GENERAL TERMS AND CONDITIONS FOR
THE PROVISION AND MAINTENANCE OF SOFTWARE
(JANUARY 2015 VERSION)

OF:
RTSS B.V.
Oude Enghweg
1217 JA Hilversum
The Netherlands

KvK: 32153810
VAT: NL8208.38.044.B01

Hereinafter referred to as “RTSS“

A GENERAL

1 Scope and Application

1.1 These general terms and conditions (hereinafter the “General Terms and Conditions”) shall govern the conclusion, content and implementation of contracts for the use and maintenance of software (hereinafter “Software”) by End-users (hereinafter “End-users” or “End-users”). Other services, such as advice on the selection of Software, installation, implementation, instruction and training are not part of the provision, use and maintenance, and therefore require execution of an express, separate, written agreement between RTSS and the End-user (hereinafter together “The Parties”, or individually “Party”).

1.2 The General Terms and Conditions set forth herein apply to all offers made by RTSS to End-users (hereinafter “RTSS Offer(s)”) for provision, use and maintenance of Software which refer to the terms and conditions set forth herein.

1.3 According to the following terms and conditions, special conditions apply to Software and third party data sold together by RTSS (hereinafter “Third Party Software”). These special conditions are set out in Section 16. However, otherwise only these General Terms and Conditions and any statements made in the relevant RTSS Offer shall apply. No other terms or conditions shall apply, and no other conditions (for example the End-user’s own purchasing or ordering conditions) shall form part of this Agreement, even if RTSS does not expressly object to them.

1.4 In the event of any contradiction between the General Terms and Conditions on the one hand and the statements and regulations contained in RTSS Offers on the other, the latter shall always have precedence.

1 There are separate contractual conditions applicable to sales partners and resellers who do not acquire the Software exclusively for their own internal use.
2 Offer and Conclusion of Contract

2.1 A contract shall be formed when the End-user accepts the RTSS Offer. RTSS can require a written contract from the End-user. Where there is doubt, the RTSS Offer shall apply.

2.2 Any RTSS Offer shall be binding during the period specified therein. If no other period is stated therein, then RTSS shall bound by the Offer for a period of 30 calendar days from the RTSS Offer date.

3 System Requirements

3.1 The requirements for running the system (for example hardware environment and system software), which have to be established by the End-user, shall either be included in the currently applicable product specification or may be obtained from RTSS.

3.2 Representations in the documentation and in the product specifications are not guarantees of condition or quality.

B Conditions of Software Use

4 Copyright

All industrial property rights to Software delivered by RTSS, and in particular the comprehensive copyright, together with all rights in the Software, documents and information provided as part of the Agreement's preparatory phase and during its performance (including warranty and maintenance), shall remain, as regards the End-user, with RTSS and its licensor's. This legal status enjoyed by RTSS and its licensor's shall remain unchanged by the grant to the End-user of rights to use the Software (hereinafter “License”) in accordance with these General Terms and Conditions.

5 End-user’s License

5.1 The Software Licenses granted by RTSS to the End-user are not exclusive and are limited in accordance with the provisions of these General Terms and Conditions and the statements in the relevant RTSS offer.

5.2 Unless expressly specified otherwise in the relevant RTSS Offer, the right to utilize and use the Software is limited to use of the Software on a single computer (PC or server) ("Node Locked License"). If the End-user wishes to use the Software on more than one computer at the same time, then it shall obtain corresponding Licenses from RTSS beforehand. In addition, the Licenses shall be limited to the other conditions of use defined in the RTSS Offer, such as the agreed number of “Full Processes” (the number of calculations to be performed simultaneously), “Front ends” (the number of entry windows to be opened simultaneously), modules and additional options. In addition, use on a local network (LAN) always requires the End-user to acquire beforehand a corresponding network license (“Floating License”). Network use beyond local networks (LAN) is not permitted without separate, prior, written agreement by RTSS.
5.3 The End-user will inform RTSS before undertaking any deviation from the Licenses stipulated herein or in the relevant RTSS Offer. The End-user shall be allowed to use the Software differently only if RTSS has expressly permitted the mode of use notified by the End-user. RTSS may make its consent to modified use dependent upon a corresponding price adjustment if higher or additional compensation for such modified use is payable according to the current RTSS prices. RTSS shall refuse its consent to such modified use for good cause only. Such good cause shall lie, in particular, when the End-user does not pay the relevant extra charge or when there are technical reasons that oppose such modified use (for example because the Software delivered by RTSS would not be executable in the new system environment).

