

EXA End User License Agreement

1 Definitions

- 1.1 “Agreement” means this *EXA End User License Agreement* which applies to the purchase of Licensed Software.
- 1.2 “Computer” means a single computer, provided that a virtual machine is also deemed to be a single computer.
- 1.3 “Defect” is a collective term that encompasses (i) defects in quality (e.g. an error in the Licensed Software) and defects in title (e.g. infringement of Intellectual Property Rights).
- 1.4 “Documentation” means the user manuals and other documents furnished by EXA which serve to explain the functions of the Licensed Software.
- 1.5 “EXA” is EXA AG, Mittermaierstraße 31, 69115 Heidelberg, Germany.
- 1.6 “Functional Description” means a description of the general functionality, compatibility, and system requirements of the Licensed Software.
- 1.7 “Intellectual Property Rights” means any and all patents and patent applications, copyright, database rights, trademarks (whether registered or unregistered), internet domain names, design rights, utility models, service marks, and all other intellectual property and proprietary rights (whether registered or unregistered, and any applications for the foregoing), and all other equivalent or similar rights which may subsist anywhere in the world.
- 1.8 “License” means the fee-based right to Use the Licensed Software after the Purchase according to the terms and conditions of this Agreement.
- 1.9 “Licensed Software” means the computer program, for which EXA grants a License to the Licensee under the Agreement, including any Defect corrections, patches or service packs, if any, provided to the Licensee together with the related Documentation.
- 1.10 “Licensee” means the corporate entity, enterprise, or commercial user that is entitled to Purchase and Use the Licensed Software pursuant to the terms and conditions set forth in the present Agreement.
- 1.11 “Party / Parties” means either Licensee or EXA, or both.
- 1.12 “Purchase” means the ordering of a License by the Licensee against payment of a license fee and the delivery of the Purchased Licensed Software by EXA after receipt of payment in order to grant the respective License to the Licensee.
- 1.13 “Use” means (i) installing the Licensed Software on a single Computer, (ii) running the Licensed Software, (iii) processing data with the Licensed Software and (iv) creating a reasonable number of backup copies of the Licensed Software, in each of the aforesaid cases in accordance with the terms and conditions of this Agreement including, but not limited to, the restrictions of Use applicable to the Licensed Software.

2 Subject Matter of the Agreement

- 2.1 The subject matter of this Agreement is the Purchase, licensing and Use of Licensed Software. The relevant functions of the Licensed Software as well as the description of its technical realization have been specified in the Functional Description.
- 2.2 EXA offers and provides the Licensed Software to entrepreneurs as defined by sec. 14 of the German Civil Code (BGB)* only, i.e. to entities or persons which or who act in exercise of their trade, business or profession, as well as to public bodies. Thus, only entrepreneurs and the employees appointed by companies or public bodies might benefit from EXA’s offer to Purchase and Use the Licensed Software under this Agreement. By Purchasing the Licensed Software, the Licensee represents and warrants that it is an entrepreneur and not a consumer.
- 2.3 The provisions of this Agreement govern exclusively. The standard terms and conditions of the Licensee will not apply, even if EXA has not expressly rejected the application of such terms and conditions.
- 2.4 Other services, in particular training, maintenance and support services, installation, implementation, modification, parameterization or customization of the Licensed Software are not subject to this Agreement. If EXA offers such services, they will be subject to other contractual terms and conditions which apply independently and separately from this Agreement.

3 Usage Rights and Restrictions

- 3.1 Upon purchase but not before payment of the agreed license fees, EXA hereby grants the Licensee a worldwide, perpetual, non-exclusive license to Use the Licensed Software subject to the rights granted and restrictions stated in this Section 3.

