General Terms and Conditions for the Delivery and Licensing of Standard Software (GTC Software)

§ 1 General

1.1. These General Terms and Conditions (GTC) apply to the delivery and licensing of standard software (hereinafter referred to as Software) by REALTECH AG (hereinafter referred to as REALTECH), irrespective of whether the Software is provided to Customer in return for payment or without payment (i.e., for example, as freeware). If REALTECH provides Customer with Software as part of a SaaS model for use via the Internet, the General Terms and Conditions for the Provision of Software-as-a-Service Services (GTC SaaS) shall apply instead.

1.2. Depending on the type of the agreed supplies and services the following Specific Terms and Conditions (STC) shall apply in addition to this GTC Software:

- The Specific Terms and Conditions for Software Maintenance (STC Software Maintenance) shall apply to the provision of software maintenance and support services;
- The General Terms and Conditions for Consulting Services (GTC Consulting) shall apply to the provision of consulting services;
- The Specific Terms and Conditions for Work Performance (STC Work Performance) shall apply to services constituting a work performance, i.e. aiming at achieving a certain result (Werkleistung), including the client specific development and/or adaptation of software.

1.3. This GTC Software, as amended from time to time, also apply to all future agreements on the delivery and licensing of Software entered between REALTECH and Customer, including all cases where they are not explicitly referred to.

1.4. The characteristics and features of the Software, the type and scope of the acquired licenses and the amount of remuneration are subject to the applicable individual contract and/or other contract documents, in particular, to the quotation, the product description for the software, and the price list of REALTECH. In case of a conflict, customer-specific provisions (in particular, in the REALTECH quotation) shall prevail over this GTC and the applicable Specific Terms and Conditions, if any. General Terms and Conditions of Customer do not apply, including all cases where REALTECH delivers Software without objecting to them.

1.5. In the absence of a deviating agreement, third-party software (including open source software) and other third-party products (e.g., databases) that are delivered by REALTECH to Customer together with its own software and/or services are subject to the terms and conditions of the relevant producers (or the license terms and conditions under which open source software is made available to the general public, respectively). In particular, these may include provisions on the grant of rights and on warranty and liability conditions that deviate from this GTC. In the event of gaps in the third party terms and conditions, the relevant license terms and conditions of this GTC shall apply in a supplementary manner.

1.6. Quotations submitted by REALTECH are non-binding, unless they are referred to as binding in a written notice. Customer agrees to be bound by his declarations regarding the conclusion of a contract for a period of four (4) weeks.

§ 2 Delivery Dates and Scope of Delivery

2.1. Delivery dates and periods are approximate and non-binding, unless they are expressly referred to as binding in the REALTECH quotation. Compliance with the agreed delivery dates and periods requires the timely receipt of any documents and records that may be necessary and the timely provision of all contributions and cooperation by Customer (in particular, the provision of the necessary testing and production environment).

2.2. In the event that circumstances beyond the control of either party arise which substantially impair the delivery or service or render it impossible for a certain period of time (e.g. due to force majeure, strikes, lock-outs, failure and/or delay in the supply by third parties although a congruent hedging transaction has been concluded), the affected party has the right to postpone its performance for the period of the impairment and a reasonable period to resume its services. The parties shall promptly notify each other of the occurrence and end of such circumstances.

2.3. Software is provided to Customer electronically in the version that is the latest release at the date of delivery. Freeware is always provided to Customer via download from the Internet. In the absence of a deviating agreement, Customer is not entitled to the provision of the source code of the Software. In the event that the Software is made available to Customer only in the form of object code, the rights to use granted in and to the Software exclusively refer to the use of the Software in object code form. The Software will be delivered to Customer together with a product-accompanying user manual.

2.4. Unless the parties agree otherwise, Customer is responsible for the installation of the Software on its hardware. The provision of other services beyond the delivery and licensing of Software, such as the commissioning of the Software, the adaptation of the Software to the specific requirements of Customer, development of interfaces for Customer's existing software programs, etc. is also subject to separate contracts that the parties may conclude.

