

EAT TERMS AND CONDITIONS FOR THE PROVISION OF SOFTWARE

North America

(EAT-LC-NA)

Version: February 2023

1 Field of Application of EAT-LC-NA

1.1 The terms and conditions set forth in this document (hereinafter: **EAT-LC-NA**) shall govern any contractual and pre-contractual relationship between **EAT GmbH The DesignScope Company ("EAT")** and commercial or self-employed Customers (i.e. excluding consumers), covering the negotiations, the formation of and the agreements under a Contract comprising the provision of EAT-owned standard software including Trial Versions, the granting of rights of use (hereinafter: **Licenses**) to EAT Software Products and related ancillary services, including without limitation consulting, demonstrations, provision of information, sales negotiations, training, installation support, configuration and parametrization, any other ancillary services (any such services called hereinafter collectively: **Ancillary Services**).

1.2 Software developments for customer-specific requirements, installation and adaptation work and other work for customizing (collectively: "Individual Software") shall not be subject to the EAT-LCA and require a separate written agreement (Project Contract) including specifications of Individual Software of EAT thereunder to be prepared by Customer, including all Customer's detailed functional requirements.

1.3 All references to "Sections" in this document mean the respective sections of these EAT-LC-NA

2 Contract Scope / Offer / Order Confirmation

2.1 The EAT Software Product, the required Customer's system (hardware, operating systems), the License Model (see Section 4) and the type of license Single License or Server/Client License), number of licenses, prices and terms of payment, terms and other individual agreements are exclusively set forth in the Offers and Order Confirmations of EAT.

2.2 The written Offers and Order Confirmations of EAT in their latest version, including the terms and conditions of EAT referred to therein, constitute the entire agreement between the parties (hereinafter: Contract). Deviating or additional terms and conditions of Customer shall not apply unless expressly confirmed by EAT in writing. In any case a binding contract between EAT and Customer as well as the granting of rights of use is subject to agreement on any and all stipulations, provisions, conditions and warranties (execution of Contract). In particular, the provision of the EAT Software Product and other deliverables and receipt by EAT of Customer's payments do not constitute acceptance by EAT of any such deviating or additional terms and conditions.

Unless otherwise set forth, the term "Offer" used hereinbelow includes also the last Order Confirmation pertaining thereto.

2.3 All agreements, including but not limited to changes or amendments to the Contract, collateral agreements and legally relevant statements by Customer and EAT each must be in writing.

3 Subject Matter of Contract / Intended Use of EAT Software Product

3.1 Subject matter of Contract

The subject matter of the Contract is described in the Offer. EAT shall deliver the EAT Software Product in object code and machine-readable form in the version described in the Offer and grants Customer the limited right of use to them according to Section 4. The source code is not included in the provision of the EAT Software Product and no rights of use are granted to the source code.

EAT retains all rights, title and interest in and to the EAT Software Products and any of its deliverables under the Contract irrespective of the selected License Model, as further defined in Section 4, and Customer's sole rights of use thereto are limited as set forth in Section 4.

3.2 Representation of Intended Use

3.2.1 Suitability of standard EAT Software Product

EAT ONLY REPRESENTS THAT THE EAT SOFTWARE PRODUCT COMPRISES THE FUNCTIONALITIES DESIGNED AND IMPLEMENTED BY EAT AS ITS MARKET STANDARD AND IS NOT CUSTOMIZED TO THE SPECIFIC NEEDS OF CUSTOMER. During the testing phase of the EAT Software Product, which begins with its installation and – unless otherwise agreed – shall be 90 working days, its intended use is deemed to be limited to the verification of the error-free condition, including suitability for Customer's expectations and its commercial use is intended to start after the testing phase only.

3.2.2 EAT SOFTWARE PRODUCT NOT DESIGNED FOR PARTICULAR PURPOSE / Availability of Trial Version to Customer:

If in doubt about the suitability of the EAT Software Product for its requirements, Customer may at its discretion and under its sole responsibility engineer and prepare a correct and complete specification to constitute the sole specification on all Customer's detailed functional requirements for a Project Contract proposal for Individual Software.

Notwithstanding the above, EAT warrants that the EAT Software Product is suitable for the intended purpose provided that EAT

- a) has assumed sole and explicit engineering responsibility for the creation of the aforesaid specification under a Consulting Contract
- b) has not advised Customer of restrictions it has identified with respect to the limited usability or related to the risks of using the EAT Software Product
- c) has negligently or deliberately provided false information to Customer in writing with respect to the quality and functionalities of the EAT Software Product.

