# General terms and conditions of EasternGraphics GmbH for transfer of software: Software T&C
## (Updated 2010-12-15)

## I. Applicability

EasternGraphics GmbH's terms and conditions concerning transfer ("Software T&C" or "SoftT&C") are applicable to all contractual relationships with customers arising from or associated with rental of software from EasternGraphics GmbH ("EGR") and are to be understood as an integral element of the contract insofar as nothing to the contrary has been individually agreed in writing between EGR and the customer. The SoftT&C are complementary to the GT&C (general terms and conditions), which are themselves, besides the SoftT&C, an integral part of any software supply contract.

## II. EGR's services

(1) EGR shall transfer to the customer the software indicated in the price quotation, the confirmation of order or the contract, as appropriate, in machine-readable object code. The software shall not be sold but licensed. Depending on feasibility and/or the customer's wishes, the software shall be transferred either on a storage medium or by remote data transfer (such as download from the Internet).

(2) Details shall be given in the user manual and/or other documentation for the software concerning the functions and services performed by the software if used in accordance with the agreement ("specified products and services"). The relevant specified products and services shall be the sole definitive description of the nature of the software subject to the contract and of its appropriate use. No public statements, commendations or advertisements shall constitute contractually stated features of the software programs.

(3) EGR's services in the context of the transfer of the software shall not consist in the supply of updates, the installation or customizing of the software, nor of training on it, nor of the performance of any activity over and above transferring the software. In particular, EGR shall be under no obligation to provide services enabling connection and data exchange between the agreed and other software, whether or not there be interfaces contained in the EGR software. Any provision of such connection, and any of the additional services mentioned above, shall be furnished by EGR solely upon receipt of payment in the context of a separate agreement to be concluded with the customer.

## III. Customer's duty of cooperation

(1) In EGR's confirmation of order and/or the documentation relevant to the software there shall be a binding statement of the hardware and software environments (system environment) which are required for proper operation of the software. The customer shall be obliged to ensure a suitable system environment is available in due time. Should this be absent and the software supplied be solely for this reason incapable of use, the customer shall bear the responsibility alone.

(2) The customer shall be under an obligation to test all functions of the software under the customer's system environment conditions before commissioning the software. In like manner, the customer shall inspect the storage media, user handbooks and other documentation on receiving them to establish freedom from defect. If the customer finds defects, they shall be reported to EGR immediately in writing, by email or fax.

(3) The customer shall be under an obligation to prevent unauthorized access to the software. The customer shall store the original storage media in a place made safe from unauthorized access.

(4) The duty of cooperation described above shall constitute a substantial contractual obligation.

## IV. Granting of rights (licence)

(1) EGR shall grant to the customer for an unlimited period the non-exclusive and non-transferable right to use the software in accordance with these T&C. This right of use is subject to reservation in respect of full payment in due time of the software.

(2) The customer is permitted to install and use the software in accordance with the number of program licences named in the price quotation, confirmation of order and/or software transfer agreement (as appropriate). The customer shall be permitted to use the software on any hardware he or she has available. On changing the hardware he or she shall delete the software from the hardware used to date. Simultaneous storage, stocking or use of more licences than are agreed in the contract shall not be permitted.

(3) The customer shall be permitted to reproduce the software insofar as the reproduction is required for the licensed use of the software. Such licensed use shall include installation of the software from the original storage medium onto the main memory of the hardware being used and the loading of the software into the random access memory. The customer shall be entitled to create a backup copy, which must be marked as such. This shall be used exclusively for backup purposes and shall not be passed on to third parties. Simultaneous use of the original and the backup copy shall not be permitted. No further reproductions shall be created. Reproduction by output of the program code is included in this prohibition. Only one printout or copy of the user handbook and/or other documentation shall be permitted to be made. Any further reproduction of the software, user handbook or other documentation by the customer shall require the prior written agreement of EGR.

(4) The client shall be entitled to pass on the software once in all to a third party. Any transfer shall take place exclusively in that the customer passes on the original storage medium and any copies he or she has made of the software to the third party, or deletes them, and places the third party under an obligation to observe these T&C, and notifies EGR of the transfer and of the written agreement of the third party.

(5) The above clause shall also apply if the customer only passes the software temporarily to the third party. The customer shall have no right to hire out the software or parts of the software.

## V. Restrictions on right of use, overuse

(1) The customer shall not be authorised to make any changes whatever to the software, even in order to remedy defects. EGR shall, in the context of a software maintenance contract to be agreed, facilitate remedy of defects even after the guarantee period has lapsed.

(2) Neither back translation of the program code supplied into other forms of code (decompilation) nor any other form of reverse engineering of the various production stages in the software shall be permitted. Permission to undertake translation of code forms for purposes of achieving interoperability with an independently developed computer program shall not be affected as long as the conditions named in § 69 e of the German Copyright Act (UrhG) are fulfilled.

(3) The information obtained through activities which are in accordance with § 69 e Section 1 of the UrhG shall not be permitted to be used for other purposes than those named there or to be passed on to third parties. Use of the information to create or market a program in an essentially similar form or for any other activity which breaches copyright shall likewise be prohibited.