§ 3 Rights to Use

3.1. Subject to the condition precedent of full payment of the agreed remuneration, REALTECH grants Customer the non-exclusive, indefinite and world-wide right to use the supplied Software for the agreed and/or presumed internal business purposes of Customer. If the Software is licensed free of charge, the rights shall be granted to Customer immediately upon delivery of the software.

3.2. Customer shall store and operate the Software on the type and number of servers and/or systems set forth in the individual contract and for the agreed type and number of licensed units (e.g., authorized users, administrable nodes, etc.). The scope of the licenses granted to Customer is set forth in the description of the license model that is detailed in the individual contract

(in particular, in the REALTECH quotation) or in the REALTECH price list to which reference is made therein. Within the scope of the licenses granted, Customer has the right to reproduce the Software and to make the necessary backup copies which shall be clearly marked as such.

3.3. Sub-licensing, renting and other forms of making available the Software to third parties for a definite period of time, the use in SaaS, outsourcing or data center operations and any other use of the Software by or on behalf of third parties, either with or without remuneration, require the prior written consent of REALTECH. Affiliated companies of Customer are deemed to be third parties.

3.4. Customer is not allowed to translate, modify or rearrange the Software beyond the legally mandatory scope – in particular, based on the provisions contained in § 69d of the German Copyright Act (UrhG). The decompiling of the Software in order to achieve interoperability of the Software with other programs is only permissible within the scope of the mandatory provisions of § 69e of the German Copyright Act (UrhG), and only in case REALTECH fails to provide the necessary information and records within a reasonable period of time following a corresponding written request submitted by Customer.

3.5. With regard to test installations, the Customer's rights to use are restricted to such acts that serve the evaluation of the functionality of the Software and the suitability for Customer's business purposes. Any further use, in particular, the productive use or the preparation of the productive use are not permissible, the same applies to making copies (including back-up copies), to the modification and decompiling of the Software.

3.6. Upon installation of a new Software release which is provided to Customer by way of subsequent performance or under a maintenance agreement, the rights to use for the previous release shall expire.

3.7. Any use of the Software beyond the provisions set forth in this § 3 and/or the license conditions of the applicable REALTECH license model, requires the prior written consent from REALTECH. In the event that the Software is used without this consent, REALTECH may charge Customer for the additional use in accordance with the then-valid price list (including retroactively). REALTECH reserves the right to assert claims to damages. Customer shall notify REALTECH of any change affecting its right to use or the agreed remuneration (e.g., impending sub-licensing) in advance.

§ 4 Transfer of Software to Third Parties

4.1. Customer may transfer the Software purchased from REALTECH for permanent use (sales contract) and stored on its servers (including subsequently purchased components or licenses, if any, and subsequent releases provided under maintenance agreements) to any third party only in its entirety and if Customer fully and finally discontinues its own use of the Software. In any event, the transfer of the Software requires the prior written consent from REALTECH. REALTECH shall grant its consent, if Customer submits a written declaration by the third party in which the latter agrees vis-à-vis REALTECH that it will comply with the license conditions applying to the Software, and if Customer confirms in writing that it has transferred all original software copies to the third party and has deleted any other copies that it may have made. Third party software may be subject to deviating provisions.

4.2. In the event that Customer is a leasing company and if the parties agree that the Software is acquired by Customer for the purpose of renting it to third parties, REALTECH shall grant its consent to renting, if the leasing company provides REALTECH with the name and address of the respective lessee (end-user) and furnishes a written declaration from the corresponding lessee in which it agrees to be directly liable to REALTECH for compliance with the license conditions applying to the Software.

§ 5 Revocation of Rights to Use

5.1. REALTECH has the right to revoke the rights to use in and to the Software for cause. Cause shall exist, in particular, if Customer is in default with its payments of a substantial portion of the license fee for a period of more than two (2) months, materially violates the license conditions set forth in §§ 3 and 4, or breaches the duty of confidentiality set forth in § 6 of this GTC, and does not promptly refrain from such violation following a written notice in which the revocation of the rights to use is threatened by REALTECH, or, in case of imminent danger, even without such a written notice. Any other rights of REALTECH based on the violation remain unaffected.