EAT therefore recommends using the Trial Version of the EAT Software Product for a limited period prior to acquisition of the Productive Version, including a review of the included user documentation, so that Customer can validate the quality, nature and scope of the functionalities and thereby ensure that they satisfy its operational needs. The Trial Version is not intended for commercial use and shall be provided on "AS IS" and "AS AVAILABLE" basis.

3.3 Ancillary Services

EAT will provide Ancillary Services whether related to performance or to conduct by EAT (see Sub-Section 1.1) only within in the scope specified in the Contract. Any such services are exclusively related to deliverables of EAT's own origin. EAT shall provide Ancillary Services with due diligence and in a professional manner, however without the obligation for the result of such service.

3.4 Third-party software that EAT procures from third party licensors is expressly referred to as such in the Contract. The rights of use thereof and all other terms and conditions pertaining thereto, including without limitation warranties and liabilities are governed by the terms and conditions of such licensor and shall prevail over any terms and conditions hereinbelow.

4 License Models / Rights of Use

4.1 License Models

EAT offers the following License Models for the EAT Software Product:

a) License Model Trial Version: The **temporary** provision of a **Trial Version** for free-of-charge use on basis of the legal lend type agreement plus training. The duration of such provision is set forth in the Offer. Customer shall return the Trial Version to EAT at any time at EAT's first written request, in particular if Customer intends to decompile the Trial Version.

b) License Model Purchase: The non-exclusive provision for commercial use (**Productive Version**) for an **unlimited term** against a one-off payment on basis of the legal sale and purchase type agreement (subject to EAT's retained rights referred to in Sub-Section 3.1). The intellectual property in the EAT Software Product remains with EAT and shall not be transferred.

c) License Model Rent: the provision for commercial use (**Productive Version**) for a **limited term** against payment of a one-off or recurring license fee (as the case may be) on basis of the legal rent type agreement. Unless otherwise stipulated in the Contract, the period of rent starts upon activation of the EAT Software Product. Any extension of the limited initial term and any subsequent terms (if agreed) shall be subject to an express written agreement. Use by Customer beyond the agreed term of rent shall not constitute a tacit extension of the rent term or shall not entitle Customer to such extension.

4.2 Rights of Use

4.2.1 License Model Purchase / License Model Rent

Upon **provision** of the EAT Software Product and **payment of the license fee**,

Customer is granted the non-exclusive right of use to the EAT Software Product as follows:

For Single License / workplace licenses: On any computer per dongle and user ID

or

For Server/Client Licenses: On any server and any number of workstations connected to it within the network (Server/Client License). The number of workplaces for simultaneous use is limited to the number of dongles provided by EAT (or in lieu thereof the allocation of IP addresses for the workplaces if agreed).

Customer may reproduce the EAT Software Product to the extent necessary for its contemplated use. Each license includes a one-time installation of the EAT Software Product on a storage device, a one-time loading into the working memory, and the creation of a backup copy. To the extent necessary for operating EAT Software Product as contemplated, temporary

alternative installation and loading on another suitable system environment is permitted without an additional license payment until Customer has restored the original system environment. Under the **License Model Purchase**, Customer is authorized to create a copy of the EAT Software Product on data carriers that bears the copyright notice of EAT for resale according to Sub-Section 6.2 and to hand it over to the secondary purchaser together with the associated copy protection (dongle) and user identification (Product Key) subject to compliance with the provisions of Sub-Section 6.2. However EAT is not obliged to grant the secondary purchaser the right and enable it to download versions of the EAT Software Product that are no longer available from the network.

Customer shall permanently mark the mobile data carrier of the backup copy as such copy together with the copyright notice of EAT.

If Customer replaces hardware (upgrade), Customer is permitted to reproduce the necessary copies of the EAT Software Product within the scope of the granted licenses for use on the upgraded hardware concurrently with its uninstalling on the previous system environment without payment of an additional license fee.

Note: The technical usability of the EAT Software Product on a system environment other than the environment defined in the Contract may be impeded or become impossible and is at Customer's sole risk.