5.4 The Software shall be provided to the End-user for its own, internal use only. The End-user is not permitted to hire out the Software in whole or in part, in whatsoever form or for whatsoever purpose. The End-user may pass on the Software to a third party only within the parameters of Subsection 7.2 of these General Terms and Conditions.

5.5 The End-user shall not lend the Software, in whole or in part. Subsection 5.4 applies mutatis mutandis.

5.6 All copies made pursuant to the statutory provisions shall be true and complete copies, and shall include all copyright notices, trademarks and commercial descriptions as well as all other notices (for example legal notices) on or in the original.

6 Software Types

6.1 RTSS Software exists of Base Software and optional packages (Options).
6.2 Base Software gives the minimal possible functionality and is always minimal needed to execute.
6.3 Options are available for different functional usages and can be used in different combinations.

7 License Types and Term of Use

7.1 The Licenses shall be granted either on a perpetual basis (purchase) (hereinafter “Perpetual License”) or for a limited term (evaluation) (hereinafter “Limited License”), depending on what is specified in the relevant agreement. The Licenses shall commence at the time specified in the RTSS Offer, but not before delivery. If the RTSS Offer does not state the commencement date of the Licenses, then this date shall be the date on which RTSS delivers the Software in accordance with its contractual obligations.

7.2 If a Limited License (evaluation) is canceled, for whatsoever legal reason, then the End-user is required, on the expiry of the Limited License, to cease all use of the Software and any accessories delivered with it (for example dongle) and, without request by RTSS, to return all original versions of the Software delivered by RTSS (including accessories), and to destroy or delete all copies and partial copies thereof. RTSS may require from the End-user a written confirmation that the destruction or deletion has been carried out.
8 Transfer of the Software

8.1 The End-user may not transfer Limited Licenses (evaluation), even for a limited time or free of charge.

8.2 In the case of Perpetual Licenses (purchase), transfer is permitted only on condition that the End-user ceases all use of the Software and any accessories that may have been delivered with it (for example dongle), does not keep any copy thereof in any form, causes the party acquiring the License to agree in writing to observe the License conditions applicable between the End-user and RTSS, notifies RTSS prior to the transfer of the transferee’s name and address.

9 Software Protection

9.1 RTSS shall provide the End-user with the program key and/or hardware dongle necessary for it to exploit the License. For Limited Licenses (evaluation), the hardware dongle remains the property of RTSS. For Perpetual Licenses (purchase), title to the hardware dongle shall pass to the End-user. The End-user shall ensure that the program key and/or hardware dongle are kept in a safe place.

9.2 In order to verify that the License is used in accordance with contract, RTSS reserves the right, even in the case of Perpetual Licenses (purchase), to provide program keys and/or hardware dongles for a limited period only, and to always renew them if the agreed limitations on use have been complied with.

9.3 If the End-user wants a different use from that provided in the previously concluded agreements, this is usually technically feasible only if RTSS has previously provided the End-user with the necessary program key.

9.4 For Perpetual Licenses (purchase), the End-user bears the risk of dongle loss (including through theft and other forms of loss). In case of dongle lost, the End-user shall purchase a new copy of the Software if it wants to continue to use the Software in accordance with the contract.