- 3.2 The aforementioned License is limited to the Licensee's own internal purposes.
- 3.3 The permissible and intended use includes installing the Licensed Software together with a copy thereof on a productive and a staging Computer, the running thereof, the processing of data and the creation of the necessary backup copies of the Licensed Software. Any use beyond the foregoing such as
- the use of Licensed Software to offer data processing services,
 - the supply of the Licensed Software or parts thereof to third parties, either free of charge or for consideration, even if this occurs on Computers which the Licensee has in its possession,
 - the surrender of dominion over Computers and the Licensed Software installed thereon to third parties (facility management) or
 - the installation of the Licensed Software at a third party's place of business or residence for the Licensee's own purposes (outsourcing),
- requires an express, separate written agreement. The text form (e.g., telefax or e-mail) [Textform] will not suffice in these cases. However, EXA shall not refuse its consent in cases related to bullet points three and four above provided that the facility management or the outsourcing (a) will be dedicated to the use of the Licensed Software for the Licensee's purposes exclusively and (b) will not result in any use beyond the scope of the License granted to the Licensee in accordance with the terms and conditions of this Agreement.
- 3.4 The Licensee shall not distribute and license the Licensed Software in any kind or form whatsoever.
- 3.5 All Intellectual Property Rights to the Licensed Software made available by EXA including without limitation the comprehensive copyright remains, as regards the Licensee, with EXA. This legal status enjoyed by EXA remains unchanged by the granting of Licenses to the Licensee in accordance with this Agreement.
- 3.6 In particular, the Licensee's right to Use the Licensed Software does not include the rights to
- resell, lease or lend the Licensed Software except for the transfer of the License according to Section 12 below;
 - distribute or make the Licensed Software available to the public both online and offline
 - transfer the License deviating from Section 12 below;
 - duplicate the Licensed Software in excess of the number of installations agreed between the Parties upon Purchase of the Licensed Software. The Licensee's statutory rights to make a reasonable number of backup copies remain unaffected. The Licensee is obligated to keep records of all copies or partial copies of the Licensed Software it makes, and to store them in a secure location, as well as to provide information to EXA about such copies or partial copies upon request;
 - adapt, modify, translate, arrange or otherwise change or revise the Licensed Software unless (i) such acts are necessary for the Use of the Licensed Software in accordance with its intended purpose, including for error correction, by any person authorized to use a copy of the Licensed Software concerned and (ii) EXA does not offer to remedy the error under customary market terms and conditions or the offered remedy has failed twice due to the same defect or to defects which are directly related thereto. Apart from that, the Licensee is authorized to adjust the customization and parameterization options contemplated in the Licensed Software, if any, in order to meet its own needs;
 - de-compile or reverse engineer the Licensed Software unless and to the extent that de-compilation or reverse engineering is indispensable to obtain information necessary for the establishment of interoperability of the Licensed Software with another independently created computer program. The Licensee shall, however, request EXA for, and give EXA an opportunity to provide within a reasonable time, the necessary operational information and documents for establishing interoperability before the Licensee carries out any de-compilation or reverse engineering in accordance with sec. 69 e par. 1 of the German Copyright Act (UrhG)*. The Licensee may exercise its rights under sec. 69 e par. 1 of the German Copyright Act (UrhG)* only if EXA fails to comply with the aforesaid request. However, information obtained by way of de-compilation or reverse engineering must not be used or passed on to third parties for any other purpose than establishing interoperability of the Licensed Software with another independently created computer program and must not be used to create, produce or market a computer program substantially similar in its expression or for any other acts which infringe copyrights;
 - change, delete or otherwise obliterate copyright notices, trademarks and commercial descriptions as well as all other notices (e.g. legal notices) contained in the Licensed Software.
- 3.7 Any Use of the Licensed Software beyond the agreed License requires an express separate agreement between the Parties before the Licensee is entitled to make an extended Use of the Licensed Software.

4 Software Asset Management, Audit Right

- 4.1 The Licensee shall duly keep records about the Use of the Licensed Software and shall, supported by a reasonable Software Asset Management (SAM), ensure the lawful and contractual Use of the Licensed Software.
- 4.2 The Licensee grants EXA the right to audit the Licensed Software to confirm compliance with the terms of this Agreement. For this purpose, EXA shall be entitled to require the Licensee, once per calendar year, to grant a certified public accountant (CPA) (i) remote access to the Licensee's computer systems concerned, (ii) access to the Licensee's business premises during its normal business hours and (iii) access to the relevant books, records, electronic records as well as onsite access to the Licensee's relevant computer systems for this review. Although EXA is authorized to appoint the certified public accountant (CPA) as an auditor, the auditor must perform the audit autonomously and independently, even for EXA. EXA shall notify the Licensee of any upcoming review in writing at least fourteen (14) days in advance.
- 4.3 The auditor agrees to treat in confidence all information of the Licensee of which the auditor obtains knowledge or which is provided to the auditor during an audit, subject to the professional secrecy obligation of the auditor. Accordingly, EXA shall agree with the auditor in the context of the assignment that the auditor is allowed to disclose details of the audit results to EXA only as far as EXA requires such details to track License violations, if any, and to enforce the resulting claims. Insofar as the Licensee has admitted License infringements to the auditor and has satisfied EXA's resulting claims for damages, details of the audit results shall not be disclosed to EXA.
- 4.4 The Licensee shall inform the commissioned auditor to the extent necessary and request its employees to provide the required information. The transmission or disclosure of personal data is not allowed during the course of the audits without the prior consent of the data subjects concerned, unless such transmission or disclosure is permitted by applicable law. EXA is not entitled to request any audit that would violate the statutory data protection law.
- 4.5 EXA shall bear the costs of any such audit unless the inspection reveals that the license fees incurred for the detected scope of Use exceed the agreed fees by at least four percent (4%) or that the Licensee is using the Licensed Software for a usage not licensed. EXA reserves the right to enforce any more extensive claims.