The EAT Software Product and any supporting software (e.g. for copy protection, for remote diagnostics and/or for managing backup functions) may only be used uniformly and jointly. The right of use shall apply accordingly to all licensed modifications of and supplements of the EAT Software Product provided by EAT to Customer, whereby the right of use for the modified features of the EAT Software Product expires automatically at the time of activation of the modified features.

Any rights of use are limited to Customer's own computers, devices and other hardware at one Customer's location (i.e. business address shown in the Order) for **own** production purposes and to the operation in compliance with EAT's product description applicable to the respective EAT Software Product. The granted right of use does **not** extend to any use for own software developments, shared use with third parties and services to third parties with the software (including without limitation data center operations, outsourcing of IT services, application software providing, service office operations, cloud computing).

4.2.2 Inspection Right / Right to rectify defects

Customer is entitled without EAT's approval to observe, investigate and test the functioning of the EAT Software Product to the extent necessary for its use as contemplated for in the Contract including correction of errors (but only to the extent mandatory under copyright law rules) but without decompiling, modifying or additionally duplicating the EAT Software Product.

Such right also includes all actions without further approval of EAT to the extent necessary for the rectification of defects of the EAT Software Product, always provided that and only if EAT is not willing or able to rectify the Errors in accordance with Section 9. after written request to rectify. The right to rectify Errors applies accordingly to error elimination ordered by Customer on a chargeable basis before and after expiry of the warranty limitation period

4.2.3 Decompilation

Customer shall have the right to perform reverse engineering (decompilation) of the EAT Software Product and to carry out any necessary modifications and produce copies without the approval of EAT to the extent such action is essential in order to obtain the information necessary for the interoperability of the EAT Software Product with other software. Decompilation is considered essential if

- a) Customer has given EAT written notice of its intention to rework the EAT Software Product
- b) Customer has given EAT the opportunity to perform the decompilation within the time frame Customer would need for it.
- c) the decompilation does not unreasonably interfere with the legitimate interests of EAT.

Customer shall comprehensively inform EAT in writing of the manner and scope in which it has carried out decompilation. EAT reserves the right to modify and further develop the EAT Software Product and to derive further software.

4.2.4 Return at expiry of the Term of Rent

At the end of the term of Rent, Customer shall return the EAT Software Product, including all copies created, to EAT at the place of EAT's registered main office (Krefeld) and permanently destroy, delete and uninstall all copies.

4.2.5 Rights of use for the License Model Trial Version

The rights of use granted in Sub-Sections 4.2.1 and 4.2.2 shall apply subject to the limitation that the authorized use shall entitle Customer only to examine and verify the EAT Software Product's usability for Customer's purposes. The EAT Software Product, including all data carriers and other items supplied by EAT along with it, shall remain the property of EAT. Customer must return them, including all copies made by Customer, to EAT and permanently destroy, delete and uninstall all copies thereof at the end of the trial period.

4.3 Restrictions on further provision and disclosure to third parties

Customer undertakes not to disclose the EAT Software Product, copies thereof and other deliverables including services of EAT to third parties. Distribution, public access, sub-licenses, leasing and provision to third parties of any other kind are prohibited. These restrictions do not extend to the disclosure to employees of Customer, provided that (i) they need to know the EAT Software Product for their work required to use the EAT Software Product as intended, in particular for the purpose of training the operators and troubleshooting, and (ii) EAT rejects training at reasonable fees and conditions despite request or Customer is entitled to rectification in accordance with Section 9.

As for the sale of the EAT Software Product to third parties Section 6 shall apply.

4.4 Other Use

Any other use of the EAT Software Product as set forth in this document is subject to an additional written agreement with EAT covering all terms and conditions of such use.

4.5 Copy protection / Program lock

4.5.1 The right of use is bound to the dongle and prior to activation only includes the installation of the EAT Software Product. Further use after installation is subject to activation after receipt of the agreed and by then due payments and shall be authorized by EAT upon subsequent notification of the user ID (Product Key).

The EAT Software Product is protected by a time lock that EAT shall only regularly extend when Customer makes partial payments and recurring payments of the license fee on the due dates and is not in breach of its limited right to use EAT Software Products and keep confident EAT's information.

4.5.2 If a dongle is lost or destroyed, the continuing use of the EAT Software Product enabled by means of the dongle is only permitted against an additional fee against delivery of a new dongle, unless Customer can prove in writing that the dongle has been destroyed or irreparably lost .

