



General Terms and Conditions
Governing the Licensing
of Framesoft AG Software Products

(ed. 20 March 2012)

agreed between

**Framesoft AG Software Applications
Sumpfstrasse 15
CH-6300 Zug
Switzerland**

- Hereinafter "Framesoft" or "Party" -

and

Customer

- Hereinafter "Partner" or "Party" -

- Hereinafter together the "Parties" -

These General Terms and Conditions governing the Licensing of Framesoft AG Software Products ("**Terms**") shall govern the making available and maintenance of Framesoft's products by Framesoft for the Partner's own use.

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1. SCOPE

1.1 Framesoft shall, subject to these Terms and the agreement between the Parties that specifies, inter alia, the particularities of the software license ("**Product Certificate**") including the license fee ("**License Fee**") (Terms and Product Certificate together hereinafter the "**Agreement**"), provide to Partner the following services:

- (a) make available the software listed in the Product Certificate ("**Product**") to Partner by means of a non-exclusive license as further defined in the Product Certificate;
- (b) maintain the Product and, in the course of this, provide Corrections and Enhancements (each as defined in section 4 of these Terms) of the Product, therein in particular included the error correction and further developments.

2. USE OF THE PRODUCT

2.1 License. Framesoft grants Partner a non-exclusive right to use the Product in the scope as further defined in the respective Product Certificate. This license is subject to the payment of the annual Licence Fee in advance. In case Partner defaults with any subsequent payment, the right to use the Product will expire automatically on the respective anniversary of the commencement date of the Agreement. Framesoft shall grant Partner the right in accordance with the first sentence of this section again from receipt of the outstanding payment.

2.2 Provision of Access. In case Framesoft offers the use of the Product as Application Service Provider ("**ASP**") or Software as a Service ("**SaaS**"), Framesoft shall make the Product available at the data centre identified in the Product Certificate.

2.3 Restrictions. The right to use the Product is limited to the normal use of the Product.

2.4 Use in Excess. Any use in excess to normal use is only permitted as far as expressly allowed by statutory law.

2.5 Standards. For a proper use of the Product, Partner shall use state-of-the-art hardware and software equipment and regularly renew such equipment to maintain the state-of-the-art of the systems.

3. DOCUMENTATION

3.1 Framesoft shall provide accompanying user documentation for the Product in electronic format only and in English language only ("**Documentation**"), unless otherwise agreed in the Product Certificate.

4. MAINTENANCE, PATCHES, AND BUGFIXES

4.1 Maintenance. Framesoft shall develop and provide corrections or workarounds for any defects in the Product ("**Corrections**"). Framesoft shall continue to advance the Product and shall make all improvements, upgrades and the like ("**Enhancements**") available to Partner, if and to the extent Framesoft makes such Enhancements available to its users generally. Framesoft shall provide such Enhancements to the Partner at no additional costs, unless otherwise agreed in the Product Certificate.

4.2 Patches, Bugfixes. Framesoft shall make available Corrections and Enhancements by new releases, patches, and bugfixes.

4.3 Scope of Maintenance. Corrections shall only be provided for the most current release of the Product ("**Current Release**") and for the release immediately preceding

the Current Release, but in the latter case only for a period of twelve (12) months from the date the Current Release is made available to the Partner by Framesoft.

- 4.4 Email Notification. The Partner shall notify Framesoft of any defect in the Product solely via email at the email address stipulated in section 14.7 in these Terms.
- 4.5 Production Support. The Partner may order production support under a separate agreement.
- 4.6 Unjustified Defect Notifications. If a review of a defect notification submitted by the Partner should reveal that in reality there is no defect in the Product or the Documentation and/or that the defect is not caused by the Product or the Documentation, Framesoft may request the reimbursement of any costs incurred by Framesoft in connection with the review of such defect notification.

