

FINARIS Financial Software Partner GmbH
General Terms and Conditions
Part D – Lease of Software

§ 1 Parts of the Agreement and Definitions

(1) Parts of the agreement are:

(a) the latest written offer/order confirmation issued by FINARIS Financial Software Partner GmbH (hereinafter FINARIS).

(b) The General Terms and Conditions of FINARIS

- Part A – General Provisions for the Agreement and License Terms
- Part E – Agreement on the Commissioned Processing of Personal Data.

(c) The present agreement containing special provisions. The provisions of Parts A and E shall additionally apply.

(d) The Annex defining the state of the respective leased software.

§ 2 Subject of the Agreement

(1) The agreement on the lease of software comprises the following services:

(a) FINARIS rents to the customer the software as set out in Annex A1 to the offer for the term of the agreement. The respective current version of the software shall be the lease object. The customer is obliged to install the latest version of the software or let it be installed. Any and all rights of use granted to the customer are solely related to this version. The afore-mentioned restriction shall exceptionally not be applicable in the event the customer is provided with a new version of the software affected by errors which make it unreasonable to work with such version.

(aa) The customer is handed over the software and is granted the necessary rights of use for the respective term of the agreement as set out in § 4 sec 2 of the agreement. The granting of the rights of use shall be governed by Part A of the General Terms and Conditions of FINARIS.

(bb) The features of the program shall comply with the user documentation handed over with the program. The operation requirements as well as the necessary system environment are set out in the offer.

(cc) The software is handed over for the customer's own use. The customer is not entitled to grant any rights to sublease or sublicense to third parties. The customer is not entitled to grant to third parties the right to process any other than the customer's own data or to use the software by means of ASP either. Afore-mentioned restrictions regarding the use of the software by means of ASP or to grant sublicenses can only be overruled by a separate and written declaration of consent of FINARIS.

(b) For the term of the agreement the software is permanently updated and further developed in accordance with the following provisions:

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(aa) FINARIS will adapt the software to changing legal regulations or technical standards within a reasonable period of time, but only to the extent reasonable to its operational and economic capabilities. This obligation shall lapse if the provision thereof will require unreasonable efforts by FINARIS. In such an event, the changes will only be provided for an additional appropriate payment.

(bb) FINARIS shall provide the customer with updates/upgrades of the maintained programs if available and necessary. In such event the software documentation shall be supplemented accordingly.

(c) (aa) Further customization services in regards to the functions, which are dictated by the individual requirements of the customer, are not obligations within the meaning of this agreement.

(bb) Neither a part of the obligations within the meaning of this agreement is the provision of major releases containing significant alterations and improvements of the software. Such major releases can be identified by a change of the left part of the version number (i.e. from 5. to 6.). The delivery of such major releases has to be ordered by the customer with a separate agreement.

(2) The following definitions shall apply within the scope of the elimination of errors:

(a) Error Categories

The definitions set out in Part A of the General Terms and Conditions § 2 section 4 lit. (d) shall apply.

(b) Reaction Time

The reaction time is the period between the receipt of the error notice from the customer and the beginning of the elimination of the error with a first status message to the noticing customer.

(c) Elimination Time

The elimination time is the period of time between the receipt of the error notice by FINARIS and the elimination of the error or, at least, the installation of a workaround to be deemed reasonable for the customer. The elimination time is reflected in the priorities that only specify an intended elimination period; the elimination time cannot always be observed due to the varying complexity of possible incidents. The elimination time is not the same as the reaction time.

(d) Service

The elimination of errors shall be carried out only within the usual business hours of FINARIS from Monday to Friday between 09.00 h and 17.00 h (CET +1, Berlin). Saturdays shall not be considered a weekday. The public holidays of the Federal State of Hesse State shall apply.

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(3) Reaction and Elimination Times

Level	Error Category	Services of FINARIS
1	operation-preventing error	<ul style="list-style-type: none"> • Reaction Time: at the latest on the next working day after receipt of the error notice within the usual business hours. • Elimination Time: FINARIS shall commence with the elimination of the error within one working day and shall assign employees to this task until the error has been eliminated or a reasonable workaround has been found for the customer.
2	operation-impeding error	<ul style="list-style-type: none"> • Reaction Time: at the latest within two working days after receipt of the error notice within the usual business hours. • Elimination Time: FINARIS shall commence with the elimination of the error within two working days and shall assign employees to this task until the error has been eliminated or a reasonable workaround has been found for the customer.
3	operation-restricting errors	<ul style="list-style-type: none"> • Reaction Time: at the latest within five working days after receipt of the error notice. • Elimination Time: FINARIS shall provide a response to the request containing information about possible improvements for the situation within five working days after receipt of the error notice and take into account a workaround and program improvements within the scope of a following update, as appropriate.
4	other errors, insignificant errors, minor errors	<ul style="list-style-type: none"> • These incidents do not substantially affect the usability of the software. These incidents shall be eliminated within the course of the normal development of the software in one of the next releases.