5.2. In the event of a revocation of the rights to use, Customer shall return the original version of the Software, including documentation, and any copies thereof to REALTECH and completely delete the stored programs from its servers and/or systems. Upon request, Customer shall confirm to REALTECH in writing that it has deleted the Software in its entirety.

§ 6 Confidentiality and Data Protection

6.1. The parties agree to treat any business and trade secrets of the other party as well as any other information on business relationships and business-related information that are disclosed to them, made available to them or of which they may become aware in any other manner as strictly confidential. They shall use such confidential information only for the purpose specified in the individual contract and shall not disclose it to third parties. In particular, the term "confidential information" includes the Software in any tangible or intangible form, including documentation. The parties shall allow only those employees and sub-contractors access to this confidential information that need to know them for performing the individual contract and that have signed a non-disclosure agreement.

6.2. The duty of confidentiality does not apply to confidential information that was previously known to the receiving party without any duty of confidentiality or that is or will become known to the general public through no fault of the receiving party, or which is rightfully disclosed to the receiving party by a third party without being bound by a duty of confidentiality, or that can be shown to have been independently developed by the receiving party.

6.3. The parties agree to duly store any business items and records made available to them by the other party

and to return them at any time upon the other party's request. In particular, they shall ensure that unauthorized third parties cannot gain access to them.

6.4. To the extent that personal data of Customer is processed by REALTECH, REALTECH shall bind the employees assigned to this task prior to their assignment to handle the data confidentially and to comply with the General Data Protection Regulation (GDPR) in writing. REALTECH has the right to transfer personal data to subcontractors that were retained in accordance with the contract to the extent that such transfer is required for providing the commissioned supplies or services. REALTECH shall bind subcontractors to the duty of compliance with the provisions of the GDPR. In the event that Customer allows REALTECH access to its personal data, Customer will ensure that the applicable statutory requirements regarding the transfer and processing by REALTECH (and its subcontractors) are complied with.

6.5. In the event that Customer allows REALTECH to use its name as a reference customer, REALTECH has the right to include Customer's name in a list of reference customers for promotional purposes and to use Customer's corporate signs, trademarks and logos in printed publications and online, in particular, on the REALTECH website for this purpose.

§ 7 Remuneration and Terms of Payment

7.1. If Customer is provided with Software against payment of a license fee, in the absence of a customer-specific agreement in the purchase agreement or in REALTECH's offer, the amount and due date of the license fee are subject to the REALTECH price list valid at the time of conclusion of the purchase agreement.

7.2. In the absence of a deviating agreement, provided services will be compensated on a time and material basis at the agreed daily and/or hourly rates. In the event that the individual contract or the REALTECH quotation does not contain any provisions on the amount of remuneration, the REALTECH price list valid on the date of contract conclusion shall apply. The remuneration will be invoiced to Customer on a monthly basis at the beginning of the month after the services were provided together with the reports that are customarily used by REALTECH.

7.3. The statutory value added tax shall be added to the amounts indicated. Payments shall be made by Customer within fourteen (14) calendar days from the invoice date with no deductions.

7.4. Customer shall not offset any claims, unless its counter-claim is undisputed or has been finally adjudicated. Customer shall not withhold payments, unless its counter-claim is uncontested or has been finally adjudicated and is related to the same contractual relationship.

§ 8 Claims Based on Defects

8.1. If REALTECH provides Customer with Software without any remuneration being due for this, the special rules in § 11 of these GTC shall apply to liability for defects.

8.2. Customer shall notify REALTECH of any Software defects promptly upon delivery or, in the event of hidden defects, promptly upon their discovery, in comprehensible form by written notice, email or via the ticket system provided by REALTECH. To the extent that Customer can be reasonably expected to do so, Customer shall take all necessary measures to determine, delimit, and document defects. This includes the preparation of an error report, system logs, dump files, providing the input/output data affected, interim and test results, and any other information and records that may serve to describe the defect. § 377 of the German Commercial Code (HGB) shall apply in all other regards. In no event REALTECH will waive its right to raise the defense that the inspection of the Software and the notice of defects were too late.

