

# OMS Conformance Tester Version 4.0 Software Licence Agreement

## Licensor

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Please read the conditions of the software licence agreement carefully before you purchase the software and install it on your computer. By sending the signed order form you declare your express agreement with the following licensing terms. These terms and conditions apply exclusively.

## Preamble

The buyer acquires from the seller standard software to use for the test of communication products. The software is to be used in particular to verify that the OMS specification is correctly implemented in the tested product.

## § 1 Object of Contract

(1) The purpose of this contract is the permanent transfer of the computer program, including the associated user documentation ("contract software") and the granting of rights of use described in § 2. The hardware and software environment within which the contract software is to be used, is also described in the user documentation.

(2) The seller shall provide the buyer with a copy of the contract software and a current version of the associated user documentation.

(3) The nature and functionality of the contract software are specified by this licence agreement and the accompanying software and manual received upon delivery (OMSConformanceTester\_Manual\_V4.pdf). The information contained therein is to be understood as service descriptions and not as guarantee. A guarantee is granted only if it has been designated as such explicitly.

(4) Installation and Configuration services are not covered by this contract.

## § 2 Granting of rights

(1) The buyer will receive a non-exclusive, perpetual right to use the contract software. In no case does the buyer have the right to use the purchased contract software to rent or sublicense it, to reproduce or publish it in public in any wired or wireless way or to provide it to third parties in return for payment or free of charge, in the context of Application Service Providing or as "software as a service". Clause 5 remains unaffected.

(2) The buyer has the right to always receive the current version of the contract software from the

purchase of version 4. The condition is that the buyer pays 20 % of the non-rebated list price annually following the year of the purchase of the contract software. The invoices are always sent to the buyer by the seller in January of each year and are to be settled within 30 days. If no payment is made in due time, the buyer's right under sentence 1 automatically expires and the buyer has to purchase a new contract software if necessary.

(3) The buyer is entitled to make a backup copy if this is necessary to ensure the future use. The buyer will attach the note "backup" and a copyright notice on the backup copy,

(4) The buyer is entitled to decompile and to reproduce the contract software, as far as is necessary to achieve interoperability of the contract software with other programs. However, this applies only under the condition that the seller has not made the requisite information available to the buyer upon request within a reasonable time.

(5) The buyer is entitled to transfer the purchased copy of the contract software, assignment of the licence agreement and the documentation permanently to a third party, ceding his own licence contract.

The OMS-Group has to be notified of this transfer. When passing from a member of the OMS-Group to a non-member the difference between the price for members and non-members of the OMS-Group is payable to the OMS-Group.

(6) If the buyer uses the contract software in a manner which exceeds the acquired rights qualitatively (regarding the type of permitted use) or quantitatively (in terms of the number of licences purchased), it is immediately necessary to acquire rights of use. If he fails to do so, the seller will make his rightful demands.

(7) Copyright notices, serial numbers and other program-identification features may not be altered or removed from the contract software.

### **§ 3 Fee, Due payment and Default**

(1) The licence fee has been determined by the licensor. The licence fee, payable at the time the licence is acquired, is based upon the licensor's valid price list at the time of purchase. The price list is available on the website of the licensor. If this is not available, a price list may be ordered directly from the licensor. The licence is only valid if the full licence fee has been paid to the licensor.

(2) All prices are net prices, that is, exclusive of VAT, if applicable.

(3) Payments are due upon receipt of invoice by the buyer and the concomitant information that the contract software is ready for shipping or downloading at the seller. The shipment or the statement of access to the buyer shall be no later than 14 days after receipt of the purchase price.

### **§ 4 Warranty**

(1) The Seller warrants the agreed quality. Material defects warranty does not cover defects, which are based on the contract software being used in a hardware and software environment that does not meet the requirements specified in the licence certificate.

(2) If the buyer is a merchant or a company, he must have the contract software checked immediately upon receipt for obvious defects of which he must notify to the seller immediately, otherwise a guarantee for these defects will be excluded. The same applies according to § 377 HGB (German Commercial Code), if such a defect is found later.

(3) In case of defects, the seller is entitled to remedy the defect by repair or replacement at his discretion. In the case of replacement the buyer will receive a new version of the contract software unless this leads to an unacceptable impairment. In the case of legal defects, the seller will provide the buyer, at his option, a legally correct way to use the contract software, or modify it so that no third party rights are violated.

(4) The seller is entitled to provide the guarantee in the buyer's premises. The seller satisfies his obligation to repair also by providing an automatic installation routine providing updates on its homepage to download or by offering the buyer telephone support to solve occurring installation problems.

(5) If the failure to repair or replace occurs twice, the right of the buyer to reduce the purchase price or to withdraw from the contract remains unaffected. The right of withdrawal does not apply to minor

defects. If the buyer claims damages or reimbursement of expenses, the seller shall be liable as in § 5.

(6) If the buyer is a consumer, the statutory warranty regulations find unlimited application.

