

TERMS AND CONDITIONS

of TIG USA LLC ("TIG") for supply of software under a subscription (as of March 1st, 2020)

A. Scope

1. These Terms and Conditions of TIG (the "Conditions") shall apply to the supply of software and the grant of license by TIG under a subscription.
2. Unless agreed to contrary, the following sections of the "General Terms and Conditions of TIG USA LLC for project work, delivery and installation of software, maintenance and delivery of hardware" (the "T&C"), as amended from time to time, shall apply:
 - a. Section I.H. (Customer Responsibilities);
 - b. Section I.I. (Insurance);
 - c. Section I.J. (Liability);
 - d. Section I.L. (Confidentiality).
3. Customer Purchase order terms and conditions or terms included on other forms of Customer shall by no means be accepted or become part of any contract between TIG and Customer. All software orders are subject exclusively to the present Conditions.

B. Definitions

For the purpose of these Conditions the following definitions shall apply:

1. Add-On-Module – a functional supplement to the Software, requiring a Base-Module for its intended application and use;
2. Base-Module – a version of the Software including basic functionalities and required for the use and application of Add-On-Modules;
3. Failure – all malfunctions of the Software that lead to a restriction of the intended application of the Software;
4. Hardware – all devices necessary for the use of the Software;
5. Hotfix (Patch) – cause-related rectification of a defect and/or failure of the Software which significantly impairs the intended use of the software;
6. Open Source Software – the term "Open Source Software" (OSS) has the meaning defined and published by the Open Source Initiative ("OSI") at <http://www.opensource.org>.
7. Order Confirmation - TIG's written acceptance of Customer's order
8. Project Contract - The individual agreement entered into by and between TIG and Customer signed by the parties.
9. Release – new development stage of the Software;
10. Software – programs, routines and sub-routines including all respective documentation, offered by TIG or any third-party licensor under a subscription for specific application fields;
11. Subscription – supply of Software based upon software rental;
12. Term – the period of time as defined in Section G.;

C. Scope of Supply

1. TIG shall supply Customer with Software according to the current release status within the scope of the respective Subscription. Any Subscription of an Add-On-Module requires Subscription of a Base-Module.
2. Supply of Software includes all Releases, Hotfixes and Patches issued by TIG within the respective term.
3. Customer shall provide and commission all Hardware required for the use of the Software.

D. Contract Formation & Contract Documents

1. The contract documents are complementary and what is required by one shall be as binding as if required by all. In the case of conflict between terms of the contract documents, the following order of precedence shall apply:
 - The Project Contract;
 - Order Confirmation;
 - These Conditions;
 - The provisions of the T&C as stated in section A.2.
2. Quotations issued by TIG shall constitute an invitation for an offer by Customer, always subject to change. Position prices quoted are fixed for the applicable fixed price period.

E. Fees and Payment Conditions

1. Amount and due date of fees for Subscriptions shall be subject to the Project Contract.
2. All fees for a Subscription shall be paid in advance for the respective Term. If a subscription is renewed, the relevant fee will be invoiced 6 weeks prior to the start of the renewal term.
3. Unless otherwise agreed to the contrary, in event of renewal of a Subscription, subscription fees are subject to adjustment based on increases in the Consumer Price Index (CPI).
4. Unless otherwise agreed to the contrary, payments are to be made within 14 days from receipt of the invoice by interbank payment without any kind of deduction and free of transaction charges to the designated bank account of TIG in the currency specified in the invoice. No check or bill of exchange will be considered as fulfillment of the payment obligation.
5. From the due date interest of 1.5. percent per month shall accrue subject to applicable law. If Customer is in default with a payment at the beginning of the renewal period, TIG – without prejudice to any further rights and remedies available hereunder or at law - reserves the right to prevent the further use of the Software within the respective Subscription by means of technology, until full payment of the balance due; such prevention of use shall not extend the Term in question.
6. Customer may invoke set-off or exercise a pledge or right to retain only if its claims have been accepted by TIG in writing or have been adjudicated by court.

F. License Grant

1. Upon each Subscription, TIG grants to Customer the non-exclusive, non-sublicensable, non-transferable, worldwide right to use the Software, including all releases provided under the Subscription, during the term in accordance with the applicable Software Documentation and the provisions of this Section F.
2. The license grant set out above shall be subject to the full payment of the balance due.
3. The license granted for each Subscription to a Base-Module enables usage of the Software by one user. The use of the Software is not bound to a specific device or a certain workstation. Each additional Subscription to a basic module grants simultaneous use of the Software by one further user for all machines connected; usage of the Software on a machine console or a corresponding production monitor does not affect the license grant.
4. The right to use the Software shall exclusively apply for the machine specified for the respective Subscription. Use or application of the Software for any machine other than the specified, is not admissible.
5. Notwithstanding the foregoing, any rights in the Software shall remain with TIG or a third-party licensor. To the extent Software includes Open Source Software ("OSS"), the conditions of use underlying the OSS (the "OSS-Conditions") shall apply. TIG shall notify Customer of the fact that OSS and OSS-Conditions exist and make such OSS-Conditions accessible to Customer or, if required according to the OSS-Conditions, provide Customer with such OSS-Conditions.
6. At TIG's request, Customer shall furnish TIG with a document signed by Customer's authorized representative verifying Customer's usage of the software.

