



Terms and Conditions Sale of Client Software

September 27, 2011

1. Validity of the Terms and Conditions

- 1.1. Unless agreed otherwise, these General Terms and Conditions only apply to the sale of client software from OpenLimit SignCubes GmbH (referred to hereafter as "**OpenLimit**") to third parties (referred to hereafter as "**Customers**") and to pre-contractual obligations between OpenLimit and the Customer. Other terms and conditions shall not become a subject matter of this Contract even if they are not expressly contradicted by OpenLimit.
- 1.2. "**Client software**" for the purposes of these General Terms and Conditions are all software products sold by OpenLimit which are intended to be operated on one single computer workstation and therefore to be used by one single user respectively (e.g. CC-Sign, BatchSign, add-ons) including a related user documentation and - where necessary - including the agreed number of hardware keys and/or other codes required for their use.
- 1.3. These terms and conditions also apply to all updates, upgrades, supplements, add-on components or components of Internet-based services in the client software (referred to hereafter as "**complementary services**") which OpenLimit makes available to the Customer following purchase of the client software by the Customer.

2. Conclusion of the Contract

Offers from OpenLimit are subject to amendment and non-binding unless an offer from OpenLimit is designated in writing as being binding. A legal obligation shall only come to effect

- when the Contract is signed by both parties or
- upon a written confirmation of order on the part of OpenLimit or
- upon the commencement of the services to be provided by OpenLimit in accordance with this

Contract.



3. Scope of Service

- 3.1. The subject matter of these Terms and Conditions only pertains to the delivery of the ordered client software as defined in the foregoing Item 1.2 and the granting of the rights of use in accordance with Item 4.
- 3.2. The Customer shall have verified prior to conclusion of this Contract that the specifications of the client software correspond to his wishes and requirements. The main functional features and conditions of the client software are known to the Customer.
- 3.3. The contract signed by both parties or the confirmation of order by OpenLimit or, in the absence of one or both thereof, the offer submitted by OpenLimit shall be authoritative with regard to the subject and quality of the delivery. Verbal secondary agreements shall only be binding for OpenLimit if OpenLimit has provided the Customer with written confirmation of the contents of the corresponding agreement.
- 3.4. Product descriptions, visualisations, test programs, etc. are service descriptions but not, however, guarantees of either their quality or anything else. Corresponding guarantees shall be binding for OpenLimit only if these have been submitted by an authorised signatory on behalf of OpenLimit in a number reasonable for representation purposes and in writing.
- 3.5. The Customer is entitled to delivery of the client software comprising the machine program and, where applicable, a requisite hardware key and/or sundry code necessary for the use of the software and the user guide. The technology in the delivered client software is oriented to the agreements; in the absence of any other agreement OpenLimit shall, at its own discretion, make the program and the manual available to the Customer in electronic form on its website for a (one-time) download or on a CD-ROM or USB stick.
- 3.6. The Customer shall not be entitled to relinquishment of the source code for the client software.
- 3.7. The client software complies with the latest technological standards at the time of delivery.



- 3.8. OpenLimit shall be entitled at any time to cease providing or to modify a complementary service as defined in the foregoing Item 1.3 provided that the complementary service was previously rendered free of charge and the parties have not agreed otherwise.

4. Rights of the Customer to the client software

- 4.1. The client software is protected by law. The copyright, patent rights, trademark titles and all other ancillary copyrights to the client software as well as to any other items relinquished or made accessible to the Customer by OpenLimit within the scope of the preparation and execution of the Contract are exclusively the entitlement of OpenLimit in the relationship between the Partners. OpenLimit possesses the corresponding exploitation rights insofar as an entitlement lies with a third party.
- 4.2. The Customer shall only be entitled to use the client software to process proprietary data for his own purposes. All data processing devices (e.g. hard disks and central units) onto which the client software is copied or taken over in its entirety or in part and for either the short term or long term must be situated on the Customer's premises and be in the Customer's immediate possession unless expressly agreed otherwise. Further contractually agreed terms of use are to be technically set up by the Customer and adhered to in practice. OpenLimit herewith grants the Customer the authority necessary for this use, including the right to remedy defects, as a general right of use. The provisions of the following Item 13 are to be heeded.
- 4.3. The Customer may create such backup copies of the programs as are necessary for reliable operation. The backup copies must be kept in a secure manner and labelled with the copyright notice of the original data carrier insofar as is technically possible. Copyright notices may not be deleted, altered or suppressed. Superfluous copies are to be deleted or destroyed. The user guide and other documentation provided by OpenLimit may only be printed, copied or be otherwise duplicated for the Customer's own use.
- 4.4. The Customer shall only be entitled to relinquish the client software or parts thereof to a third party

subject to the following terms and following implementation of the following measures:

- a) The Customer is allowed, insofar as the client software has not been supplied on a physical data carrier, to relinquish to a third party one single copy only of the client software in the supplied form or, insofar as the client software has been supplied on a physical data carrier, may only relinquish the original data carrier received from OpenLimit.
- b) The Customer shall delete all other copies of the client software (regardless of its state), in particular copies stored on data carriers and in read-only or main memory. The Customer shall definitively stop using the software. The Customer undertakes to take these steps prior to relinquishing the client software to the third party in accordance with the foregoing a) and to notify OpenLimit of their completion immediately and in writing.
- c) The software shall be relinquished to the third party on a permanent basis, i.e. without any entitlement to restoration (e.g. as a hire or leasing contract) or repurchase.
- d) The third party shall give a written commitment to OpenLimit that it will abide by the provisions of Items 4, 13.2 and 13.3., 14 and 15 of these General Terms and Conditions.
- e) OpenLimit has given written approval that the client software may be relinquished.

OpenLimit is fundamentally obliged to grant approval unless there exist important reasons for not doing so (e.g. protection against competition).

In the event of a breach of these provisions by the Customer, the latter shall become liable to pay OpenLimit a lump sum compensation to the amount of half the sum the third party would have had to pay to OpenLimit for the relinquished client software according to the then current price list, and at least half of the purchase price as agreed today or, if this sum is higher, to the amount paid by the third party to the Customer for relinquishment of the client software. This shall not apply provided that the Customer proves that no loss has been incurred by OpenLimit or that the loss is substantially less than the lump-sum payment.

- 4.5. The provisions of Items 4.2, 4.3 and 4.4. d) and e) shall also apply if the Customer remedies a defect or



(insofar as is permitted) otherwise modifies the client software.

- 4.6. The Customer is only permitted to decompile the interface information of the programs within the legal constraints and only after having informed OpenLimit of his intentions and subject to a request for the necessary information with a notice of at least two weeks. The provisions of Item 14 as given below are to be applied to all knowledge and information acquired by the Customer within the scope of the decompilation of the client software accordingly where necessary. The Customer may only engage a third party to perform a decompilation of interface information of the client software subject to the foregoing Item 4.4. If the Customer does not abide by the foregoing obligations or is in breach of the same, the last clause of the foregoing Item 4.4 shall apply accordingly. In all other respects, the Customer is not entitled to reverse engineer, decompile or disassemble the client software, to perform any general reverse engineering or to determine the source code of the software in any other manner.
- 4.7. All other exploitation activities, in particular renting, leasing and distribution in tangible or intangible form, use of the software by and for a third party (e.g. outsourcing, data centre operations, as an application service provider), are not permitted without prior written approval by OpenLimit. The last clause of the foregoing Item 4.4 shall apply accordingly.
- 4.8. Contractual items, documentation, proposals, test programs, etc. belonging to OpenLimit that are made accessible to the Customer before or after conclusion of this Contract are deemed to be the intellectual property and the business and commercial secrets of OpenLimit. They may not be used in the same manner without written approval by OpenLimit and are to be kept secret in accordance with the provisions of Item 14.
- 4.9. The Customer is not entitled to disassemble single components of the client software for use on more than one computer provided that such a disassembly is not pertinent to the designated use of the software.
- 4.10. The Customer must have purchased a previous version of the client software or the corresponding components in order to use client software or components of the client software that are designated as an update or upgrade (referred to hereafter as "update") and have been supplied to the Customer for this purpose. Insofar as the upgrade is supplied as a software program comprising all the



functionalities of the client software or the corresponding components (full version), following installation of the update the Customer may not use the originally purchased version of the client software or the corresponding components to which the update relates. The provisions of these General Terms and Conditions shall apply in all other respects to the use of the upgrade or update.

