other programs and/or another form of use which is contrary to the contract, unless the customer proves that such fault existed already at the time of delivery of the contractual software and where it is not directly caused by one of the above events.

**VIII. Termination, consequences of the termination of the contract**

8.1 .riess reserves the right to terminate the contractual relationship with the customer regarding the licensing of the contractual software for good cause and, if necessary, with immediate effect. A good cause would in particular exist when the customer is in breach of one of the above restrictions of use and fails to satisfy the required obligation within an appropriate period granted to this end.

8.2 Upon the termination of the contractual relationship, customer shall at its own expense return to .riess all original storage mediums including the complete software documentation within 10 days and shall finally delete all existing copies of the contractual software such as back-up copies, copies on hardware, etc.

8.3 If .riess waives its rights to restitution, customer shall upon the request of .riess finally delete all existing copies of the contractual software and destroy the original storage mediums and the software documentation. Customer shall confirm in writing to .riess the complete deletion and destruction.

8.4 With termination of the contractual relationship the customer shall no longer be entitled to use the granted right of use. Any further use of the contractual software will violate the rights of .riess.

**IX. Applicability of the .riess-General Terms and Conditions-GENERAL**

The general provisions for the conclusion of contracts, supplies, remuneration and payments, retention of title and rights, liabilities, limitation and the legal venue, etc. as set out in the General Terms and Conditions of .riess -.riess-General Terms and Conditions-GENERAL - shall apply analogously to the contractual relationships in connection with the licensing of software programs.

# General Terms and Conditions of .riess engineering europe gmbh for software maintenance services



## .riess-General Terms and Conditions-SOFTWARE MAINTENANCE

### I. Scope

The following General Terms and Conditions of the engineering europe gmbh (.riess) - for the maintenance of software, .riess-General Terms and Conditions-SOFTWARE MAINTENANCE apply to all contractual relationships with customers in connection with the licensing of software programs and form part of the contract, unless agreed otherwise between .riess and the customer in a written separate agreement. The .riess-General Terms and Conditions-SOFTWARE MAINTENANCE complete the General Terms and Conditions of .riess - .riess-General Terms and Conditions-GENERAL- and the conditions of contract of .riess for licensing of software - .riess-General Terms and Conditions-SOFTWARE -, which both form part of the contract next to the .riess-General Terms and Conditions-SOFTWARE MAINTENANCE.

### II. Software maintenance / supply of current program versions

**2.1** riess will provide to the customer all new program versions of the software programs to the extent that they are currently marketed by .riess and that they are available. This shall not apply to extensions of the software programs to be maintained and which .riess offers and markets separately as new and independent product.

**2.2** At customer's request and depending on the possibilities and customer's wishes, new program versions will be provided on a storage medium or by way of remote data transfer, e. g. as "download" from the Internet. In case that .riess transmits the new program version by remote transfer to the customer, .riess will warrant the availability of the contractual software on a server for download by customer.

### III. Consulting and support through the .riess Service Center in case of software bugs

**3.1** In case of occurring software bugs, malfunctions or other issues in connection with the program sequences of the software programs to be maintained, .riess will provide telephonic and/or electronic support. Such telephonic support will be available to the customer within the regular working hours of .riess and as agreed to in a separate agreement and pursuant to the agreed fault classes and response times and will otherwise comply with the specifications of the software maintenance certificate.

**3.2** .riess will analyse notified malfunctions of the software programs and offer to the customer telephonic consulting services regarding the possibilities to bypass identified malfunctions. In doing so, .riess will use its best efforts to inform the customer on how and until when errors may be eliminated and/or if, if yes, the customer has a possibility to bypass malfunctions. To do so, .riess will deploy skilled staff.

**3.3** Whether there is an error related to the use in compliance with these provisions, depends on the performance characteristics set out in the product description and/or other documentation of the software programs. An error would exist in particular there, where a software program fulfils functions set out in product description and/or the other documentation, but issues incorrect results, cancels the processes without control or does otherwise not perform properly so that using the maintained software is impossible or significantly restricted. An error upon the terms of this provision does not exist if the above-mentioned malfunction is caused by improper use and/or operation of the software programs.

**3.4** If .riess offers a new program version to the customer in order to avoid or eliminate defects or fail-outs of other software or hardware, customer will have to use it and will have to install it to its hardware pursuant to the installation instructions of .riess as soon as it can be reasonably expected from the customer.

