

# General Software License Conditions

## RAFI GmbH & Co. KG

### § 1 Scope and Validity

(1) In particular, these General Software License Conditions govern the scope of the right to use and exploit the software by RAFI GmbH & Co. KG by customers who have commissioned RAFI. Customers include only entrepreneurs as defined in § 14 BGB (German Civil Code). For consumers, they are not applicable.

(2) Our General Terms and Conditions shall apply in addition, unless otherwise agreed in the following License Conditions.

(3) Both these General Software License Conditions and our General Terms and Conditions are available to our customers in the current version for downloading at [General terms and conditions \(rafi-group.com\)](https://rafi-group.com) and we will also be happy to send them by e-mail or fax upon request.

(4) With the first use of our software by the customer, the respective corresponding provisions of these License Conditions referred to in the associated offer or documents referenced therein shall be deemed agreed and accepted by the customer.

### § 2 Subject of the License

(1) The subject of the license is the standard software developed and manufactured by us/firmware or customer-specific software/firmware together with the associated program documentation/specification or the technical solution concept in the respective agreed language. If nothing is agreed, it may be in German or English at our discretion, depending on the context. The exact name of the licensed software as well as the permitted scope of use result from the respective quotation or the documents referenced therein. The software does not include any separately supplied software or firmware of other manufacturers (so-called third party suppliers), "external software". In this regard, the software license terms of the respective manufacturer apply, which also results from the respective quotation or the documents referenced therein. The same applies to open-source software.

(2) The source code as well as the associated documentation are only subject of the license in the case of a separate written agreement and corresponding remuneration in the context of customer-specific software. Regarding the other software/firmware mentioned in § 2 (1), individual contractual agreements with the customer are required.

### § 3 Copyrights to the Software

The software as well as the supplied program documentation/specification or the technical solution concept are protected by copyright in favor of RAFI GmbH & Co. KG. This does not include third-party software, including open-source software.

### § 4 Granting of other Rights and Scope of the License

(1) We hereby grant you the basic, spatial and temporal unlimited right to use the subject of the license in accordance with the offer as well as these license conditions and to reproduce, if and to the extent it has been expressly agreed. A transfer to third parties is only permitted after prior written consent in the respective scope to be regulated therein. Third parties in this sense, unless otherwise expressly agreed, are also business partners with whom the customer maintains collaborative IT business systems as well as companies affiliated with the customer.

(2) The right to use and exploit is limited to the agreed purpose of use (project), in particular the distribution of the hardware manufactured by us and supplied to you (RAFI modules or other products), on which the software is used.

(3) If the right to reproduce the subject of the license in accordance with § 4 (1) has been expressly agreed, this is limited to the installation of the licensed item on a hardware in your direct property and possession for the purpose of use and duplication, which is necessary for loading, displaying, expiring, transferring and storing the subject of the license and the right to make a backup copy of the subject of the license by an authorized person in accordance with § 69 d (2) UrhG (Copyright Act). The copy must be marked with the original label and the copyright of the original data carrier. Use of the backup copy is only permitted in cases of deterioration or loss of the data carrier supplied by us and is also subject to the provisions of these General Software License Conditions. You must not make any other reproductions, including the output of the program code on a printer.

(4) The right to process the licensed item is limited to the receipt or restoration of the agreed functionality of the subject of the license.

(5) The right to compile the subject of the license is granted only under the condition of § 69 e (1) Nos. 1 to 3 UrhG (Copyright Act) and within the framework of § 69 e (2) Nos. 1 to 3 UrhG (Copyright Act).

(6) Further rights of use and exploitation of the subject of the license will not be granted to you.

(7) Upon request and if there is a legitimate interest, you will allow us or a third party commissioned by us to check whether the use of the subject of the license is within the scope of the rights granted hereunder; we rely on you to assist us to the best of your ability in carrying out such an audit.