5 Dates / Delivery / Activation

5.1 No date pertaining to any of EAT's deliverables, including without limitation dates for delivery and activation of EAT Software Products and for the performance of services shall be a condition, of the essence or considered expiry dates. EAT shall be in delay only upon Customer's formal reminder.

EAT shall deliver the EAT Software Product at its discretion physically on data media or in electronic form by making it available on the network and notifying Customer accordingly. Delivery of the number of dongles required for the use shall be made physically. Physical delivery shall be carried out on CIP term, address of Customer, as defined by the most recent version of the INCOTERMS.

EAT shall notify the user ID (Product Key) to Customer within three working days from receipt of the relevant written request by Customer and receipt of the payment or partial payment due under the Contract at that time of receipt in EAT's bank account.

5.2 The notification of the user ID (Product Key) represents the date when the EAT Software Product is activated and the commencement of Customer's rights of use for testing and production use.

5.3 Delivery date shall mean:

- a) for data carriers, the dispatch to the freight forwarder,
- b) for electronic transmission, the date on which EAT makes the EAT Software Product available for download in the network and notifies Customer accordingly
- c) for the user ID (Product Key), the dispatch of the e-mail message by EAT

5.4 Installation is performed by Customer unless EAT has supplied the operative hardware required for the use of the EAT Software Product.

6 Limited Transferability of the EAT Software Product and Rights of Use

6.1 Subject to Sub-Section 6.2, the EAT Software Product and the rights of use are not transferable to third parties.

6.2 Except as and only to the extent that the foregoing restriction is prohibited by law applicable in the territory for which the use of the EAT Software Product was granted, a resale of EAT Software Products is subject to the following provisions and only permitted under the **License Model Purchase**. The Rights of Use (Section 4) together with the EAT Software Product in the version/configuration licensed at the time of the resale can be sold and transferred to third parties for perpetual and irrevocable use together with the mobile data carrier, the associated dongle and the user ID and only in the case of the **License Model Purchase** against payment of a one-off fee and written confirmation of final relinquishment of any own rights of use thereto. In the case of multiple individual licenses (excluding volume license at package license fee), the sale and transfer of any number of individual licenses is permitted; a Server-Client license can only be sold and transferred collectively and jointly together with all dongles and user IDs (Product Keys) provided in this connection.

The transfer to third parties is subject to the following additional conditions:

- a) Customer establishes by way of affidavit of a third party assigned by EAT that it has completely and ultimately abandoned its own technical and/or commercial use of the sold EAT Software Product, has permanently deleted/uninstalled all copies, and has handed over all existing data carriers on which the EAT Software Product is stored to EAT at its business location (Krefeld, Germany).
- b) Customer has ensured that the purchaser is informed of all terms and conditions related to the transferred rights of use and the purchaser undertakes to observe them, in particular by expressly accepting the scope of use according to Section 4 of the EAT-LC-NA to EAT in writing.

7 Prices / Payment

7.1 All prices are fixed prices that apply over the of the entire duration of Contract performance. Payment of the prices is made effective in the currency stated in the Contract without deductions. All price indications of EAT refer to net prices. Any customs duties, fees, sales, value-added or other similar taxes and other public charges incurred by EAT for their service, maintenance, deliveries and licensing are not included in the net prices and shall be borne by Customer in addition thereto (except for taxes based on EAT's income).

7.2 Payments shall only be deemed received when its entry is booked in EAT's bank account without reservation.

8 Cooperative Undertakings of Customer

Customer undertakes to cooperate with EAT by providing:

- a) Production and maintenance of a system that is suitable for the EAT Software Product in the prevailing version (updates, new versions) provided by EAT
- b) Installation including setting up of the EAT Software Product and including a comprehensive test run to verify all necessary functionalities, especially in case of data exchange with Customer's systems and machines prior to the start of productive use.

- c) Granting remote data access to the EAT Software Product and the system to EAT, in particular for error detection and troubleshooting purposes.
- d) Availability of qualified personnel for training and other communication related to the scope of software support by EAT, including documentation and diagnosis of malfunctions
- e) Maintaining and securing a backup of the EAT Software Product during its use against harmful external attacks (viruses etc.) and backup of its programs and data (regularly and before service calls of EAT) against data loss and data manipulation.