(4) The customer shall be forbidden to remove, alter or make illegible the copyright notices, stickers, labels or trademarks of EGR which are contained in the software or in the user handbook and/or other documentation.

(5) Commercial use of the software of the kind known as Application Service Providing (ASP) shall not be permitted. Furthermore, any use of the software which exceeds that described here, in particular simultaneous use of more licences than those which have been contractually agreed, constitutes use of the software in breach of contract. The customer shall be under an obligation to notify EGR immediately should this arise. The customer shall be construed has having agreed to pay compensation for the period of non-agreed overuse in accordance with EGR's pricelist. For the calculation of the compensation, the basis shall be linear depreciation over a period of four years. If the customer does not inform EGR of the overuse, a breach-of-contract penalty shall be due at five times the price of the use made, in accordance with EGR's pricelist.

## VI. Use of protective technology

(1) EGR shall have the expressly reserved right to supply the software equipped with a protective technical mechanism (copy protection), for example in the form of a dongle or software key.

(2) If EGR supplies the software with a dongle and if this fails to function, the customer shall be permitted to demand its replacement on return of the defective dongle. Replacement shall be without charge within the guarantee period named in Clause VII. (2) for any claims in respect of software defects. After the guarantee period for software defects has elapsed, the customer shall pay for the replacement dongle in accordance with the list price at the time of its supply. In case of theft or other loss of the dongle the customer shall have no right to its replacement.

(3) Circumvention or removal of the protective technical mechanisms shall be a breach of EGR's rights and may constitute an offence in law.

## VII. Liability for defects

(1) The legal provisions shall apply to the rights of the customer in respect of defects in the software transferred unless otherwise laid down in the following clauses.

(2) Claims in respect of software defects shall be governed by a guarantee period of one year. This one-year period shall commence on transfer of the software to the customer. The guarantee period set in German law shall, however, apply if EGR has deliberately failed to declare a defect or has given a guarantee for the specifications of the software. The guarantee in respect of specifications shall take effect only if given in writing.

(3) EGR shall ensure that the software fulfils the specifications described if used in accordance with the contract and has no defects which will impair its effectiveness for the contractually agreed use to anything but an insignificant degree. Insignificant deviations from the specifications shall not be construed as defects. The customer shall be construed as being aware that software of the present complex type is incapable of absolutely faultless development in the present state of the art.

(4) The customer shall have a duty immediately to inform EGR in writing, by email or by fax of any defects arising and to state and describe how the defect manifests itself, what its effects are and under what circumstances it appears. There shall be a right to claim in respect of the defect only if the defect notified is reproducible or can be demonstrated in machine-generated output.

(5) EGR shall remedy a defect properly notified by the customer by way of supplementary performance, i.e. by repair or replacement. The right of choice of the means of the supplementary performance for the remedy of a defect shall lie in the first instance with EGR. The right of EGR under the applicable law to refuse the chosen type of supplementary performance shall remain unaffected. Insofar as such is reasonable for the customer, EGR shall have the right to provide the customer with a new version of the software by way of remedy of defect (for instance an update or patch), which either no longer contains the defect complained or will remove it; or to develop an alternative solution.

(6) If the supplementary work has failed to provide a remedy within a reasonable period, the customer shall set a reasonable extension for EGR to facilitate a repeat attempt as long as to set such an extension is reasonable for the customer and as long as EGR has not made a final refusal of supplementary work. If both of these conditions are fulfilled, the customer shall be permitted to withdraw from the contract after failure of the second attempt or to reduce the purchase price and if appropriate because EGR is at fault to demand compensation in lieu of performance or recompense for time and effort applied in vain. When the last extension has brought no success, the customer shall declare within a reasonable period whether he or she is continuing to demand supplementary performance or is claiming the

rights named above. There shall be no right of withdrawal in the case of insignificant defects. All claims by the customer to supply of defect-free software shall lapse on declaration by the customer of withdrawal or of reduction.

(7) EGR shall have no liability in respect of defects if defects in the software have arisen after alterations to the conditions of use or operation, after alteration of the system environment, after faults in installation or operation (as long as these faults are not caused by defects in the user handbook), after manipulation of the software such as modification, adaptation, connection to other programs and/or after use in breach of contract: unless the customer proves that the defect was already present on transfer of the software or has in no way been caused by the events listed here.

(8) EGR shall have no liability for the correctness of data from the customer or third parties to be found in the software or for any defect resulting therefrom.

(9) Should it transpire that a defect notified by the customer does not in fact exist or is not caused by the software, the customer shall pay EGR for the effort involved in analysis and other work in accordance with calculations based on the current price list of EGR for the tasks in question.

(10) EGR shall be entitled in the case of justified withdrawal on the part of the customer to demand reasonable compensation for the extent to which the customer has benefitted by using the software up to the dissolution of the contract. This compensation for benefit from use shall be calculated on the basis of a total period of four years of use of the software, with a reasonable deduction for the impairment of the software due to the defect which caused the withdrawal.

**VIII. Applicability of the GT&C**

The terms of the GT&C relating to such matters as conclusion of contract, supply, payment and means of payment, reservation of ownership and rights, liability, limitation, place for hearings, etc. shall likewise be applied in an appropriate manner to contractual agreements for transfer of software programs.