- (4) In the event an error notice is received by FINARIS after business hours the reaction time shall begin on the next working day.
- (5) Within the scope of an error notice, occurring errors will be mutually classified by the parties into the error categories set out in Part A of the General Terms and Conditions § 2 section 4 lit. (d). If the parties cannot reach a mutual agreement FINARIS shall decide about the classification and shall thereby reasonably consider the customer's interests.

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§ 3 Handing-over, Installation, Consultancy

- (1) FINARIS will hand over the software including the documentation on a download server and provide the customer with the URL for the download. The relevant point of time for the completion of delivery is the accessibility of the software in the network and the provision of the respective link to the customer.
- (2) The customer is responsible for the installation of the software and all successive releases.

§ 4 Rent

- (1) The amount of the monthly rent in the contractually agreed amount is set out in the respectively current version of the price list/an individual offer by FINARIS. The performances encompassed are set out in § 2 sec 1.
- (2) The leasing agreement is initially concluded for a term according to two leasing periods. One leasing period has a term of three months. The agreement shall commence on the first day of the month following the month in which FINARIS receives the respective order. The agreement shall automatically be prolonged for another leasing period of three months unless it is terminated within the time-limit and in the prescribed manner. This shall be the case if FINARIS receives a written termination from the customer at least ten days prior to the end of the then current leasing period.
- (3) Partial termination: The customer may also partially terminate regarding individual parts of the software that are available program-technically isolated under the conditions of sec. 2 (4). However, he is not entitled to a partial termination regarding parts of a program package provided by means of a "License Package".
- (4) Leasing of further licenses during the term of the agreement:
 - a) Provided that the customer has already purchased RapidRep products, he is entitled to the leasing of further licenses.
 - b) Provided that the customer has leased RapidRep products, he is furthermore entitled to the leasing of other program components. The term of the agreement shall be as set out in § 4 sec. 2. Nevertheless, in deviation from § 4 sec. 2 the minimum term of the agreement shall be one leasing period plus the period of time passing until the commencement of the leasing period pertaining to the software initially handed-over under this agreement.

§ 5 Duties to cooperate

- (1) The customer shall support FINARIS in the fulfillment of the contractual obligations. The customer particularly will
 - for the term of the agreement designate in writing a responsible person who has all decision-making authority for the purposes of the execution of the agreement;

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- FINARIS is entitled to claim that the responsible proves trainings in the use of the maintained programs; error notices will be submitted by the responsible person or – in case of its absence – by its deputy;
 - in the event of an error notice carefully observe the system environment and hardware environment and all symptoms and report the error – by using the forms provided by FINARIS, if applicable – while providing all information which could be needed to eliminate the error, for example the number of affected users, description of the system and hardware environment as well as the specification of any simultaneously loaded software from other manufacturers and documents;
 - provide FINARIS with the occurring error in reproducible form on a suitable data carrier;
 - support FINARIS to the best of his abilities and possibilities in the search for the cause of the defects and encourage all his employees to cooperate with FINARIS' representative if necessary;
 - grant access to the computers on which the leased programs are stored and/or loaded to the employees authorized by FINARIS for the execution of the software maintenance;
 - install all programs and/or program parts (patches, bug-fixes) provided by FINARIS in accordance with FINARIS' instructions and always observe FINARIS' recommendations regarding the search for and elimination of defects;
 - have all used or generated data related to the maintained programs available in machine-readable form as security backup in order to enable the recovery of lost data with reasonable effort;
 - run a testing system complying as good as possible with the productive system and obligate the customer to report without undue delay any change to the productive system and respectively adapt the testing system. He shall at first install any and all newly delivered software on the testing system and determine whether any errors occur in the testing environment. Furthermore, the customer has to be obligated to determine any new release in the testing system at first.
- (2) The aforementioned duties to cooperate and those set out in the Annex to the present agreement are main obligations. If the customer breaches his duties to cooperate, FINARIS is not obligated to perform its services. In the event of recurrent or serious breaches of contract, FINARIS has the right to terminate the agreement within one month thereafter. In such case the agreement will end at the end of the respective following month.

§ 6 Rights of Use

The granting of the rights of use shall be governed by the license terms as set out in Part A section II of the General Terms and Conditions of FINARIS. (§§ 10ff).

§ 7 Prices and Payment Terms

- (1) The price for the software will be calculated at the time of the conclusion of the agreement in accordance with the then current price list.