8.3. REALTECH warrants that the Software has the characteristics and features described in the product description. Any impairment of a function resulting for instance from mal-operation of the Software by Customer, from Customer's system environment or any other circumstances for which Customer is responsible, shall not be deemed a defect. Furthermore, REALTECH shall be released from its liability for defects if Customer fails to comply with the system requirements indicated by REALTECH, has modified the Software or used it in violation of the contract (e.g., under different working conditions), unless Customer is able to show that the defect is not related to these circumstances.

8.4. In the event of a defect in the Software at the date on which the risk passes, REALTECH shall discharge its warranty obligations by subsequent performance, at the option of REALTECH either by providing error-free Software to Customer or by rectifying the defect. The defect may also be rectified by REALTECH initially by presenting to Customer a reasonable workaround that avoids or circumvents the effects of the defect.

8.5. In the event that subsequent performance finally fails (no less than two (2) attempts for each notified defect) or is refused by REALTECH, Customer may either rescind the contract or reduce the remuneration. In view of the complexity of the Software, more than two (2) attempts of subsequent performance may be reasonable and Customer may be expected to accept them. In the event of only a slight deviation of the Software from the contractually agreed quality Customer is not entitled to rescind the contract or reduce the remuneration. REALTECH shall be liable for compensation of damages and reimbursement of wasted expenditures based on a defect in accordance with the limits set forth in § 9 of the GTC.

8.6. In the event that REALTECH performs services in connection with the trouble shooting or rectification of alleged defects without being obligated to do so, it may claim a separate remuneration from Customer on a time and material basis in accordance with the then-valid REALTECH price list. In particular, this shall apply if a defect reported by Customer cannot be reproduced or if it cannot be attributed to REALTECH. There is no claim to additional remuneration, if Customer was unable to recognize that the defect was not related to the REALTECH Software.

8.7. In the event that third parties assert claims against Customer due to an infringement on their proprietary rights based on the Software, Customer shall promptly notify REALTECH hereof in writing and comprehensively. REALTECH has the right, but is not obligated to settle the dispute with the third party on its

own, either in court or out of court. In the event that REALTECH makes use of this option, Customer shall assist REALTECH in the defense against the claim to a reasonable extent and free of charge. Customer shall not recognize any third party claims in its own discretion.

8.8. In the event that the Software has a defect in title at the time of transfer of risk, REALTECH shall obtain any rights required for the lawful use of the Software and grant them to Customer. Alternatively, REALTECH may replace the Software concerned with equivalent software, if Customer can reasonably be expected to accept this. In the event that the infringement on third party proprietary rights and/or a legal dispute regarding the corresponding third party rights can be avoided or settled by Customer using the latest Software release provided by REALTECH free of charge, Customer is obligated to use this latest release within the scope of its duty to minimize damage, unless Customer proves that it cannot be reasonably expected to use the latest Software release. Within the limits of § 9 of these GTC, REALTECH shall hold Customer harmless and indemnify Customer from and against any damage caused by this infringement, to the extent that it is due to a defect in title of the Software that was used by Customer in accordance with the contract and for which REALTECH is responsible.

8.9. The statutory period of limitation for claims based on defects asserted by Customer under this § 8 is one (1) year from the delivery of the Software. This shall not apply if REALTECH has caused the defect intentionally or in a grossly negligent manner or has maliciously concealed it.

8.10. In the event of a defect in third party products that were supplied by REALTECH together with the Software, REALTECH shall assert, at its option, its warranty claims against the producer and/or the sub-supplier on behalf of Customer or assign them to Customer for its own claim enforcement. In the event of such defects, Customer will only be entitled to assert warranty claims against REALTECH under this GTC, if the enforcement of the claims in court against the producer and/or sub-supplier fails or does not promise any success, e.g., due to the insolvency of the producer and/or the sub-supplier. During the period in which claims are enforced against the producer and/or the sub-supplier, the statute of limitations period for Customer's warranty claims against REALTECH is suspended. To the extent that REALTECH satisfies Customer's claims itself, any claims based on defects against the producer and/or the subsupplier that had been assigned to Customer will fall back to REALTECH (re-assignment).

§ 9 Liability

9.1. In the event that REALTECH provides Software to Customer that is not subject to remuneration, the special rules in § 11 of these GTC shall apply to liability.