- 4.11. OpenLimit shall heed the applicable statutory provisions concerning data protection.
- 4.12. The Customer shall permit OpenLimit to verify compliance with the provisions of these General Terms and Conditions, in particular observance of the obligations of the Customer in accordance with the foregoing Item 4, provided that such verification does not interfere with the legitimate interests of the Customer. The Customer shall provide OpenLimit with all the necessary information in this regard and perform all other necessary and practicable measures in support of the verification. If the Customer denies OpenLimit an appropriate verification for reasons of legitimate interests, OpenLimit may demand a corresponding verification by a competent third party bound to secrecy ("licence audit"). This expert individual shall be nominated by OpenLimit. OpenLimit shall bear the costs of the licence audit unless the verification reveals that the Customer has breached any provisions of these General Terms and Conditions, in particular the provisions of the foregoing Item 4. In this case the Customer shall reimburse OpenLimit for the costs of the licence audit. The foregoing Clauses 2 to 5 shall not apply if the Customer is a natural person and is concluding the legal transaction for neither commercial purposes nor professional freelance activities.

5. Delivery and performance time limits

- 5.1. Stated times of delivery and performance are non-binding unless they have been designated in writing by OpenLimit as being binding. OpenLimit may render partial services provided that the delivered parts can be practicably used by the Customer.
- 5.2. Delivery and performance time limits shall be extended respectively by time periods
 - a) in which the Customer is in default of payment under the terms of this Contract,
 - b) in which OpenLimit is hindered in delivery or performance due to circumstances beyond the



control of OpenLimit (including force majeure and labour disputes) and/or

- c) in which the Customer does not fulfil his agreed contributory obligations (e.g. does not give information, create a means of access, provide material or make employees available).

Delivery and performance time limits shall end at the earliest on the expiry of a period adequate to the circumstances following the removal of one of the foregoing reasons for hindrance.

- 5.3. If the Partners subsequently agree to other or additional services that affect the delivery and performance time limits with regard to the original content and scope of the performance, these delivery and performance time limits shall be extended for the changed or extended deliveries and performances by a reasonable time period.
- 5.4. Reminders and time limits set by the Customer must be made in writing to take effect. A time limit extension must be reasonable. A time limit of less than two weeks is only appropriate in particularly urgent cases.

6 Contractual commitment and termination of contract

- 6.1. The Customer may only declare his withdrawal or demand compensation instead of a service (withdrawal and compensation instead of a service are referred to hereafter as "secondary claims") if he has named the reason for this and has set OpenLimit a reasonable time limit for remedying the respective reason under threat of asserting the secondary claims.
- 6.2. As a rule the time limit for the remedy should be at least two weeks. A time limit does not need to be set if
 - a) OpenLimit seriously and conclusively refuses to render the due services,
 - b) OpenLimit does not render the due services by a date stipulated in the contract or within a certain time period and the Customer has in the contract made the continuance of his



interest in the services dependent upon the punctual provision of the service or

- c) special circumstances exist that justify an immediate withdrawal taking mutual interests into consideration.
- 6.3. The Customer may only assert the secondary claims within two weeks after the time limit has expired in accordance with Items 6.1 and 6.2 or, if a time limit is not essential, within two weeks of the reason taking effect. The Customer may not declare his withdrawal if he is fully or predominantly responsible for the asserted reason or if he is in default with regard to accepting the stipulated services from OpenLimit.
- 6.4. All declarations for the purpose of Items 6.1 and 6.3 must be made in writing to take effect.

7. Remuneration, payment

- 7.1. Unless expressly agreed otherwise, the client software shall be delivered against prepayment.
- 7.2. Any customs duties or other taxes that are charged in conjunction with the contractual services are to be borne by the Customer.
- 7.3. Unless agreed otherwise, all prices are exclusive sales tax (net). The respective statutory sales tax is to be added to the prices to be paid by the Customer accordingly.
- 7.4. Offsets against claims from OpenLimit are only permitted in the case of indisputable or legally ascertained claims.
- 7.5. Claims asserted by the Customer may only be ceded to a third party with the prior approval of OpenLimit.
- 7.6. The Customer is only entitled to assert a right of retention or an objection of unfulfilled contract against claims from OpenLimit arising from a contract with regard to claims on the part of the



Customer that arise from the same contract.

8. Obligations of the Customer

The Customer shall take reasonable precautionary measures for the event that the client software does not function properly either at all or only in part (e.g. with data backups). The Customer is responsible for ensuring the functional capability of the working environment respectively stipulated in the product description of the client software.