9 Quality of Goods and of Ancillary Services

9.1 Warranty of EAT Software Products and goods provided by EAT

9.1.1 Under the **License Model Purchase**, EAT **warrants** to Customer that the EAT Software Product and EAT Hardware when provided shall be free from Errors (which term includes any defects in programming, material and workmanship negatively affecting its operation, if not only insignificant) to the following LIMITED EXTENT:

- Pursuant to the Offer and Sub-Section 3.2, any warranty for the suitability for a specific purpose including any expressly agreed specified use or implied use, is subject to an express and individual written warranty of EAT agreed with Customer in this regard
- Any warranty by EAT for EAT Software Product extends solely to Errors if Customer proven, by presenting the Trial Version, that the EAT Software Product does not substantially perform as the Trial Version provided to Customer or – if a Trial Version was not provided by EAT – that it does not reflect state-of-the-art technology and/or is unsuitable for the intended use as reasonably expected, subject to Sub-Section 3.2 and as described in the relevant product sheet of EAT on the website <https://www.designcompany.com> at the time of the Offer. No product sheet shall be construed as any warranty, condition, representation, undertaking or other promise in particular with regard to any performance levels.
OTHER PUBLIC STATEMENTS, PUBLICATIONS AND ADVERTISING STATEMENTS REGARDING EAT'S PRODUCTS ARE NON-BINDING AND SHALL ONLY BECOME BINDING UPON THE EXPRESS WRITTEN CONFIRMATION OF EAT.
- CUSTOMER AGREES THAT ACCORDING TO THE STATE-OF-THE-ART TECHNOLOGY EAT SOFTWARE PRODUCTS CANNOT BE ABSOLUTELY FREE OF ERRORS AT DELIVERY.
- In the case of data exchange with Customer's systems and machines, liability for functional defects shall only commence after a comprehensive test run of the EAT Software Product in such system environment and any customizing to establish the necessary compatibility.

Under the **License Model Rent**, the foregoing warranty extends to Errors emerging after activation and maintaining the Error-free condition during the period of rent, with the exception of (i) customizing to changed operating conditions, (ii) measures due to malfunctions according to Sub-Section 9.1.3, and (iii) technical and functional further developments of the EAT Software Product that do not represent rectifications of Errors.

9.1.2 THE WARRANTIES PROVIDED UNDER SECTION 9 ARE EXCLUSIVE AND THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES INCLUDING FOR MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE. NO WARRANTY OF EAT RELATED TO QUALITY OF ANY OF ITS PRODUCTS, INCLUDING THE QUALITY OF TRIAL VERSIONS, IS TO BE UNDERSTOOD AS A CONDITION, REPRESENTATION, GUARANTEE OR GUARANTEED FEATURE OR SIMILAR UNDERTAKING, UNLESS

IT IS DESIGNATED AS GUARANTY AND EXPRESSLY PROMISED IN WRITING BY EAT'S EXECUTIVE BOARD.

9.1.3 A malfunction only constitutes an Error if it is proven to be caused by and attributable to an Error in the software version provided by EAT, but not if it is caused by insufficient fulfillment of Customer's cooperation obligations pursuant to Section 8, including but not limited to Customer's system environment (if not tested and approved by EAT) is defective, or has been changed.

9.1.4 Liability for Errors

9.1.4.1 License Models Purchase and Rent

In the event of an Error, EAT at first shall and may, upon Customer's prompt written Notification of Error and request remedy the Error within a reasonable time limit set by Customer by

- a) effecting replacement of an Error-free EAT Software Product of the most recent version, or replacement of the erroneous program feature.
- b) providing additional or improved operating instructions or procedural instructions, provided they are suitable to compensate the Error.

and may select such alternative at its sole discretion. If reasonable to Customer, EAT may provide temporary workarounds during ongoing Error analysis or the development of an Error-free version.

Customer may exercise its right to rectify Errors in both license models only if EAT by its default delays corrective actions at least twice or EAT has failed twice in rectifying the Error.

Customer's Notification of Error shall include all information on the initiation and implementation of any measures taken, the documentation on potential hazards (if any) and its causes. Customer shall provide EAT with a detailed description of the problem, its frequency and the circumstances under which the problem occurs, and shall assist EAT in the investigation of the problem causes.

Replaced data carriers shall become the property of EAT.