(7) With the exception of claims for damages, warranty for defects runs out after two years, or after one year if no consumer is involved in the transaction. The period begins upon the sale on a storage medium with the delivery of the contract software, in the event of a sale by download from the Internet after notice and unlocking the log-in data for the download area. Claims for damages and claims for reimbursement of expenses are regulated according to § 5.

(8) If the parties have a maintenance contract, the elimination period for defects is regulated in this maintenance contract.

## **§ 5 Liability, Due Diligence**

(1) Claims under the Product Liability Act shall remain unaffected.

(2) For other damages in the event of a negligent breach of duty by the seller or his agents the liability of the seller is limited to the contractual, typical foreseeable, direct average damage, maximum to the simple contract value. This does not apply to gross negligence or willful misconduct.

(3) Any further liability of the seller does not exist. Liability for data loss is limited to the typical restoration costs, occurring in a daily production of backup copies within the scope of possibly occurring danger.

(4) Any liability of the seller is limited to cases where the buyer is not culpable of contributory negligence. The buyer is therefore committed to careful maintenance and inspections, proper use and operation of the object mentioned under § 1, as well as to any precautions for defense against any damage. This also applies to actions to ward off outside damage (e.g. hacker attacks), in particular through preventive measures such as firewalls antivirus programs and encryption. The seller is not liable for damages caused by interference by third parties not mandated or authorized by him installing software not purchased at the seller.

The seller is not liable if there is no connection to a damage, e.g. by a consultation error.

(5) For all claims against the seller for damages or reimbursement of expenses for contractual and non-contractual liability - except in cases of intent or personal injury – applies a limitation period of one year. The deviatingly regulated period for warranty claims (§ 4 clause 7) remains unaffected by the provisions of this paragraph.

(6) Any personal liability of employees, representatives and organs of the seller is excluded.

## **§ 6 Security Measures, Audit Rights**

(1) The buyer will secure the contract software and, if applicable, the access data for online access through appropriate measures against access by unauthorized third parties. In particular all copies of the contract software and access to shall be kept in a secure place

(2) The buyer will allow at the request of the seller to verify the proper use of the contract software, in particular as to whether the buyer uses the program qualitatively and quantitatively in the context of his purchased licences. For this, the buyer will provide information to the seller, grant access to the relevant documents and records, and allow for a review of the hardware and software environment. The seller may carry out the test in the buyer's premises at his regular business hours, or can have them performed by third parties legally bound to secrecy. The seller will ensure that the business of the buyer is disturbed as little as possible by his activities on site.

## **§ 7 Confidentiality**

(1) " Confidential Information" means all information and documents of the other party marked as confidential or considered to be confidential from the circumstances, such as particular information about business processes, business relationships and know-how.

(2) The Parties agree to keep confidential information confidential.

(3) Confidential information are exempt from this obligation if

(a) the receiver was proven to have knowledge of it at the completion of the contract or was informed thereafter by a third party, without causing a confidentiality agreement, legal regulations or administrative orders to be violated;

(b) it is publicly known at the conclusion of the contract, or is to be subsequently made public, in as far as this is not based on a breach of this contract;

(c) it has to be disclosed as required by law or by order of a court or administrative authority. To the extent permitted and possible, the recipient of the order of disclosure will notify the other party in advance to give the opportunity to challenge the disclosure.

(4) The parties shall only grant access to confidential information to such advisors as are bound to professional secrecy or who have pledged the corresponding confidentiality obligations of this agreement. In addition, the parties will only reveal the necessary confidential information to employees who need this knowledge for the performance of this contract, and shall require such employees to be bound to this level of confidentiality for any legally permissible period following their departure.

(5) Each culpable violation of these provisions will result in a penalty in the amount of the current list price by itself.

## **§ 8 Miscellaneous**

(1) The buyer may transfer claims against the seller only after written consent by the seller to a third party. § 2 clause 5 shall remain unaffected.

(2) The buyer may only offset undisputed, legally established and well considered claims

(3) Amendments and supplements to this agreement have to be in writing. This also applies to the amendment or repeal of this clause. Simple electronic documents in text form do not meet the requirement of written form.

(4) Terms and conditions of the buyer are not applicable.

(5) The contract software can be subject to (re-)export restrictions, e.g. The United States of America or of The European Union. The buyer has to follow these regulations at a resale or any other export.

(6) This Agreement corresponds to German law and shall apply to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods dated 11. April 1980 (CISG).

(7) Place of fulfilment is Cologne, exclusive court of jurisdiction is Cologne, provided that each party is a merchant or a legal entity under public law or has no general jurisdiction in Germany.

(8) If any clause of this agreement should be invalid, the validity of the remaining clauses shall not be affected. The Contracting Parties shall endeavour to replace the invalid provision by a valid one which comes closest to the economic importance of the invalid clause.

(9) All attachments specified in this contract are binding parts of the contract.

(10) This paper is derived from the legally binding German version of the software licence agreement. Some wording may appear different though the meaning is the same.

Cologne, 31. January 2017