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- (2) Before the first handing-over of the software the rent for two leasing periods is due and payable in advance upon receipt of the order by FINARIS.
- (3) The rent for all consecutive leasing periods has to be paid at the latest 30 days in advance.
- (4) Payment is fulfilled as soon as the due rent is unconditionally available to FINARIS.
- (5) In the event of late payment FINARIS is entitled to withhold an activation key required for the usage of the software within 30 days upon declaration of a time-limit for the payment. These activation keys are required to load the software into the RAM of a computer. Without them, working with the software is impossible. FINARIS shall be freed from its obligation to timely provide the customer with the required activation keys within 30 days upon sending of such declaration until full payment of the outstanding rates. This shall not be applicable only in the event that the customer legitimately claims for defects, proves them in reproducible form and refers to a reduction of the rent. FINARIS is not obliged to send activation keys if defects of the software are not reported in the described manner without undue delay. Furthermore FINARIS will not accept to be confronted with claims for any defect that can be attributed to a processing of the software by the customer or third parties.
- (6) FINARIS is entitled to raise the price of rent by month-end with a three-months prior written announcement for the first time after the expiry of twelve months after the conclusion of the agreement if and to the extent that its costs for the maintenance of the rented object have increased. The customer is entitled to terminate the agreement within six weeks upon receipt of the announcement of the increase. In the event that FINARIS' costs for the maintenance have decreased the customer may claim for a diminution of the price of rent after expiry of the period as set out in sentence 1.

§ 8 Customer's Rights in the Event of Defects

- (1) FINARIS is obliged to cure defects of the software including the documentation.
- (2) FINARIS may remedy any defects by either eliminating the defect without cost or substitute delivery at FINARIS' choice.
- (3) The customer's right to terminate due to the non-granting of the contractual purpose (§ 543 II 1 German Civil Code – *Bürgerliches Gesetzbuch*) is only permitted if FINARIS has had adequate opportunities but however failed to remedy the defect. The remedy of a defect shall be deemed failed only if it is impossible, if FINARIS refuses or unacceptably delays the remedy, if the prospects of success can be reasonably doubted or if adherence to the agreement is unacceptable for the customer due to any other reason. The right to terminate the agreement or to claim damages because of unsubstantial or insignificant defects is excluded. The customer's right to demand a price reduction remains unaffected in those cases.
- (4) The customer's rights in the event of defects are excluded if and to the extent that the

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customer has processed the rented object or let it be processed without FINARIS' approval unless the customer can prove that these changes do not unreasonably affect FINARIS' efforts to analyze and remedy the defects. The customer's rights shall remain unaffected in the event that the customer was entitled to change the software – especially by means of a self-rectification within the meaning of § 536a sec. 2 German Civil Code – *Bürgerliches Gesetzbuch*) and such change has been properly done and clearly documented.

- (5) FINARIS may determine at its own discretion whether the program-technical services may also be provided through the delivery of new releases (including updates and upgrades of the maintained program), by commissioning third parties or by the provision of guidelines to the customer's personnel to affect program changes or changes to the program parameters. The customer may refuse to accept the provision of updates and upgrades in case they do not feature the same compatibility and functionality as the replaced program. The customer may also refuse to accept the delivery of the offered new version free from defects in case the required re-adjustment would cause unacceptable costs.

§ 9 Limitations of Liability

- (1) FINARIS' liability regardless of fault in accordance with § 536a sec. 1 alt 1 German Civil Code (*Bürgerliches Gesetzbuch*) shall be excluded for defects already existing at the time of the conclusion of the agreement if FINARIS has only acted negligently.
- (2) In the event of a negligently caused loss of data FINARIS shall be liable only for the damage that would have also occurred if the customer had executed proper, regular and reasonable back-ups regarding the importance of the data; this limitation shall not apply in the event the ability to create a back-up has been restricted or impossible due to reasons that are attributable to FINARIS. The afore-mentioned stipulations shall be applicable regarding any claims for reimbursement of expenditures accordingly.
- (3) The liability in accordance with the German Product Liability Act (*Produkthaftungsgesetz*) shall remain unaffected.
- (4) Furthermore, the provisions as set out in § 6 of Part A as well as those of any individual agreement (offer/order confirmation) shall apply.

§ 10 Term of the Agreement, Termination of the Leasing Contract

- (1) The term of the leasing agreement shall be as set out in § 4 sec. 2 of this agreement.
- (2) The customer's termination rights in accordance with § 4 sec. 2 and § 8 sec. 3 of this agreement shall remain unaffected.
- (3) Either party's right to declare the extraordinary termination for good cause shall remain unaffected.

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§ 11 Return

- (1) After expiry of the agreement the customer must delete any and all copies of the program provided by FINARIS.
- (2) The customer is responsible for a back-up of the data. FINARIS will support the customer to develop a solution with which the customer shall be enabled to read the created and edited data even after expiry of the agreement. The handing-over of suitable systems shall be made subject to a separate agreement.
- (3) Any use of the software is inadmissible after expiry of the agreement.