G. Term & Termination

1. Term for each Subscription shall be one year.
2. If a Subscription is purchased within the Term of an earlier Subscription, this subsequent Subscription shall remain in effect until expiry of the term of the earlier Subscription. The annual fee for the additionally purchased Subscription shall only be invoiced on a pro rata for the actual term.
3. Customer is entitled to terminate a Subscription in writing at the end of the respective term by giving 3 months' written notice. If a notice of termination is not given in due time, the Subscription shall continue to be effective for another year.
4. Subject to a 4 months' notice period, TIG shall be entitled to terminate Customer's Subscriptions at the end of the then current term. If TIG does not terminate all Subscriptions, Customer shall be entitled to terminate remaining Subscriptions in accordance with para G.3.
5. If a Subscription for a Base-Module is terminated, corresponding Subscriptions for Add-On-Modules shall also be deemed terminated.
6. Notwithstanding the foregoing, either party may terminate the respective contract effective immediately in the event of an uncured breach by the other party. In case of termination for cause by Customer, TIG shall reimburse the fees on a pro rata basis corresponding to the remaining Term.

H. Limited Warranty

1. TIG shall use reasonable efforts consistent with prevailing industry standards to provide and maintain the Software in a manner that minimizes errors and interruptions and shall perform any services in a professional and workmanlike manner. Furthermore, the TIG warrants that the Software will substantially conform to the functionalities specified in the respective program documentation, provided that the Software is used in accordance with the applicable installation requirements and under the applicable conditions. Except for the foregoing, the Software is provided "AS IS". The above warranties specifically exclude defects resulting from accident, abuse, unauthorized repair, modifications, or enhancements, or misapplication. TIG does not warrant that use of the Software will operate uninterrupted or error free. In addition, due to the continual development of new techniques for intruding upon and attacking networks, TIG does not warrant that the Software or any equipment, system or network on which the Software is used will be free of vulnerability to intrusion or attack.
2. Customer's sole and exclusive remedy and TIG's entire liability and the liability of its suppliers under this limited warranty will be repair or replacement of the software by Hotfixes and/or Releases within the scope of supply, in both cases subject to the condition that any error or defect constituting a breach of this limited warranty is reported to TIG promptly upon its occurrence (notification of non-conformity). Such notification of non-conformity shall include a comprehensible description of the error symptoms annexed with written recordings, hard copies or other documents demonstrating the alleged defects.
3. EXCEPT AS SPECIFIED IN THIS WARRANTY SECTION, ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS, AND WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, SATISFACTORY QUALITY, NON-INTERFERENCE, ACCURACY OF INFORMATIONAL CONTENT, OR ARISING FROM A COURSE OF DEALING, LAW, USAGE, OR TRADE PRACTICE, ARE HEREBY EXCLUDED TO THE EXTENT ALLOWED BY APPLICABLE LAW AND ARE EXPRESSLY DISCLAIMED BY TIG, ITS SUPPLIERS AND LICENSORS. TO THE EXTENT THAT ANY OF THE SAME CANNOT BE EXCLUDED, SUCH IMPLIED CONDITION, REPRESENTATION AND/OR WARRANTY IS LIMITED IN DURATION TO THE EXPRESS WARRANTY PERIOD REFERRED TO ABOVE.

I. Governing Law and Place of Jurisdiction

The contract arising out of TIG's acceptance of Customer's order shall be governed by and construed according to the laws of the Commonwealth of Pennsylvania and the parties hereto agree that any claims or actions relating to the Software or the contract arising out of TIG's acceptance of Customer's order may only be brought in the Court of Common Pleas of York County, Pennsylvania or the United States District Court for the Middle District of Pennsylvania. The parties hereby submit to the jurisdiction of such courts and waive change of venue to any other jurisdiction. In the event of litigation arising in connection with the Software or the contract arising out of Seller's acceptance of Customer's order, the party which substantially prevails in such litigation shall be entitled to reimbursement by the other party of its attorneys' fees, court costs and related litigation expenses.

J. Severability

The contract concluded subject to these Conditions shall remain effective, even if any term or other provision thereof is determined by a court of competent jurisdiction to be invalid, illegal or incapable of being enforced by any rule of law or public policy, all other terms, provisions and conditions of the contract shall nevertheless remain in full force and effect. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, it is also the intention of the parties that in lieu of each clause or provision that is illegal, invalid or unenforceable, there be added as a part of the respective contract a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.