5 Documentation

Only an electronic version of the Documentation for the Licensed Software will be made available to the Licensee. There is no duty to supply any Documentation in hardcopy form. Should the Licensee request Documentation in hardcopy form, it is recommended that a corresponding copy be printed out and carefully retained before working with the Licensed Software.

6 License Fees

- 6.1 The license fees for each Licensed Software are one-off fees. All prices are net prices excluding applicable VAT (if any). Any taxes, duties or other dues originating from the sphere of the Licensee shall be borne by the Licensee.
- 6.2 The method of payment is set out in the course of the Purchase process. Invoices will be transmitted electronically to the email address submitted by the Licensee.
- 6.3 Only counterclaims that are undisputed or reduced to final non-appealable judgment may be offset against any receivables held by EXA. The Licensee may enforce a right to withhold counter-performance only on the basis of claims that are undisputed or reduced to final non-appealable judgment and that are based on the same contractual relationship.

7 Agreed Quality of Licensed Software

- 7.1 The Parties agree that the Licensed Software must be in the condition documented in writing or electronically in the relevant Functional Description and applicable Documentation made available to the Licensee upon Purchase of the Licensed Software. EXA shall, upon request, provide the relevant Documentation and Functional Description to the Licensee for review prior to Purchase.
- 7.2 Representations in the Functional Descriptions and in the Documentation are not considered to be a certain quality guaranteed by EXA.
- 7.3 If the Licensed Software is based on SAP software (if thus defined in the Functional Description), it can be used solely as an add-on thereto as long as the Licensee uses the relevant SAP software (system requirements are as stated in the Functional Description as well as the SAP software on which the Licensed Software is based). The Licensee is not permitted to use the Licensed Software which is based

on SAP software, as standalone software or together with or as an add-in of any other ERP software or third-party software that is functionally comparable to the relevant SAP software.

8 Warranty

- 8.1 EXA warrants that the Licensed Software Purchased by the Licensee is free from defects in quality at the time when the risk passes to the Licensee.
- 8.2 EXA warrants that the Licensed Software Purchased by the Licensee is free from defects in title including, but not limited to, third party rights which restrict or prevent the contractually agreed Use, particularly if such rights result from Intellectual Property Rights or other proprietary rights.
- 8.3 EXA makes no express warranties with respect to the Software nor assumes any liability if the Licensed Software does not meet the Licensee's requirements. The foregoing disclaimer does not apply if EXA has expressly guaranteed a certain quality or Use for certain purposes.
- 8.4 In the event of a Defect, EXA shall, in the first instance, remedy the Defect. EXA may, at its discretion, provide the Licensee with non-defective Licensed Software instead of remedying the Defect. If a third party enforces a legitimate claim based on a defect in title caused by EXA due to non-compliance with the warranty set forth in Section 8.2, and the contractually conforming Use of the Licensed Software delivered by EXA is thereby impaired or prevented, then EXA has the right, at its discretion, either (i) to modify the relevant modules or the program components of the Licensed Software in such a manner that they no longer fall within the ambit of intellectual property protection but nevertheless comply with the contractual provisions and warrant contractually-conforming Use, or (ii) to work towards obtaining the rights and authority to permit the Licensee to Use the Licensed Software in accordance with the contract without any limitations and without any additional cost to the Licensee.
- 8.5 The Licensee shall grant EXA a reasonable grace period to remedy the Defect.
- 8.6 If EXA fails to remedy a Defect, the Licensee shall, in each case be entitled to withdraw from the Agreement or to reduce the license fee in accordance with the applicable statutory provisions. Subject to the limitation of liability stipulated in Section 11, the Licensee may demand damages or claim for reimbursement of wasted expenditure provided that the statutory prerequisites are fulfilled.
- 8.7 If upon examination of an alleged Defect reported by the Licensee, it is found that there is no such Defect and the Licensee is aware of or negligently unaware of this circumstance, EXA has the right to demand remuneration for the time and effort invested at the hourly rate in effect on the date the Defect was reported, in accordance with EXA's respective valid service price list (plus any incurred travel costs, travel time, costs for data-storage media, copying costs and other expenses, together with legally required value-added tax, if any).
- 8.8 In the event that the Licensee withdraws from the Purchase of Licensed Software, the Licensee will allow any use made of the Licensed Software to be credited. The credited amount will be calculated on the basis of a typical useful life of five (5) years. The Licensee may in this case deduct from such credited amount the price reduction arising during the use due to the Defect that led to the withdrawal from the Purchase of the Licensed Software.
- 8.9 To the extent that the Licensee caused the infringement of Intellectual Property Rights itself, claims for defects of title against EXA are excluded.

