

# General Terms and Conditions - Software Rental

## Contract

### ("GTC-SR")

the  
**OMNINET Nederland**  
President Kennedylaan 19  
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Netherlands

hereafter referred to as the "**Company**".

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## § 1 Fundamental

### § 1.1 Scope of application

§ 1.1.1 These General Terms and Conditions - Software rental ("**GTC-SR**") apply to all contracts for the rental of standard software concluded between the Company and their contractual partner.

§ 1.1.2 The area of validity of the GTC-SR is limited to the B2B sector and is only applicable to contracts with consumers to the extent that the GTC-SR can be used to interpret the respective individual contract within the framework of the statutory provisions.

§ 1.1.3 Unless otherwise stated, references in this contract always refer to the GTC-SR.

§ 1.1.4 In addition, the General Terms and Conditions of the Company general part ("**GTC-GP**") as well as the respective additionally relevant pertinent GTC shall apply.

## § 2 Subject matter

### § 2.1 Contractual software

§ 2.1.1 The contractual software ("**Contractual Software**") consists of the OMNITRACKER components of the OMNITRACKER platform selected by the Customer in accordance with § 2.1.3 and the selected OMNITRACKER applications in accordance with § 2.1.4, unless otherwise expressly agreed in the contract (e.g. individual software).

§ 2.1.2 "**OMNITRACKER**" consists of the OMNITRACKER platform and the OMNITRACKER applications.

§ 2.1.3 The "**OMNITRACKER Platform**" includes all components listed in the respective current price list of the

Company under the article groups “OMNITRACKER License Packages”, “OMNITRACKER Individual Licensing”, “OMNITRACKER Interface Bus” and “Third-party Licenses”.

- § 2.1.4 The “OMNITRACKER Applications” include all components listed in the current price list of the Company under the article group “OMNITRACKER Applications” in the unchanged version provided by the Company (“Standard Applications”).
- § 2.1.5 The Contractual Software is expressly listed in the offer together with the service description which forms the basis of the contract, or in the so-called “Product Certificate” which the Customer receives together with the licence key required for the installation and use of the Contractual Software (see § 3.1).
- § 2.1.6 The “Scope of Services” of the contractual software results from the offer together with the user documentation and the test version that has been or will be provided to the customer by the Company.
- § 2.1.7 The customer shall receive the user documentation in electronic, printable form and, for the OMNITRACKER platform, additionally as online help.

## § 2.2 Expansion level and remuneration

- § 2.2.1 Unless expressly agreed otherwise, the remuneration shall depend on the nature and extent of the use of the Contract Software selected by the Customer. Unless expressly agreed otherwise in writing, the remuneration shall be based on the quotation and/or the Company's current price list.

## § 2.3 Additional services

- § 2.3.1 Further services for the contractual software, such as installations, adaptations and modifications of the contractual software, maintenance, instruction and training, shall be regulated by the contracting parties in separate, legally independent agreements, if necessary. They are not part of the software rental agreement.
- § 2.3.2 In general, the Company is prepared to comply with reasonable additional requests of the customer upon separate order.
- § 2.3.3 The Company's support services such as instructions, installation assistance, software adaptations or similar services going beyond the provision of the software shall be remunerated separately by the customer. Their remuneration shall be based on the fixed price explicitly agreed for this purpose or on the expenditure of the use of personnel. The latter shall be calculated according to the time spent at the rates listed in the respective valid price list.
- § 2.3.4 Explicit reference is made to § 1.5.3 of the GTC-GP.

## § 3 Services of the Company

### § 3.1 Implementation of the contractual software, license key

- § 3.1.1 The customer shall receive, unless otherwise agreed, the contractual software in a form required for the installation on a data carrier or as a download from the internet portal of the Company.
- § 3.1.2 Initially, the customer receives, unless otherwise agreed, a time-limited license key that expires no later than 30 days after the agreed period of payment.
- § 3.1.3 After receiving full payment, the Company shall provide the customer, unless otherwise agreed, with a license key which guarantees the use of the software within the contractually agreed scope of performance for the contractually agreed duration (see § 5.1). This license key is bound to the host ID of the server instance.
- § 3.1.4 The authorization to use the contractual software, in particular the applications, is based exclusively on the agreed use and period of operation. The possible effectiveness of a license key or usability of an application beyond the period of use does not entitle the user to use the software beyond the contractually agreed period of operation. Any use of the contractual software or applications that exceeds the term of the contract constitutes overuse within the meaning of this agreement, see § 4.3.