5. REMUNERATION, TAXES, AND SET-OFF RIGHTS

- 5.1 Applicable Fees. The License Fee for the Product shall be stipulated in the respective Product Certificate. For the initial Usage Term, the License Fee is due and payable within 30 days from execution of the respective Product Certificate. For subsequent Usage Terms, the respective License Fee is due and payable in advance. For clarity, the payment affects the grant of the license in accordance of section 2.1.
- 5.2 Default. If Partner fails to pay any amount properly due and payable by it under the Product Certificate, Framesoft shall be entitled to charge Partner interests of eight (8) percentage points above the base rate of the European Central Bank per annum on the overdue amount from the due date up to the date of actual payment, reserving the assertion of further rights.
- 5.3 Taxes and Duties. All payments described in this section 5 are expressed strictly net. Withholding taxes or any other levy shall be borne by the Partner. If withholding taxes or any other levy are or become due upon payment – regardless of whether the Partner or Framesoft is liable for such taxes – then the charges will be grossed up in such a manner that after withholding of the withholding taxes due, Framesoft receives the charges in full.
- 5.4 Other Costs. All hardware, software and services associated with communications between the computer clients of the Partner (e.g., a VPN-link), as the case may be, including maintenance thereof, and the data centre of Framesoft, will be contracted for by the Partner and, as between Framesoft and the Partner, solely the Partner is responsible for the costs thereof.
- 5.5 Price Adjustment. Framesoft may, at its reasonable discretion, elect to increase the License Fee set out in the Product Certificate once per calendar year, at the earliest, however, after the anniversary of the conclusion of the respective Product Certificate. If the License Fee is payable in EUR, the increase must not exceed the HICP (Harmonized Indices of Consumer Prices) inflation rate in the Euro Area (as published by Eurostat), and if the License Fee is payable in CHF, the increase must not exceed the HICP (Harmonized Indices of Consumer Prices) inflation rate in Switzerland (as published by Eurostat), each calculated as from the last price adjustment under this section 5.5.
- 5.6 Set-Off. The Partner may offset counterclaims against claims of Framesoft only if such counterclaims are undisputed or have been confirmed by a final and conclusive court judgment. The Partner may assert a right to withhold performance only in respect of claims arising out of the same contractual relationship in connection with the Agreement.

6. **WARRANTY RIGHTS**

- 6.1 If not stated otherwise in the Product Certificate, the statutory warranty rights apply subject to the following:
- 6.2 Framesoft shall remedy any defects in the Product reported by Partner (including defects in the Documentation) as part of the maintenance as set out in section 4 of these Terms.
- 6.3 Partner must not reduce the License Fee or cancel this agreement unless Framesoft failed to correct a severe defect twice. A significant number of other defects shall be considered a severe defect.

7. **THIRD PARTY RIGHTS**

- 7.1 **Indemnification.** Subject to section 8, Framesoft shall defend, or at its option settle, at its own expense, any claim, suit or proceedings brought against Partner, and Framesoft agrees to pay, subject to the limitations hereinafter set forth, all reasonable damages and costs (including reasonable attorneys' fees), finally awarded against Partner, as a result of any such claim or any settlement entered into on such issue in any such suit or proceeding, alleging that the use of the Product in accordance with the provisions of the Agreement infringes any third party right.
- 7.2 **Co-operation.** Partner shall (a) notify Framesoft promptly of such claim, suit or proceeding, (b) provide Framesoft with the sole control of any such action or settlement negotiations, and (c) give Framesoft authority to proceed as contemplated herein, and, at Framesoft's expense, give Framesoft proper and full information and assistance to settle and / or defend any such claim, suit or proceeding. Partner shall be heard with respect to actions Framesoft intends to take pursuant to section 7.1. Further, Framesoft shall take Partner's suggestions into consideration when taking such actions.
- 7.3 **Effect.** If it is adjudicatively determined, or if Framesoft believes it may be determined, that the use of the Product infringes upon any third party right, then Framesoft may, at its sole option and expense, and in a reasonable time frame, either (a) procure for Partner the right under such third party right to use the Product as provided for by the Agreement; or (b) replace or modify the Product with another functionally equivalent software. If (a) and (b) are not possible, as determined in Framesoft's sole discretion, the parties will jointly develop another solution (e.g., Framesoft to acquire the right to grant Partner access to a third party platform comparable to the Product). The parties will bear all costs and expenses incurred in connection with such solution in equal shares. In any event, Framesoft will not be liable for any costs or expenses incurred without its prior written authorization.
- 7.4 **Fault.** Notwithstanding the provisions of section 7.1 through 7.3 above, Framesoft only assumes liability to the extent such claims are based on the fault of Framesoft.
- 7.5 **Entire Liability.** The foregoing provisions of this section 7 state the entire liability and obligations of Framesoft, and the exclusive remedy of Partner, with respect to the infringement of any third party right by the Product.