9. Material defects

- 9.1. A functional impairment of the client software resulting from hardware defects, ambient conditions or incorrect use is not deemed to be a defect. The Customer shall not be entitled to assert any defect-related rights arising due to insignificantly impaired functions.
- 9.2. In the case of material defects, subsequent fulfilment shall take place at the discretion of OpenLimit by means of remedying the defect, supplying client software that does not have the defect, or in that OpenLimit demonstrates to the Customer upon inspection of the defect reasonable methods for avoiding any impact due to the defect ("work-around"). OpenLimit shall be entitled to make at least three attempts to remedy the defect. OpenLimit is entitled within the scope of the subsequent delivery to supply the Customer with an equivalent newer version or the equivalent previous version of the client software that does not contain the fault in place of the purchased version of the client software if this is reasonable to the Customer.
- 9.3. The Customer shall assist OpenLimit in analysing and remedying the fault by, in particular,
 - a) specifically describing any problems that occur,
 - b) extensively informing OpenLimit of all the circumstances necessary for remedying the defect



and

- c) by granting OpenLimit the necessary time and opportunity to remedy the defect.
- 9.4. OpenLimit may take any action necessary to remedy the defect on its own premises unless it is absolutely essential that such measures are undertaken at the premises of the Customer.
- 9.5. OpenLimit may also make use of remote maintenance as part of the reworking provided this can be reasonably expected of the Customer. In this case the Customer shall accomplish the necessary technical requirements at own expense and shall accord OpenLimit access to his IT system by prior notice accordingly.
- 9.6. Provided that a defect can be remedied within a period of one month following receipt of the error report through the provision of a newer version of the client software (updates, patch), the delivery of this newer version of the client software to the Customer shall suffice if the functional capability of the client software supplied to the Customer cannot be restored.
- 9.7. The provisions of Items 5.2 and 5.3. shall apply when determining the time limit in accordance with Item 9.6.
- 9.8. OpenLimit can demand reimbursement for additional costs incurred by OpenLimit within the scope of reworking due to modifications made to the client software without the approval of OpenLimit, deployment outside of the stipulated environment or incorrect use by the Customer. OpenLimit can demand reimbursement for such costs and time expended in investigating an error report within the meaning of Item 9.2 where no defect in the client software existed.
- 9.9. If OpenLimit definitively refuses to provide subsequent fulfilment, the subsequent fulfilment is finally unsuccessful or if the subsequent fulfilment is not reasonable to the Customer, the Customer shall be able
- a) (while taking into consideration the foregoing Item 6) to either withdraw from the contract or
 - b) to reduce (decrease) the remuneration by a reasonable amount or



- c) to demand compensation or reimbursement of expenditure in accordance with Item 11 below.

The foregoing claims can also be asserted cumulatively within the scope of statutory provisions and shall be subject to a statute of limitation in accordance with Item 12 below.

- 9.10. OpenLimit shall only be liable to provide software care services beyond the scope of the liability for material defects in accordance with the foregoing Items 9.1 to 9.9 or following the expiry of the warranty period if the contracting parties have agreed on this separately.

10. Defects of title

- 10.1. OpenLimit assures that no third party rights preclude the stipulated use of the software by the Customer. In the case of defects of title, OpenLimit warrants that it will at its discretion provide the Customer with a non-infringing possibility to use the software or equivalent software.
- 10.2. The Customer shall notify OpenLimit immediately in writing in the event that a third party asserts trademark rights (e.g. copyrights or patent law) to the software against him. The Customer authorises OpenLimit to conduct the dispute with the third party alone. As long as OpenLimit makes use of this authorisation, the Customer is not allowed to acknowledge claims asserted by the third party without the approval of OpenLimit. OpenLimit shall contend the claims asserted by the third party at own expense and indemnify the Customer from all costs associated with contending these claims insofar as these are not attributable to breaches of obligation on the part of the Customer (e.g. through use of the programs in a manner contrary to the terms of this Contract).
- 10.3. The provisions of the foregoing Items 6, 9.2 and 9.8 shall apply accordingly. Item 11 below applies to liability, Item 12 below applies to limitation.