If EAT fails at least twice in the rectification of a significant proven Error, or if EAT unlawfully and ultimately refuses to rectify such Error, EAT may Offer Customer a reasonable reduction of the license fee (price reduction). If the price reduction is not adequate to compensate for the decrease of the erroneous object, Customer may in lieu thereto rescind the Contract, return the erroneous object together with any benefits derived from it in the interim and only claim reimbursement of the license fee (excluding interests, compensation of costs and any damages)

Under the License Model Rent after the EAT Software Product has been provided, the right of termination for good cause shall replace the right of rescission set forth above.

ANY FURTHER RIGHTS AND CLAIMS OF CUSTOMER IN CONNECTION WITH ERRORS AND FAILURE TO REMEDY ERRORS, INCLUDING BUT NOT LIMITED TO RESCISSION OR REPUDIATION OF CONTRACT AND COMPENSATION FOR DAMAGES, SHALL BE EXCLUDED SUBJECT TO THE EXEMPTIONS SET FORTH IN SUB-SECTION 12.3. OF THIS DOCUMENT.

9.1.4.2 UNDER THE LICENSE MODEL TEST VERSION (LEND), EAT IS SOLELY AND EXCLUSIVELY LIABLE FOR ERRORS SET FORTH IN SECTION 9 KNOWN TO EAT, WHICH IT HAS FRAUDULENTLY CONCEALED.

9.1.5. EAT is not liable for Errors if Customer makes or has made changes to the EAT Software Product, including modifications, without the approval of EAT, or if Customer is entitled to such changes pursuant to the license terms (see Sub-Section 4.2.3 and Sub-Section 9.1.4.1) provided that these changes are made and documented comprehensively and professionally by Customer. Customer is responsible for ensuring that its rectification of Errors does not cause unreasonable additional expenses to EAT for subsequent Error analyzes and Error rectification. Liability for Errors does not extend to Errors and damages due to incorrect decompilation by Customer or third parties assigned by Customer.

9.2 Liability for Quality and Performance of Ancillary Services

Ancillary Services (see Sub-Section 1.1) only include the obligation of EAT to diligently provide a professional and state-of-the-art service but not an obligation to achieve or warrant an outcome or result, unless an obligation and liability for any such outcome or result has been expressly agreed.

In the case of nonconforming Ancillary Services, EAT shall be solely liable to the following extent:

- a) If EAT fails to perform Ancillary Services, is in delay in its performance or fails to performing accordance with such quality standard, prior to recurring to any other remedy Customer shall grant EAT the opportunity to cure such failure within a reasonable additional period. EAT is entitled to two attempts to cure nonconforming or delayed Ancillary Service. If the cure of nonconforming Ancillary Service fails for reasons attributable to EAT, Customer may claim a reduction of its payment obligation related to the Ancillary Service to compensate for the reduced value of the nonconforming Ancillary Service.
- b) Customer may terminate for good cause nonconforming or delayed Ancillary Services, if either
 - (i) EAT continues delay of Ancillary Service after expiry of the second period to cure or has not remedied nonconforming Ancillary Services after expiry of the second period to reperform
 - or
 - (ii) EAT unlawfully refuses to cure or reperform Ancillary Services or in case such cure or reperformance shall become impossible due to the fault of EAT.

ANY FURTHER RIGHTS AND CLAIMS OF CUSTOMER IN CONNECTION WITH ANCILLARY SERVICES NOT PERFORMED, FAULTY OR NOT RENDERED IN DUE TIME SHALL BE EXCLUDED SUBJECT TO THE EXEMPTIONS SET FORTH IN SUB-SECTION 12.3. OF THIS DOCUMENT.

10 Warranty to Title and Liability for Defective Title

10.1 Scope of warranty

EAT warrants to Customer that the EAT Software Product, if used in accordance with the Contract, does not infringe intellectual property rights, exclusive rights of use and copyrights in effect at the date of execution of the Contract (hereinafter referred to as "industrial property rights") of third parties (herein: Defective Title). EAT shall however not be liable for any infringement of rights (i) if the program of the EAT Software Product is based on Customer's specification, (ii) the EAT Software Product is not used in accordance with the Contract, or (iii) if the

infringement results from a combination of the EAT Software Product with hardware or software not supplied by EAT.