### § 3.2 Shipping

- § 3.2.1 The shipping or transmission of the contractual software and the associated services shall be at the risk and expense of the customer.

## § 4 Legal concession to the customer

### § 4.1 Determined use

- § 4.1.1 The customer shall use the contractual software only to the extent stipulated in the contract within the meaning of § 2.1, which includes installation, loading and running of the program as well as a copy for data backup (see also § 4.4).

### § 4.2 Granting of right of use

- § 4.2.1 The customer shall exclusively receive the right to use the contractual software for the duration of the respective contractual period pursuant to § 5.1, for exclusively one server instance at a time, unless otherwise stated in the Contract or product certificate pursuant to § 2.1.5.

### **§ 4.3 Overuse**

- § 4.3.1 If the customer uses the contractual software beyond the agreed extent of use (“**Overuse**”),
- a) a contractual penalty of € 25,000 shall be agreed for each case of offense without any special proof of damage by the Company being required. Several cases of offense shall also be deemed to exist if all offenses are covered by a uniform intention of the customer,
  - b) the customer shall additionally compensate the Company for the correspondingly higher price.
- § 4.3.2 Insofar as the amount of the contractual penalty does not stand up to legal scrutiny, the contractual penalty shall be adjusted or reduced by the court to the extent that it corresponds to the legal situation applicable at the time of the decision.
- § 4.3.3 The customer shall notify the Company of any overuse without delay on its own initiative. In case of reporting of one own’s offense, the Company may, according to the circumstances, refrain from enforcing the contractual penalty according to § 4.3.1. However, a claim to this shall not be established thereby. This does not imply the Company’s consent to the overuse.

### **§ 4.4 Unallowed duplication**

- § 4.4.1 Duplication of the contractual software beyond the above and the scope stated the contract or in the product certificate (see § 4.2) is generally not permitted, except for making a backup copy of the contractual software (see also § 4.1).

### **§ 4.5 Duplication, user documentation**

- § 4.5.1 The customer may duplicate the user documentation for internal purposes.
- § 4.5.2 Duplication for other purposes is only permitted if the Company has given its prior explicit written consent to the duplication and the purpose of distribution pursued thereby.

### **§ 4.6 Change of the contractual software**

- § 4.6.1 Modifications of any kind to the contractual software are only allowable for the OMNITRACKER applications pursuant to § 2.1.4 and only by means of the mechanisms and procedures provided and documented by the Company (for exceptions see § 4.8), unless explicitly agreed otherwise.
- § 4.6.2 The duplication of the results obtained by the customer is only permitted with the written consent of the Company.

### **§ 4.7 Transmission of the contractual software**

- § 4.7.1 The customer may neither sell nor transfer free of charge, nor rent or lend the contractual software including user documentation and other accompanying materials.

## **§ 5 Running time, remuneration**

### **§ 5.1 Running time**

- § 5.1.1 The running time of this contract begins with the provision of the contractual software by the Company and amounts to at least 12 months, unless expressly agreed otherwise between the parties.
- § 5.1.2 The contract shall be automatically extended by a further twelve (12) months if it is not terminated by one of the contracting parties with three (3) months’ notice to the end of the contract term or if the parties agree on a change to the contract.