11. Liability

- 11.1. OpenLimit shall only pay compensation or reimbursement for fruitless expenditure regardless of the legal reasons (e.g. due to legal or similar contractual obligations, material defects and defects of title, breach of duty or tortious liability) to the following extent:
- a) Liability in cases of intent and pertaining to warranty is unrestricted; the same shall apply subject to the provisions of b) below to liability in cases of culpable negligence.
 - b) In cases of culpable negligence on the part of persons engaged by OpenLimit for the purposes of fulfilment of contract (agents), OpenLimit shall however only become liable for damage to the amount typical and foreseeable upon conclusion of this Contract.
 - c) Should OpenLimit be at fault due to neither intent or culpable negligence for a breach of an obligation, the fulfilment of which only enables proper performance of the contract in the first place, in the observance of which the Customer trusts and may trust, and where breach of which puts the fulfilment of the purpose of the contract at risk ("cardinal obligation"), OpenLimit shall become liable for damages to the amount typical and foreseeable upon conclusion of this Contract.
 - d) Statutory provisions shall apply without restriction in cases of death, injury and damage to health and in cases of claims arising from product liability legislation.
- 11.2. Liability for the breach of a cardinal obligation in accordance with the foregoing Item 11.1., c) is limited, provided that OpenLimit maintains a company liability insurance, to the amount of the respective sum insured under the terms of this company liability insurance.
- 11.3. The Customer may not demand compensation for loss of profit.
- 11.4. OpenLimit shall have resort to objection due to contributory negligence. The Customer shall be obliged in particular to back up data and to defend against malware using the latest technological means.



12. Limitation

12.1. The period of limitation is

- a) two years from delivery of the client software for claims due to material defects,
- b) two years from delivery of the client software for claims arising from defects of title if the defect of title is not based on a real right of a third party, on the grounds of which he may demand restitution of the objects named in Item 3.5 belonging to the scope of delivery or that use thereof be ceased.
- c) two years in the case of claims for compensation or reimbursement for fruitless expenditure that are not based on material defects or defects of title beginning from the date on which the Customer has become aware of the circumstances on which the claim is based or should have become aware thereof without culpable negligence.

The limitation shall take effect at the latest upon the expiry of the statutory maximum time limits.

12.2. The statutory periods of limitation shall apply exclusively in cases of reimbursement for damage or expenditure arising from intent or intention to deceive, culpable negligence or warranty and in those cases stated in the foregoing Item 11.1, d).

13. Beginning and end of the rights of the Customer

13.1. The ownership of delivered articles shall be transferred to the Customer only following full payment of the remuneration stipulated in the contract. The same shall apply to the rights of the Customer in accordance with the foregoing Item 4. Until then the Customer shall only be entitled to temporary, exclusively contractual and revocable right of use to the client software in accordance with the following Item 13.2.



- 13.2. OpenLimit may withdraw from this Contract for important reasons and may in this context in particular revoke the rights to the client software granted to the Customer in accordance with the foregoing Item 4; the foregoing Item 6 shall apply to OpenLimit in this case accordingly. An important reason shall exist in particular if the Customer does not pay the remuneration or is in serious breach of his obligations pertaining to Item 4 and OpenLimit cannot therefore be reasonably expected to continue to abide by this Contract. Item 6 shall apply in this case accordingly.
- 13.3. If the rights of the Customer to the client software according to the foregoing Item 4 do not materialise or if they terminate, OpenLimit may demand from the Customer
- a) the return of all articles relinquished to the Customer in accordance with Item 3.5 or
 - b) (at the discretion of OpenLimit) written assurance that these articles have been destroyed or
 - c) the deletion or destruction of all copies of the articles and written assurance that this has taken place.

14. Secrecy

- 14.1. The Partners hereby agree to handle confidentially all articles which are received from the other Partner to this Contract, and/or circumstances that may become known, prior to or after implementation of the Contract such as software, documentation, information or know-how that is protected by law or which contain business secrets or trade secrets or which are designated as being confidential (referred to hereafter as "**Confidential Articles**"), to continue to handle them confidentially beyond the end of the contract unless they are known in the public domain without a breach of the obligation to confidentiality having taken place. The Partners shall keep and secure these articles in such a way as that access by a third party is excluded as far as is reasonably possible.
- 14.2. OpenLimit shall process the Customer's data necessary for the handling of the business taking into consideration statutory data protection regulations. Following the successful conclusion of the services, OpenLimit may name the Customer as a reference customer as long as the Customer does



not prohibit OpenLimit from doing so in writing and by stating the reasons.

15. Final provisions

- 15.1. Any amendments or changes to this Agreement must be made in writing to take effect. The statutory written form can only be rescinded in writing. A transmission in text form, in particular by telefax or e-mail, is sufficient to satisfy fulfilment of the statutory written form.
- 15.2. The laws of the Federal Republic of Germany shall apply to the exclusion of UN Sale of Goods legislation (CISG). The place of fulfilment and jurisdiction for all disputes arising from and in conjunction with this Contract, in the case of contracts concluded with commercial customers, is Berlin, Federal Republic of Germany.