10.2 Liability

In the event of Defective Title in terms of Sub-Section 10.1, EAT shall defend Customer against all claims based on an infringement of industrial property rights by EAT and indemnify Customer from damages awarded to Customer by the court, provided that Customer immediately notifies EAT of the alleged infringement of industrial property rights and assigns all settlement negotiations and defensive measures to EAT. In the event of Defective Title EAT may, at its discretion and prior to any other relief by Customer, grant Customer the right to use the EAT Software Product or modify the EAT Software Product to make it free from industrial property rights of third parties, provided that the modified product will substantially perform according to the Contract or EAT has the discretionary right to terminate the Contract. Customer is entitled to terminate the Contract, if EAT does not procure the right of use within a reasonable period or does not modify the EAT Software Product as described above. In the event of termination, Customer may solely and exclusively demand reimbursement of the license fee and price for hardware (if any) less benefit derived by Customer from the use of the EAT Software Product in the interim in exchange for the return of all software and hardware provided by EAT in consideration of the license fee and the price for hardware delivered.

Under the **License Model Rent**, after the EAT Software Product has been activated, the right of termination for good cause shall be in lieu of termination set forth above.

ANY FURTHER RIGHTS AND CLAIMS OF CUSTOMER IN CONNECTION WITH DEFECTIVE TITLE AND FAILED SUBSEQUENT IMPROVEMENT, IN PARTICULAR THE CLAIM FOR RESCISSION OF CONTRACT OR PRICE REDUCTION AND COMPENSATION FOR DAMAGES, SHALL BE EXCLUDED SUBJECT TO THE EXEMPTIONS SET FORTH IN SUB-SECTION 12.3. OF THIS DOCUMENT.

10.3 Sole and Exclusive Remedies under License model Trial Version

The Trial Version is provided on a non-chargeable lend basis in "AS IS" and "AS AVAILABLE" condition. EAT is liable for Defects in Title of the Trial Version solely and exclusively in case of EAT's fraudulent concealment of such defects known to EAT AND THE RIGHTS SET FORTH IN SUB-SECTION 10.2 ABOVE ARE THE SOLE AND EXCLUSIVELY REMEDIES OF CUSTOMER FOR SUCH FRAUD.

11 Limitation Period for Claims

All claims of Customer, regardless of their legal grounds, including liability for the breach of auxiliary and ancillary obligations, shall become statute-barred after 12 months starting on the date provided by the applicable law for such limitation. Any cure of breach of an obligation, condition or warranty including search or admission of Errors by EAT, as well as payments made by EAT or payment deferrals and payment waivers granted by EAT, shall not cause suspension or renewal of the Limitation Period.

12 Other liability of EAT for Delay and Non-Fulfillment / Limitations of Liability

12.1 If EAT is in delay with the activation of the EAT Software Product (notification of User ID / Product Key), in particular due to delayed Delivery of the EAT Software Product and/or dongles or other hardware according to Sub-Section 5.3, EAT shall be obliged to pay Customer's actual

proven direct damages (except loss of profit and loss of production) caused by the delay however limited up to the amount of 0.5 % per full week of being in delay, but not exceeding 5 % in total for any and all delays under the Contract, calculated in each case on the basis of net license fee amount attributable to the part of the EAT Software Product that cannot be used due to the delay.

In the event of delay (delivery and/or activation), Customer may rescind the Contract when (i) the said maximum amount of 5% has accrued and (ii) after failure of EAT deliver all of the products to be provided under the Contract for reasons attributable to EAT within a reasonable grace period, set by Customer in writing and only claim reimbursement of the payments made for the EAT Software Product (excluding interests, compensation of costs and any damages).

ANY FURTHER CLAIMS IN THE EVENT OF ANY DELIVERY DELAY AND ACTIVATION DELAY INCLUDING COMPENSATION FOR NON-PERFORMANCE SHALL BE EXCLUDED SUBJECT TO THE EXEMPTIONS SET FORTH IN SUB-SECTION 12.3. OF THIS DOCUMENT.

UNDER THE LICENSE MODEL TRIAL VERSION, EAT SHALL BE LIABLE FOR ANY DELAY EXCLUSIVELY WITHIN THE LIMIT SET FORTH IN SUB-SECTION 12.3. Lit. a).