### **§ 5.2 Termination**

- § 5.2.1 Terminations must be made in writing, by the customer by registered letter with return receipt.
- § 5.2.2 The right of each party to terminate the contract without notice for important reason remains unaffected. The Company shall be entitled to terminate without notice in particular if the customer fails to make due payments despite a reminder and setting of a deadline or if the customer violates the contractual provisions regarding the use of the contractual software. A termination without notice requires in any case that the other party is warned in writing and requested to remedy the alleged reason for the termination without notice within a reasonable period.
- § 5.2.3 After determination of the contract the customer shall return to the Company or destroy all data carriers, documentation, other materials and documents received from the Company as well as backup copies made, uninstall the contractual software and irreversibly delete any remaining recognizable software residues from its IT systems. Upon the Company’s request, the customer shall confirm the fulfillment of these duties in writing.

### **§ 5.3 Remuneration**

- § 5.3.1 The amount of the remuneration results from the contractual agreement and/or the respective current price list of the Company.
- § 5.3.2 Unless otherwise agreed, the remuneration as well as the applicable statutory value added tax (VAT) and any other statutory levies shall be due and payable every three (3) months in advance.

§ 5.3.3 Additional services of the Company (installation, adaptations and modifications of the contractual software, maintenance, instruction, trainings etc.) shall be agreed upon separately and shall in any case be remunerated separately by the customer (see also § 2.3).

§ 5.3.4 Explicit reference is made to § 1.5.3 GTC-GP.

#### **§ 5.4 Renumeration adjustment**

§ 5.4.1 The Company is entitled to adjust the remuneration of this contract according to its current price list at the beginning of an extension of a contractual term even without an adjustment of use made. The Company shall inform the customer about such a change of the remuneration at least 3 months in advance in written form (also by email). If the remuneration increases by more than fifteen (15) percent, the customer is entitled to terminate the contract with effect from the end of the contractual year within a period of one (1) month after receipt of the request for increase.

§ 5.4.2 This shall not affect § 1.4 GTC-GP, to which explicit reference is made.

#### **§ 5.5 Contact persons**

§ 5.5.1 License invoices, product certificates, license keys as well as documents of comparable content may also be sent by the Company via email.

§ 5.5.2 The customer shall name an authorized contact person to the Company for this purpose.

§ 5.5.3 Explicit reference is made to § 2.1 der GTC-GP.

### **§ 6 Participation of the customer**

#### **§ 6.1 Software environment**

§ 6.1.1 The customer shall procure additional software required for the use of the contractual software (operating system, database software, etc.) at its own expense in the suitable, released version designated by the Company and provide it free of charge in due time before the agreed delivery.

#### **§ 6.2 Trainings**

§ 6.2.1 The customer shall, if necessary, send suitable employees to the trainings offered by the Company as an additional service according to § 2.3 in due time.

#### **§ 6.3 Deployment of employees**

§ 6.3.1 The customer is obliged to use only suitable employees when using the contractual software and to record the use of the contractual software and any special incidents that occur in a suitable manner.

§ 6.3.2 Employees are suitable if they possess the necessary knowledge and skills to use the contractual software within the scope of its contractual possibilities of use in a fully comprehensive and error-free manner without any assistance by the Company and if they have comprehensive system administration and configuration skills, regarding the contractual software ("**Suitable Employee**"). The suitability of the employees can be achieved by a successful participation in the corresponding trainings of the Company (see § 2.3).

§ 6.3.3 Recording can only be considered suitable if it is made in a manner that is easily comprehensible for third parties or the Company, usually via the company's portal and in a common file format (Word/Excel/PDF or similar).

§ 6.3.4 Costs and expenses incurred by the Company due to unsuitability of the customer's employees shall be borne by the customer in full. This shall not apply if the customer proves that these would also have been incurred if suitable employees had been employed. The same shall apply in case of unsuitable recording.

#### **§ 6.4 Provision of staff in case of on-site work**

§ 6.4.1 Insofar as the Company carries out work directly at the customer's premises, the customer shall provide the Company with the corresponding rooms, devices, software, documents with, if applicable, error examples and data material, also test data, processing time, as well as employees for information in due time and free of charge and to an appropriate extent.

### **§ 7 Material defect and legal deficiency**

#### **§ 7.1 Material defect**

§ 7.1.1 A "**Material Defect**" exists if the contractual software does not have the contractually agreed quality or if it is not suitable for the contractually intended use.