### IV. Customer's duty to cooperate

**4.1** Customer will assist .riess free of charge and in all respects in the implementation of the software maintenance services.  
The customer will in particular

- advise in writing a person in charge with the required decision rights and powers of attorney in connection with the implementation of the services for the term of the contract;
- observe in detail the symptoms as well as system and hardware environment in case of error messages, and if possible, use the forms provided by .riess in order to inform .riess promptly on occurring defects stating relevant information required for the consulting services such as the number of users concerned, a description of system and hardware environment as well as of simultaneously downloaded third-party software and documents;
- if possible, identified malfunctions must be made available to .riess in reproducible form on a suitable storage medium or by means of remote data transfer;
- within its abilities and employing its best efforts, assist .riess in the determination of the cause of a fault and, if necessary encourage its employees to cooperate correspondingly with the people deployed by .riess;
- allow the access via remote maintenance software;
- install new program versions provided by .riess according to the instructions of .riess and implement the proposals of .riess regarding the identification and elimination of faults;
- have all data used or created in connection with the maintained software programs ready in machine-readable form as back-up copy which enables the recovery of lost data at reasonable expense;
- if necessary for the creation of a new program versions of software programs to be maintained, provide new operational versions of operating system, data base or of other third-party software required for the application of software programs at its own expense;
- provide suitable and trained staff for the installation and start-up of new program versions.

**4.2** The above obligations to cooperate constitute material contractual obligations. In case that the customer is in breach of its obligations to cooperate, .riess shall no longer be obliged to provide its services.

### V. Remuneration, invoicing

The amount of the remuneration to be paid by the customer for software maintenance depends on the order confirmation or the relevant software maintenance certificate. Unless stipulated otherwise, remuneration and invoicing shall be subject to subsections 6.1 et seq. of .riess-General Terms and Conditions-SOFTWARE.

### VI. Other services

**6.1** Unless expressly set out in one of the subsections above, .riess shall not be obliged to provide further services to the customer. Within its operational possibilities, however, .riess will provide further services related to the software programs to be maintained but not set out in one of the above subsections to the customer at the latter's request. These additional services will be charged in accordance with a separate agreement.

This applies in particular for the following services:

- Services provided by .riess at customer sites;
- Services in connection with software programs, which are not covered by these provisions;
- Services, which are provided at customer's request outside the usual working hours of .riess;
- Services, which need to be provided as a result of the improper treatment of the maintained software and/or of a breach of duty through the customer, irrespective of whether the customer itself, its vicarious agents or other persons not authorized by .riess are responsible for such breach;
- Services required due to events of Force Majeure or to other conditions, for which .riess is not responsible;
- Services required in connection with the installation of a new program version acquired by the customer, particularly trainings related to such software programs;
- Services resulting from altered and/or new requirements of the customer. This includes in particular the assistance of the customer with the adaptation as well as the creation of user software and/or general IT-technical issues, which are not directly related to the software programs to be maintained;
- Updates of earlier customer-specific adaptations, settings and extensions required after a change of version in order to be maintained properly.

### VII. Disruptions in the performance

**7.1** To the extent that .riess is obliged to deliver new program versions to the customer, the warranty provisions set out in the .riess-General Terms and Conditions-SOFTWARE shall apply analogously to faults in these software programs.

**7.2** With regard to the services performed for the software maintenance, .riess will be liable for the timely and proper provision of the services but not for an economic or other result expected by the customer.

### VIII. § 12 Duration, termination

The provisions of the software maintenance certificate or otherwise the provisions set out in the subsections 6.2 and 8.1 et seq. of the .riess-General Terms and Conditions-SOFTWARE shall apply mutatis mutandis.

### IX. Rights of use

**9.1** .riess grants to the customer the rights to use the new program versions provided in connection with the software maintenance in the same scope as they exist to software programs allowing for a compliant use and/or by which they are supposed to be substituted.

**9.2** The right of use to the software programs, which are technically substituted by the new program versions, will expire within two weeks following the productive use of the delivered program versions through the customer. For registration purposes the customer shall be entitled to make one copy respectively of the technically substituted software programs.

### X. Applicability of the .riess-General Terms and Conditions-General and of the .riess-General Terms and Conditions-SOFTWARE

The general provisions for the conclusion of contracts, supplies, remuneration and payments, retention of title and rights, liabilities, limitation and the legal venue, etc. as set out in the General Terms and Conditions of .riess - .riess-General Terms and Conditions-GENERAL - shall apply analogously to all contractual relationships in connection with the provision of software maintenance services. To the extent that new program versions are delivered to the customer in connection with the software maintenance services, the software licensing conditions arising of the .riess-General Terms and Conditions-SOFTWARE - shall apply mutatis mutandis.