12.2 DISCLAIMER:

EAT'S LIABILITY FOR ANY OF ITS BREACH RELATED TO THE CONTRACT, INCLUDING ANY OBLIGATION, CONDITION, WARRANTY, REPRESENTATION OR OTHER DUTY AND FOR ALL NON-CONTRACTUAL CLAIMS OF CUSTOMER AGAINST EAT – REGARDLESS OF THE LEGAL BASIS ON WHICH THEY ARE ASSERTED – IS EXCLUSIVELY SET FORTH IN THE TERMS AND CONDITIONS OF THE EAT-LCA AND SHALL BE IN SUBSTITUTION OF ALL REMEDIES PROVIDED BY LAW, INCLUDING WITHOUT LIMITATION CLAIMS FOR PRICE REDUCTION, RESCISSION, ANNULMENT OR ANY OTHER TERMINATION OF THE CONTRACT, OR COMPENSATION FOR DAMAGES AND COMPENSATION FOR EXPENSES. IN NO EVENT SHALL EAT BE LIABLE FOR ANY DAMAGES WHETHER OF DIRECT, INDIRECT, CONSEQUENTIAL, ACCIDENTAL OR OTHERWISE NATURE INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF PROFIT, LOST PRODUCTION, LOSS OF DATA OR ANY OTHER COMMERCIAL DAMAGE (AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY COMPENSATION OR DAMAGE THAT COULD NOT REASONABLY BE EXPECTED WHILE ENTERING INTO THE CONTRACT).

12.3 LIMITED Exemption from Disclaimer: This disclaimer shall not apply:

- a) in the event of unlawful intent or gross negligence on the part of EAT.
- b) In the event of any intentional or negligent bodily injury or death,
- c) in the event and to the extent EAT is held liable for bodily injury, death or property damage under statutory strict liability law
- d) in the event of EAT's breach of an express obligation or guarantee which may only be assumed by EAT in accordance with Sub-Section 9.1.2. that exceeds the warranties for quality set out in Sub-Section 9.1.1

NOTWITHSTANDING THE ABOVE EXEMPTIONS, EAT DISCLAIMS ANY LIABILITY FOR ACTS AND OMISSIONS OF ITS AGENTS (WITHIN THE DEFINITION OF ART 101 OF SWISS CODE OF OBLIGATIONS) INCLUDING THEIR UNLAWFUL INTENT AND GROSS NEGLIGENCE.

UNDER THE **LICENSE MODEL TRIAL VERSION**, ANY LIABILITY OF EAT FOR ALL CONTRACTUAL CLAIMS IS LIMITED TO 1000.00 € IN TOTAL

NOTWITHSTANDING THE EXEMPTION FROM RELIEF EAT'S LIABILITY FOR THE RECOVERY OF DATA IS LIMITED TO THE NECESSARY COSTS INCURRED BY CUSTOMER OF SUCH RECOVERY THAT COULD NOT BE AVOIDED BY CUSTOMER'S REASONABLE PRECAUTIONARY MEASURES FOR STORING AND RECONSTRUCTING DATA FROM MACHINE-READABLE DATA MATERIAL.

13 Return in the case of Termination

If the Contract terminates whether for the total of all performed and unperformed provisions or the unperformed provisions only by termination notice, rescission, withdrawal or by expiry of its term, Customer at its sole costs must uninstall the EAT Software Product and return the data carriers received from EAT and all copies made thereof, or destroy them permanently and completely and confirm the same to EAT in writing upon request.

14 Exclusion of offsetting and waiver of retention

Customer may only offset claims of EAT against its own claims that are undisputed, ready for decision, or claims finally awarded by court. Customer expressly waives retention right to the contractual items provided to it by EAT.

15 Written form

All reminders, settings of deadlines, Notices of Error, and termination notices and rescission notices of Customer are only valid or may be relied on if made in writing.

16 Exclusive Place of Jurisdiction, Applicable Law

16.1 Any legal dispute arising from or in connection with the contractual or pre-contractual relations between EAT and Customer (including but not limited to disputes concerning the validity and dissolution of the Contract and the validity of this Sections providing for the place of jurisdiction and choice of law clause) are to be settled **exclusively** by the courts with jurisdiction at the registered main office of EAT (Krefeld, Germany).

16.2 Swiss substantive law shall apply to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (C.I.S.G) and the conflict of law rules (Swiss "IPRG").

17 Severability

In the event any term of the Contract, in particular the terms and conditions of the EAT-LC-NA, are found to be or to become invalid or ineffective, the remaining terms and conditions of the Contract shall remain effective and such invalid or ineffective term shall be replaced with such effective term as comes closest to the economic purpose and intent of the invalid or ineffective term.