9 Co-operation in Case of Warranty

- 9.1 The Licensee shall inform EXA promptly of any Defect detected, specifying the nature of the error and the program execution in which the error occurs. Such notification must also be in writing if EXA so requires. If the Defect is a defect in title, notification must be given in writing without undue delay and the Licensee must inform EXA of any claims arising in connection with the alleged infringements of Intellectual Property Rights.
- 9.2 To the extent required for the purposes of correcting the Defect, the Licensee shall accept patches, updates, upgrades or a new version or release of the Licensed Software, unless this would lead to unreasonable adaptation and migration problems on the Licensee's part.
- 9.3 The Licensee shall provide reasonable assistance to EXA in connection with localizing and correcting the Defect. In particular, the Licensee shall make available all data, information, and files necessary for correcting the error.
- 9.4 A precondition for liability based on a defect in title is (i) that the Licensee immediately notifies EXA in writing of any third party claims based on an Intellectual Property Rights infringement, (ii) that it does not acknowledge the alleged infringement, and (iii) that it conducts any dispute (including any out-of-court settlement) solely with the consent of EXA. If the Licensee discontinues its Use of the Licensed Software in order to mitigate damages or for some other reason, it has no obligation to notify the

allegedly infringed third party that any such discontinuation of Use shall not be deemed an acknowledgment or admission of the alleged Intellectual Property Rights infringement. In the event of an unauthorized acknowledgment or a failure to provide the aforementioned notice, a claim for damages or reimbursement of wasted expenditure to which the Licensee is entitled will be reduced by the amount of detriment suffered by EXA as a result of the unauthorized acknowledgment or failed notice.

10 Warranty Period

- 10.1 The warranty period for Defects is one (1) year.
- 10.2 Notwithstanding Section 10.1, the regular statutory limitation period applies if EXA is liable for any intentional acts or omissions, fraud, gross negligence, product liability according to the German Product Liability Act (ProdHaftG)*, the lack of a certain quality guaranteed by EXA as well as for losses based on an injury to life, body or health.
- 10.3 The warranty period commences according to the applicable statutory provisions.

11 Limitation of Liability

- 11.1 EXA is liable in accordance with the statutory provisions for any intentional acts or omissions, fraud, product liability according to the German Product Liability Act (ProdHaftG)*, the lack of a certain quality guaranteed by EXA as well as for losses based on an injury to life, body or health.
- 11.2 If the conduct of EXA constitutes gross negligence, the liability will be limited to the damages considered foreseeable for contracts of that type.
- 11.3 In the event of simple negligence, EXA is liable based on whatever legal reason, only if a material contractual duty has been breached, i.e., a duty, the fulfillment of which makes the ordinary performance of this entire Agreement even possible and the compliance with which the Licensee can and should regularly rely on (e.g., duty to deliver compliant, non-defective Licensed Software). In this case, the liability will be limited to the damages considered foreseeable for contracts of that type at the time the relevant Purchase was made.
- 11.4 In the event that EXA is liable, the Licensee's comparative fault must be reasonably taken into consideration, including insufficient error reports or insufficient data backup, insufficient protection against damaging programs (computer viruses, Trojan horses, spyware, ransomware, etc.) or a lack of precautionary measures to safeguard IT security.
- 11.5 To the extent that liability is limited to the damages considered foreseeable for contracts of this type in accordance with Sections 11.2 and 11.3, EXA assumes that the sum of twenty-five thousand euros (EUR 25,000) for each damage incident and a maximum amount of one hundred thousand euros (EUR 100,000) in total for each Purchase are sufficient to cover the damages considered foreseeable for contracts of this type in this particular damage incident. Should this amount not suffice to cover the foreseeable damages, the Licensee must inform EXA thereof in writing to ensure that any corresponding adjustment to the liability sums will be made by the Parties and EXA can in fact cover the increased risk, if necessary, by taking out an appropriate liability insurance policy.
- 11.6 The liability limitation agreed to under this Section 11 also applies in favor of EXA's statutory representatives and vicarious agents.
- 11.7 The foregoing provisions under this Section 11 apply *mutatis mutandis*, where EXA must reimburse wasted expenditure instead of compensate for damages.
- 11.8 Any liability claims of the Licensee that are more extensive than those expressly stated in this Section 11 and that relate to compensatory damages and reimbursement of wasted expenditure, based on whatever legal reason, are excluded and disclaimed. The foregoing also applies, above all, to liability that is not based on fault.