§ 7.1.2 The "**Contractually Agreed Quality**" results from the scope of services according to § 2.1.6.

§ 7.1.3 Any use provided for in the contract shall only be permissible if expressly agreed between the contracting parties.

§ 7.1.4 Technical data, specifications and performance information in public statements, in particular in advertising material, are not quality information.

§ 7.1.5 The lessor shall provide and maintain the contract software in a condition suitable for use in accordance with the contract.

- § 7.1.6 It is explicitly pointed out that the duty to maintain the contractual software during the term of the contract does not include any adaptation to changed conditions of use and technical and functional developments such as e.g. the modification of the hardware or the operating system. Such measures by the Company shall be commissioned separately and shall be remunerated separately by the customer.
- § 7.1.7 Liability without fault for defects already existing at the time of conclusion of the contract is expressly excluded.
- § 7.2 Legal deficiency**
- § 7.2.1 A “**Legal Deficiency**” exists if the customer has not been effectively granted the rights necessary for the contractual use.
- § 7.3 Modification of programs by the customer**
- § 7.3.1 Insofar as the customer modifies the contractual software themselves or has it modified by third parties in accordance with § 4.6.1, the claims due to material defects or legal deficiencies shall be allotted, unless the customer proves that errors which have occurred are not attributable to this fact and that the error analysis and elimination by the Company is not impaired thereby. This proof can be provided by the customer reproducing the error in the originally delivered, unchanged version of the contractual software on a reference system.
- § 7.3.2 If the Customer uses the Contractual Software together with hardware or software of third party manufacturers which (in the case of OMNITRACKER, in the document 'OMNITRACKER System Requirements' - in its respective valid version-dependent form) are not expressly described as compatible with the Contractual Software and which interfere with the operation of the Contractual Software, § 7.3.1 shall apply accordingly.
- § 7.4 Notification of defects by the customer**
- § 7.4.1 Explicit reference is made to § 2.4 of the GTC-GP.
- § 7.5 Rent reduction**
- § 7.5.1 The tenant may not enforce a rent reduction by deducting it from the agreed rent. Corresponding claims for enrichment or damages shall remain unaffected.
- § 7.6 Exclusion of termination**
- § 7.6.1 The tenant's right to terminate the contract for non-granting of use is excluded unless a rectification or substitute delivery is deemed to have failed.
- § 7.6.2 The subsequent performance shall not be deemed to have finally failed already with the second attempt of subsequent performance. Rather, the customer shall grant the Company a reasonable period of grace. The number of attempts of subsequent performance within this period of grace is free.
- § 7.7 Measures in case of alleged legal deficiencies**
- § 7.7.1 If a third party asserts the breach of a remedial statute against the customer due to the use of the contractual software, the customer shall inform the Company thereof without delay and leave the defense against such claims to the Company as far as possible. In doing so, the customer shall provide the Company with all reasonable assistance. In particular, the customer shall provide the Company with all necessary information about the use and possible processing of the programs, if possible in writing, and shall provide the Company with the necessary documents.
- § 7.7.2 If the customer fails to inform the Company without delay about an alleged legal deficiency, the customer shall have to bear all expenses and costs resulting therefrom which could have been avoided by an immediate notification.
- § 7.7.3 To the extent that third-party rights are violated, the Company may, at its own discretion, remedy the violation by
- a) obtaining from the person entitled to dispose of the remedial statute a right of use for the benefit of the customer, which is sufficient for the purposes of this contract, or
  - b) modifying the defective software without affecting its function or only with effects acceptable to the customer, or
  - c) replacing the defective software without effects or only with effects acceptable to the customer on its function with software whose use in accordance with the contract does not violate any breach of remedial statute, or
  - d) delivering a new program version, the use of which in accordance with the contract does not violate any third-party property rights.
- § 7.7.4 In all other respects, the provisions of § 7 for material defects shall apply accordingly in the case of legal deficiencies.