9.5 For Limited Licenses, including during a test period, the End-user is liable for every loss of the dongle for which it is responsible (including through theft and other forms of loss). The End-user bears the burden of proof for showing it was not responsible for loss of the dongle.

9.6 If an error occurs with the hardware dongle within the support period, then RTSS shall exchange an error-free dongle for the one that has the error. RTSS reserves the right to make such exchange depending on the reimbursement of a lump sum payment of expenses. The provisions relating to claims based on defects are not affected hereby.

10 Manuals

10.1 The provision of user manuals (hereinafter “Manuals”) to accompany the Software forms part of the scope of delivery. RTSS shall provide the Manuals in digitalized form.

10.2 The Manuals shall be delivered in English unless expressly specified otherwise in the RTSS Offer.
10.3 The End-user may copy and use the digitalized Manuals in the required environment for use in accordance with contract. Any use made of the Manuals over and above that provided for herein requires the prior consent of RTSS and may be subject to payment in accordance with the then current prices.

11 Fee for Use of the Software and Price Adjustments

11.1 The respective fee for the Licenses granted to the End-user (hereinafter “Fee”) is as provided in the applicable RTSS Offer. The Fee takes into account the agreed limitations on use (for example the number of “Full Processes” or “Front ends” as well as the modules and additional options). The License may be expanded only with the consent of RTSS. If the then current prices of RTSS provide for an additional charge or supplemental Fee to be paid in respect of the modified License, then RTSS can make its consent depending upon such a payment.

11.2 The then current RTSS price shall always be payable on all further orders.

11.3 Unless the contrary is expressly stated in the relevant RTSS Offer, RTSS shall grant Perpetual Licenses (purchase) against a one-off payment, which it shall invoice on delivery and which shall be paid at the latest within 30 calendar days of the invoice date, without cash discounts.

12 Export Regulations

The End-user shall comply with any and all relevant export regulations.

C SOFTWARE MAINTENANCE

13 Scope of the Maintenance

13.1 RTSS shall provide the following software maintenance:

13.1.1 Help with interruptions (hereinafter “Help”) caused by program errors, by providing advice on error prevention, circumvention and correction, in so far as this is technically possible for RTSS at justifiable cost. The principal Help medium is RTSS-Support. Electronic error reports may be sent to this medium via the Support E-Mail address provided on the RTSS homepage.

13.1.2 Delivery of general, new program updates with general error corrections and further developments.

13.2 The End-user is responsible for the installation of new program updates for software maintenance.

13.3 Software maintenance services will be carried out only for the most current program release at the time. The License in respect of the software maintenance services corresponds to the License in the Software for which they are performed.

14 Contractual Basis for Software Maintenance

14.1 An End-user shall be entitled to software maintenance only if and when the relevant software maintenance License has been granted to it.
14.2 If a Limited License (evaluation) is agreed, the software maintenance is a constituent part of the License relationship, and can be terminated only together with such relationship.

14.3 The first year Software Maintenance support is included in the purchase and starts at the invoice date.

14.4 Release of new Software versions (updates) will not extend the period of the Software Maintenance period.

14.5 Purchase of an additional Software Option will not extend the period of the Software Maintenance period.

14.6 Options can only be purchased if the license has a right on Software Maintenance.

14.7 If the license has less than 1 month right on Software Maintenance left, at the moment of purchasing an option, RTSS will extend the Software Maintenance support period, so that 1 month Software Maintenance is included.

14.8 If the End-user wants to extend the Software Maintenance period, although the actual Software Maintenance period is already expired, back-maintenance will be charged starting at the last actual Software Maintenance end-date.

14.7 RTSS reserves the right to charge an "upgrade license" fee for new versions of the software that include new or improved functionality.

14.8 Please note that although we take the security of personal information seriously, RTSS will not be held liable for any loss or misuse of any information supplied to RTSS (either through our help desk or otherwise provided).

14.9 With respect to technical information provided to RTSS as part of the Support Services, RTSS may use such information for its business purpose, including for product updates and development.