12 Transfer of the License

- 12.1 The Purchased right of the Licensee to Use the Licensed Software in accordance with this Agreement may be transferred or otherwise passed on to a third party only after first notifying EXA thereof in writing. The aforementioned right of Use may not be transferred or passed on unless
 - 12.1.1 the Licensee discontinues its Use, deletes all modules of the Licensed Software including any and all installations, copies or partial copies thereof, forwards the original Licensed Software versions being Used by the Licensee to the new licensee, and
 - 12.1.2 the new licensee states in writing to EXA that it is willing to assume all rights and duties of the original Licensee based on the license agreement existing with respect to the relevant Licensed Software.

- 12.2 Before any such rights are transferred or passed, the Licensee must provide EXA with written notice about the name of the recipient and the company's address.

13 Export Control Laws

- 13.1 Since the Licensee is allowed to transfer Licensed Software according to Section 12, the Licensee is hereby advised that the export of Licensed Software may be prohibited or may be subject to official approval, in particular pursuant to the relevant export control laws of the Federal Republic of Germany, the European Union and the United States of America. The Licensee is responsible for complying with all relevant export laws applicable nationally or internationally if exporting any Licensed Software or any parts thereof and, where applicable, for procuring the required licenses.
- 13.2 In the event of a breach of the Licensee's obligations regarding export control law, the Licensee shall indemnify EXA and hold it harmless against any and all claims and any and all losses asserted against EXA by suppliers or licensors of EXA, third parties or state, or international authorities or organizations, in each case provided that the breach is attributable to the Licensee.
- 13.3 The Licensee shall advise its end users in writing about any existing prohibitions and restrictions on exports. For the avoidance of doubt, EXA is not responsible for compliance with any export control regulations applicable to the transfer of Licensed Software or any parts thereof from the Licensee to an affiliate or a third party in accordance with Section 12 or any unauthorized transfer, licensing or assignment.

14 References and Publicity

EXA is granted the right to publicize the fact that the Licensee Uses the Licensed Software. EXA is therefore authorized to report internally and externally about its business relations with the Licensee subject to the general and customary duties of confidentiality. These disclosures include, for example and irrespective of the form or media, press releases, success stories, and presentations together with any naming of the Licensee. Each publication must be structured and designed in such a way that EXA does not infringe any of the Licensee's rights.

15 Miscellaneous

- 15.1 This Agreement constitutes the entire arrangement and understanding between the Parties and supersedes any prior arrangement and understanding between the Parties. This Agreement may be modified or amended by written instrument only, executed by a duly authorized officer of the Parties.
- 15.2 Other than as specifically provided for herein, this Agreement may not be assigned in whole or in part by either Party except with prior written consent of the other Party. Sec. 354 of the German Commercial Code (HGB)* remains unaffected.
- 15.3 If any provision of this Agreement or a part thereof should be or becomes invalid or unenforceable or violates any applicable law, this Agreement is to be considered severable as to such provision and such provision is to be deleted from this Agreement. In such case, the remainder of this Agreement shall be deemed valid and binding as if such provision was not included herein and the Parties shall agree upon any necessary and reasonable adjustments in order to secure the vital interests of the Parties. The latter also applies if in performing the Agreement an omission or contractual gap becomes apparent.
- 15.4 The failure by one Party at any time to require performance by the other Party or to claim a breach of any provision of this Agreement will not be construed as a waiver of any right accruing under this Agreement, nor will it affect any subsequent breach or the effectiveness of this Agreement or any part hereof, or prejudice any Party as regards any subsequent action.
- 15.5 This Agreement shall be governed by, and construed in accordance with, the laws of the Federal Republic of Germany without reference to conflict of laws principles and all provisions of the United Nations Convention on Contracts for the International Sale of Goods of 1980 being explicitly excluded.
- 15.6 The courts of Heidelberg (Neckar), Germany, have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute regarding the existence, validity or termination of this Agreement or the consequences of its nullity).

* Translations of the relevant sections of German Law can be found at http://www.gesetze-im-internet.de/Teilliste_translations.html