9.2. In all other regards, REALTECH shall compensate material or financial damages and losses, and reimburse wasted expenditures, irrespective of their legal cause, only to the following extent:

- In case of intentional wrongdoing as well as gross negligence, or a guarantee issued for the full amount;

- in all other cases only in the event of a breach of a material contractual obligation, without which the achievement of the purpose of the contract would be jeopardised and on the fulfilment of which the customer may therefore rely (so-called cardinal obligation), namely the compensation for a typical and foreseeable damage. The amount of liability is limited to the respective order value of the affected individual contract. If the order value of the individual contract exceeds EUR 250,000.00, liability is limited to EUR 250,000.00 as the maximum upper limit.

9.3. REALTECH shall be liable for the restoration of data within the limits set forth in § 9.2 only insofar, as Customer has ensured that data can be reproduced from electronic data stores at any time and at a reasonable cost.

9.4. The foregoing liability limitations also inure to the benefit of the legal representatives, vicarious agents and employees of REALTECH.

9.5. The liability for damages based on personal injury or bodily harm and liability under the Product Liability Act (Produkthaftungsgesetz) remain unaffected by the above provisions.

§ 10 Specific Terms for Software Rental

10.1. In the event that REALTECH provides Customer with Software for a definite period of time under a rental agreement, the provisions of § 8 shall apply accordingly to defects in quality and defects in title. However, in lieu of the right to rescind the contract, Customer has the right to terminate the rental agreement for cause. The right to reduce the remuneration shall only apply to the recurring fees. Notwithstanding § 536a par. 1 of the German Civil Code (BGB), REALTECH shall only be liable for defects in the Software that already existed when the contract was concluded if REALTECH is at fault. In all other regards, § 9 shall apply to liability claims accordingly.

10.2. Rental agreements may be terminated by giving three (3) month notice prior to the end of a calendar year, however, no earlier than upon the expiration of the contractually agreed minimum term. Either party has the right to terminate the contract for cause. The notice of termination must be given in written form.

10.3. Upon the termination of the rental agreement, Customer's right to use the Software expires automatically. Customer shall delete all Software copies from all servers, work stations and other data media completely and in a non-recoverable manner. Upon the corresponding request from REALTECH, Customer shall confirm the complete and final deletion of the Software in writing.

§ 11 Special Rules for Software Provided Free of Charge

11.1. If REALTECH provides Customer with Software without any remuneration being due for this, e.g. as freeware for permanent use or during a free test phase, the following paragraphs on warranty and liability shall take precedence over the other provisions of these GTC.

11.2. REALTECH shall only be liable for material defects and defects in title in the software if REALTECH

has fraudulently concealed a material defect and/or defect in title in the Software from Customer. Any further liability for defects is excluded.

11.3 REALTECH shall only be liable for damages in the event of intent or gross negligence. Any further claims for expenses or damages on the part of Customer, irrespective of the legal grounds, are excluded.

§ 12 Final Provisions

12.1. Customer is not allowed to assign or transfer any contractual rights or duties to third parties – including any affiliated companies of Customer – unless it has obtained the prior written consent from REALTECH. § 354a of the German Commercial Code (HGB) remains unaffected.

12.2. Modifications and amendments of the contract must be in writing to be effective (fax shall suffice, email is not sufficient). Any waiver of this mandatory written form requirement must be in writing.

12.3. The laws of the Federal Republic of Germany shall apply; the conflict-of-laws rules of International Private Law and the UN Convention on Contracts are excluded. Venue for all disputes arising out of or in connection with the contract shall be the competent court at the registered office of REALTECH. However, REALTECH may also bring action against Customer before any other national or international court having competence.

12.4. The Software may be subject to export control regulations in various countries, in particular, subject to U.S. and German law. Customer agrees not to export the Software to countries or to individuals or legal entities, if this export is forbidden under the applicable export regulations. Furthermore, Customer is responsible for its compliance with all applicable export control provisions in connection with its use of the Software.

12.5. If any provision of this GTC or an individual contract is or should become invalid or if there are any gaps, the remaining provisions shall remain in full force and effect. The invalid or missing provision shall be replaced by such a valid provision that most closely reflects the business intention of the parties at the time the contract was concluded.

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