(8) You are prohibited from removing or altering any software designation or program documentation about the manufacturer's features, copyrights, and other proprietary rights.

(9) The new know-how arising in connection with our development services is also available to you for use in our series products. However, we remain equally entitled to free use, also regarding our affiliated companies.

## **§ 5 Transfer and Installation of Subject of the License**

(1) Upon delivery of source code, we will provide you with the required number of copies of the subject of the license in a machine-readable form to exercise the rights of use and exploitation granted herein, either at your own choice or by remote data transmission. Upon delivery of hardware, the object code will be applied to the hardware to be delivered to you. You will receive the documentation as an electronic document. The place of performance for the delivery of the subject of the license is the place of business of RAFI. With the delivery of the subject of the license at the place of performance, the transport risk (in particular the risk of accidental loss or destruction) of the copies of the licensed item is transferred to you.

(2) The system environment according to the requirements in the corresponding quotation or the referenced documents is to be provided by you on your own responsibility. It has to meet the necessary technical requirements.

(3) The subject of the license will only be installed by you in exceptional cases after prior written agreement. In this case you must inform us in writing about the respective installation locations of the copies of the subject of the license. This also applies to any subsequent change of the installation locations.

(4) We reserve title to both the subject of the license and all copies of the subject of the license until full payment of the license fees. In case of breach of the contract by you, in particular in default of payment, we have the right to reclaim all copies of the subject of the license to which we have reserved the property at your expense or, if applicable, the assignment of such rights to you against third parties desire. Upon request, you will confirm in writing that you have not retained any copies of the subject of the license and that all installations of the subject of the license have been irrevocably deleted from your systems or the third party. Before the final transfer of ownership, you will only have the rights to the subject of the license with our prior written consent.

## § 6 License Fees

(1) If and insofar as license fees arise for the rights named and granted herein, these rights and the corresponding conditions result from the respective quotation or the documents referenced therein.

(2) We will charge the license fee according to the payment plan offered. Unless otherwise agreed in writing, invoices are payable without deductions within fourteen (14) days of the invoice date. If you are in default of payment, the outstanding amount has to be paid with an interest of nine (9) percentage points as per the valid base interest rate. Further rights remain unaffected.

(3) Unless otherwise expressly agreed, all amounts are net amounts, i. e. they occur plus VAT. We will indicate the tax rate and the value added tax separately on the invoice. Discount is not granted unless it is expressly agreed in writing.

## § 7 Claims for Material Defects

(1) The software provided by us essentially corresponds to the respective product description. Claims for defects do not exist in the case of insignificant deviation from the agreed or assumed quality and only insignificant impairment of their usefulness. Product descriptions do not constitute a warranty unless otherwise agreed in writing. For update, upgrade and new version deliveries, the warranty claims are limited to the improvements of the update, upgrade or new version delivery compared to the previous version.

(2) If you require supplementary performance due to a defect, we shall have the right to choose between rectification of the defect, replacement delivery or replacement performance. If you have given us another reasonable deadline after an initial period has expired without result, or if a reasonable number of attempts of rectification, replacement delivery or replacement performance have been unsuccessful, you may, at your discretion and under the statutory conditions, choose to withdraw from the contract or reduce and claim damages or reimbursement of expenses. The supplementary performance can also be done by handing over or installing a new program version or a workaround. If the defect does not or only negligibly affect the functionality, we shall be entitled to the exclusion of any further claims on defects, to remedy the defect by supplying a new version or by an update within the scope of its version, update and upgrade planning.

(3) Defects must be reported immediately in writing by a comprehensible description of the error symptoms. As far as possible, written records, copies or other documents illustrating the defects shall prove the error symptoms. The complaint should allow the reproduction of the error. Your legal examination and complaint obligations remain unaffected.

(4) The limitation period for claims for defects is twelve (12) months. The period begins with the delivery of the first copy of the subject of the license. In case of delivery of updates, upgrades and new versions, the deadline for these parts begins with each delivery.