8. **LIMITATION OF LIABILITY**

- 8.1 **General.** Except as provided differently below, both parties are liable according to Swiss statutory law.
- 8.2 **Negligence.** Framesoft's liability for negligence is limited to the extent stipulated in the Product Certificate. In case the Product Certificate remains silent regarding the total cap of liability, the total aggregate liability of a Party towards the other Party under

and in relation a Product Certificate shall be limited to an amount equal to the License Fee paid by Partner to Framesoft under the Product Certificate during the twelve (12) months immediately preceding the event giving rise to liability.

- 8.3 Indirect Damages. Neither Party shall be liable to the other Party (or any third party) for any indirect, consequential or incidental loss or damage, or any loss of profit, loss of revenue, loss of business, loss of data or loss of goodwill.

9. RETURN AND DELETION OBLIGATIONS

- 9.1 Return or Destroy. Upon termination of the Agreement, the Partner shall, at Framesoft's discretion, return or destroy all data, media, and documents related to the Product. In case of destruction, Partner shall provide satisfactory proof of the success of the destruction to Framesoft.

10. DATA PROTECTION

- 10.1 Data Processing. The Parties shall process any personal data as defined in Swiss or in any other applicable law on the protection of personal data ("**Personal Data**") solely in accordance with the applicable law on data protection. In particular, Framesoft shall take and maintain the legally required appropriate safeguards when processing Personal Data on its servers according to the Agreement.

11. CONFIDENTIALITY

- 11.1 Confidential Information. Each Party will treat as confidential all information which it receives from the other Party under this Agreement or becomes otherwise aware of in the course of performing its obligations under the Agreement (both prior and subsequent to their execution) ("**Confidential Information**"), unless the Agreement expressly allows otherwise. Confidential Information includes without limitation records and information (i) that has been marked as proprietary or confidential; (ii) whose confidential nature has been made known by the one Party to the other Party; or (iii) that due to its character and nature, a reasonable person under like circumstances would treat as confidential. Each Party undertakes to protect all Confidential Information of the other Party at all times and in the same manner as it protects the confidentiality of its own proprietary and confidential materials, but in no event with less than a reasonable standard of care.
- 11.2 Need to Know. Confidential Information of the disclosing Party must only be used by the other Party in the course of the performance of the Agreement and may only be disclosed to employees of the other Party or its affiliates or subcontractors on a "need to know" basis provided that the confidential nature of the Confidential Information is at all times secured by non-disclosure undertakings similar to those set forth in this section 11.
- 11.3 Avoid Copies. Confidential Information must not be copied, duplicated or distributed except as necessary to perform the obligations under the Agreement.
- 11.4 Non-Disclosure. Each Party shall, unless expressly set out otherwise in the Agreement, not disclose to any person, firm or entity any Confidential Information of the other Party without the other Party's express, prior written consent. The other Party may in its sole discretion withhold consent if no satisfactory proof is provided that the third party is subject to a non-disclosure undertaking similar to those set forth in this section 11.
- 11.5 Exceptions. The Partner shall not be deemed to have breached the aforementioned confidentiality obligation where the Confidential Information involved