15 Software Maintenance Fees for Perpetual Licenses (Purchase)

15.1 The amount of the Software Maintenance Fees for Perpetual Licenses shall be specified in the RTSS prices current at the time of invoice.

15.2 If Software Maintenance Fees are expressed as a percentage of the current applicable Fee for perpetual use, RTSS can change the percentage for each pending new maintenance period. If the ordinary notice period for the following period has already expired at the time that the price increase is notified to the End-user, then the End-user shall have a right to extraordinary termination with effect from the entry into effect of the new percentage rate.

15.3 In cases where the Parties agree to expand the License and additional charges or additional License Fees are therefore payable by the End-user in accordance with Subsection 11.1, the Maintenance Fees shall be adjusted upon commencement of the expanded License to correspond with the then current RTSS prices.

15.4 Extension of the Software Maintenance period can only be done for the complete License, meaning the Base Software and all used options.
16  **Maintenance of Third Party Software**

RTSS shall provide Software Maintenance for Third Party Software only if this is expressly provided for in the RTSS Offer or expressly offered in writing afterwards.

**D  JOINT CONDITIONS**

17  **Payment Conditions, Set-Off, Right of Retention, Retention of Title and Value Added Tax**

17.1 All invoices from RTSS are due and payable without cash discounts within 30 calendar days from the invoice date, unless expressly provided otherwise in the RTSS invoice concerned or in an express, written agreement between the Parties.

17.2 Set-off against RTSS' claims is permitted only if confirmed in a final and binding (res judicata) judgment or when the set off amount is undisputed by RTSS. The End-user shall be permitted to withhold payment only in respect of claims arising in respect of the same contractual relationship.

17.3 RTSS shall retain ownership of the hardware dongles and Manuals that have been delivered, until it has received all fees due to it under the agreement in question. The End-user shall immediately inform RTSS in writing if a third party interferes with the goods subject to the retention of title by RTSS, and shall inform the third party about RTSS' rights.

17.4 All prices in RTSS Offers and other documents do not include currently applicable Value Added Tax.

18  **Agreed Intended Condition of the Software**

18.1 RTSS shall deliver the Software (executable computer program in object code together with the associated Manuals) in accordance with the product specification and the details contained in the respective RTSS Offer.

18.2 The Parties agree that the Software must be in the condition documented in writing in the relevant product specification that was applicable and made available to the End-user upon acceptance of the RTSS Offer. Upon request, RTSS will provide the End-user with the relevant product specification for inspection prior to acceptance of the RTSS Offer.

18.3 If additional software is provided in connection with software maintenance, such software must be

18.3.1 in the condition documented in writing either in the additional product specification and/or the additional Manuals provided with this software to the End-user, or

18.3.2 in the condition documented in writing in the supplement to the product specification already provided to the End-user.

19  **Claims Based on Defects in the Case of Limited Licenses (Evaluation)**

19.1 In the case of Limited Licenses, the right to terminate without notice shall replace the right to rescind from the agreement.
19.2 If the End-user converts its License from a Limited License to a Perpetual License (purchase of previously evaluated Software), then it shall have the right to assert claims on the basis of defects as though it had purchased the copy of the Software on a permanent basis at the outset.

19.3 The limitations set forth under Section 23 shall apply to any claims for compensatory damages.

20  Claims Based on Defects in the Case of Perpetual Licenses (Purchase)

20.1 The limitations period for claims based on defects shall start according to the applicable statutory provisions.

20.2 The limitations period shall be one (1) year, unless RTSS (i) has fraudulently concealed the defect, (ii) is liable for the absence of warranted qualities or (iii) is liable for malice or (iv) is liable for gross negligence.

20.3 The limitations set forth in Section 23 shall apply to any claims for compensatory damages.

20.4 The End-user's claims on the basis of defects shall be excluded in the case of defects caused by non-contractual use of the Software, or defects attributable to intervention by the End-user or a third party for whose actions the End-user bears the risk, unless the End-user can show that these factors were immaterial to the occurrence of the defect.

21  End User's Duty of Co-operation where Defects are Discovered

21.1 Defects as to Quality ("Material Defects")

21.1.1 The End-user must notify RTSS of any confirmed Material Defects without delay, specifying the nature of the error and the program execution in which the error occurs. Such notification must also be in writing if RTSS so requires.

21.1.2 The End-user shall provide reasonable assistance to RTSS in connection with correcting the Material Defect. In particular, the End-user shall make available all data, information and files necessary for correction of the error.

21.1.3 To the extent required for purposes of correcting the error, the End-user shall accept a new program release, unless this would lead to unreasonable adaptation and conversion problems.

21.2 Title Defects

21.2.1 The End-user shall notify RTSS in writing without undue delay of any claims arising in connection with title defects (for example infringement of industrial property rights) and shall leave the conduct of all action to settle the matter out of court in the hands of RTSS, provided this would not be unreasonable for the End-user.

21.2.2 The End-user shall not admit to any claims relating to title defects without the prior written consent of RTSS. In the event that an unauthorized admission is made, any claim for compensatory damages on the part of the End-user shall be reduced by the value of the detriment caused to RTSS as a result of the unauthorized admission.
22 Claims Based on Defects in the Case of Software Maintenance Services

22.1 The provisions in Sections 19 to 21 apply mutatis mutandis to defects as regards the delivery of general, new program releases (see Subsection 13.1.2) as part of software maintenance. However, the right to extraordinary termination replaces the right to rescind the Agreement. Compensatory damages claims are conclusively governed by Section 23.

22.2 Defects in connection with software maintenance shall have no effect on the continued existence of the License Agreement, even if the Maintenance Agreement commences on the same date as the License. However, this is not the case with Limited Licenses (evaluation) in which, contrary to Perpetual Licenses, software maintenance is a part of the License Agreement.

23 Liability

23.1 RTSS shall be liable, whatever the legal ground, only for such damages that it or its vicarious agents or contractors have caused willfully or through gross negligence, or in the case of a material obligation given the contractual purpose (cardinal duty or material collateral duty), through ordinary negligence.

23.2 The amount of RTSS’ liability in the case of violation by it, its vicarious agents or contractors of a cardinal duty or material collateral duty through ordinary negligence is limited to the typical damages which would be suffered in the case of comparable transactions, which were foreseeable at conclusion of the agreement or at the latest by the date the breach of duty occurred.

24 Sub-contractors, Place of Performance

24.1 RTSS shall have the right to use third parties in the performance of its contractual obligations.

24.2 Place of performance for all of the services that RTSS shall perform in accordance with the aforementioned provisions is its registered office.

25 Confidentiality

The End-user undertakes to keep confidential any and all documents, information and data relating to the Software and/or RTSS, of which it becomes aware in connection with the contractual relationship.

26 Transfer and Assignment

Licenses can be transferred only within the parameters of, and in accordance with, the provisions of Subsection 8.2. Further, any assignment or transfer of rights and/or duties requires the express, prior, written agreement of the other respective Party.

27 Disputes

27.1 The Court in RTSS’ place of business shall have exclusive jurisdiction to hear actions, unless the District Court is the competent Court. RTSS shall nevertheless be entitled to submit the dispute to the Court deemed competent by the law.
27.2 The Parties shall only refer the matter to the court if they have done their utmost to solve the dispute in mutual consultation.

28 **Applicable Law**

Dutch law shall apply to each and every agreement between The Parties.

29 **Changes to the Terms and Conditions, interpretation and their Location**

29.1 The present Terms and Conditions have been filed at the office of the Chamber of Commerce in Hilversum, the Netherlands.

29.2 The most recently filed version shall always apply, or, as the case may be, the version valid at the time the agreement was concluded.