- (a) is or becomes generally known through no violation of the duty of confidentiality stipulated in these Terms, or
 - (b) was known to the Partner prior to the duty of confidentiality arising and prior to receiving access to the Product or the information concerning the Product from Framesoft, or
 - (c) was developed by the Partner independently and not in violation of the confidentiality obligation contained in these Terms or in a separate agreement between the Parties, or
 - (d) was disclosed to the Partner with the prior, express written consent of one of Framesoft's authorised representatives,
 - (e) was lawfully provided to the Partner by a third party without any violation of these or any other confidentiality obligations;
 - (f) was disclosed by the Partner pursuant to the order of any court or governmental or administrative authority competent to require the same; or
 - (g) was disclosed by the Partner in compliance with any applicable law or regulation.
- 11.6 Survival. This duty of confidentiality shall survive the termination of the agreement executed between the parties.
- 11.7 Non-Disclosure Agreement. If Framesoft and Partner entered into a Non-Disclosure Agreement regarding the subject matter of the Agreement, the provisions of the Non-Disclosure Agreement shall remain unaffected and, in case of a conflict between the provisions of the Non-Disclosure Agreement and this section 11, the provisions of the Non-Disclosure Agreement shall prevail.
12. **TERM AND TERMINATION**
- 12.1 Term. The Agreement shall commence upon the date stated in the Product Certificate and shall continue to be in force for the initial usage term and for subsequent usage terms as stated in the Product Certificate ("**Usage Term**").
- 12.2 Termination for Convenience. Either Party may elect to terminate the Agreement upon ninety (90) days' prior notice to the end of a Usage Term.
- 12.3 Termination for Cause. Notwithstanding any of the foregoing, The Parties' right to terminate the Agreement for cause remains unaffected. In particular, Framesoft may terminate the Agreement for cause by giving written, hand-signed (by an authorized representative) notice with immediate effect or as of a date specified in such notice, if Partner:
- (a) materially breaches any term or condition of the Agreement, including the default of payment of the License Fee under a Product Certificate, and fails to remedy the breach within 30 days after being given notice thereof;
 - (b) materially breaches any term or condition of the Agreement and such breach is not capable of being cured, e.g. acts in excess of the granted rights of use;
 - (c) ceases to function as a going concern or to conduct operations in the normal course of business; or
 - (d) has a petition filed by or against it under any national bankruptcy or insolvency laws.
13. **EXIT ASSISTANCE**
- 13.1 Support. Upon termination of the Agreement, Framesoft will support the Partner in orderly exporting the Partner's data stored in the Product at the Partner's cost. Framesoft will offer such support under its then current applicable terms.

14. **GENERAL PROVISIONS**

- 14.1 **Written Form.** Amendments or additions to this agreement or waivers of any provision under this Agreement, including Amendments to or a waiver of this written form requirement, shall be made in writing.
- 14.2 **Venue.** Exclusive venue for any judicial proceeding brought against any of the parties to this Agreement or any dispute arising out of this Agreement are the courts of Zug, Switzerland.
- 14.3 **Choice of Law.** This Agreement is governed by and must be interpreted under Swiss law, without regard to its conflict-of-laws provisions.
- 14.4 **Conflicting Terms.** If the Partner also uses terms and conditions of business, it is agreed that the Agreement comes into force without express agreement of the inclusion of terms and conditions. Insofar as the content of the different terms and conditions accord, these are considered agreed. The same applies in the case that the Partner's terms and conditions contain regulations not included under the provisions of these Terms. If these Terms contain regulations that are not included in the Partner's terms and conditions, the respective regulations in these Terms are considered agreed.
- 14.5 **Announcements.** Neither party will make any public announcement or press release about the Agreement without the other's prior written approval.
- 14.6 **Independent Contractors.** Framesoft and Partner are independent contractors. In particular, no employer-employee, partnership, joint-venture, or agency relationship exists between Framesoft and Partner.
- 14.7 **Notices.** Notices provided for by these Terms shall be valid only if made in writing (including encrypted mail or facsimile transmission, unless otherwise provided for in these Terms) to the following Party's address:

(a) if to Framesoft:

Framesoft AG
Sumpfstrasse 15
6301 Zug
Switzerland

Attn.: [##]

Telecopy: [##]

E-Mail: [##]

(b) if to Partner:

[Postal Address]

Attn.: [##]

Telecopy: [##]

E-Mail: [##]

or to such other person or address as either Party shall specify by notice in writing to the other Party in accordance with this section 14.7.

- 14.8 Assignment. Neither Party shall assign this Agreement or any part thereof to any third party without the prior written consent of the other Party.
- 14.9 Entire Agreement. These Terms, including all Product Certificates, constitute the entire agreement between the Parties and supersede all previous agreements and understandings, whether oral or written, between the Parties hereto with respect to the subject matter hereof, and no agreement or understanding varying or extending the same shall be binding upon either party hereto unless in a written document signed by the Party to be bound thereby.
- 14.10 Severability. If any part of these Terms and/or a Product Certificate is held indefinite, invalid, or otherwise unenforceable, the rest of the Terms and the respective Product Certificate will continue in full force. In lieu of such a provision such regulation shall apply that reflects to the closest extent possible the purpose of the Terms and the Product Certificate and the intention of the Parties hereto as at the signing of the Product Certificate. The same shall apply to any unintentional gap in this Terms and the Product Certificate.