(5) You shall immediately examine the delivered items for identifiable defects, secure the corresponding evidence and assign any recourse claims to us, handing over the documents.

(6) Claims for damages are subject to the restrictions of § 9.

(7) If the defect is due to the defectiveness of the product of a supplier and if the supplier is not acting as our vicarious agent, but we are merely passing on an external product to you, your claims for defects are initially limited to the assignment of our claims for defects against our supplier. This does not apply if the defect is due to improper treatment for which you are responsible. If you cannot assert your claim for defects against the supplier out of court, our subsidiary liability for defects remains unaffected.

(8) Modifications or extensions of the services or supplied software or hardware made by yourself or third parties, shall render your claims for defects null and void, unless you prove that the change or extension is not the cause of the defect. We are also not responsible for defects caused by improper operation, operating conditions or the use of unsuitable equipment by you.

(9) We may refuse subsequent performance until you have paid to us the agreed remuneration, minus a portion that reflects the economic significance of the defect.

#### **§ 8 Claims for Defects of Title**

(1) The software supplied or provided by us is free of third party rights that prevent the contractually agreed use. Exceptions to this are customary retention of title.

(2) If third parties have such rights and assert them, we shall do everything in our power to defend the software against the asserted third party rights at our expense. You shall immediately notify us in writing of any assertion of such third-party rights and grant us all powers of attorney and authority to defend the Software against the asserted third-party rights.

(3) Insofar as defects in title exist, we shall be entitled, at our discretion, either to eliminate the rights of third parties which impair the contractual use of the software or to dispute their assertion by taking lawful measures, or to modify or replace the software in such a way that they no longer infringe third-party rights, if and insofar as the owed functionality of the software is not significantly impaired. In addition, we are obliged to reimburse you for the necessary recoverable legal costs.

(4) If the exemption pursuant to par. 3 fails within a reasonable grace set by you, you may, under the statutory conditions, at your option, withdraw or reduce the contract and claim damages.

(5) Otherwise § 7 par. 4, 6 and 9 apply accordingly.

#### **§ 9 Liability, Claim for Damages**

(1) We are liable under these license conditions only in accordance with the following provisions in (a) to (e):

(a) We shall be fully liable for intentional or grossly negligent damages caused by us, our legal representatives or executives or for intentionally caused damages by vicarious agents; for gross negligence on the part of vicarious agents, liability shall be determined in accordance with the provisions for slight negligence listed in (e) below.

(b) We shall be fully liable for damages caused intentionally or negligently by us, our legal representatives or vicarious agents resulting from injury to life, body or health.

(c) We shall be liable for damages due to missing assured quality in the sense of an express guarantee of quality or durability issued by us up to the amount that was covered by the purpose of the guarantee and that was recognizable to us when placing the guarantee.

(d) We shall be liable for product liability damages in accordance with the provisions of the Product Liability Act.

(e) We shall be liable for damages resulting from the breach of cardinal obligations by us, our legal representatives, or vicarious agents; cardinal obligations are the essential duties that form the basis of the contract, which were crucial to the conclusion of the contract and on the fulfillment of which you may trust. If we have slightly negligently violated these cardinal obligations, our liability shall be limited to the amount that was foreseeable for us at the time of the respective service.

(2) We shall be liable for the loss of data only up to the amount that would have been incurred in proper and regular backup of the data for their recovery.

(3) Further liability by us is excluded.

#### **§ 10 Cybersecurity**

(1) The Parties shall each ensure the implementation of an information security management system (ISMS for short) to the extent that basic protection is included in the sense of the respective current standard. This respective standard is defined in Germany by the Federal Office for Information Security (in short: BSI), illustrated for example by compliance with ISO standard 27001 as the

currently applicable international standard. Compliance with the applicable information security baseline may only be deviated from in justified exceptional cases.

(2) Each Party shall have an exceptional right of termination without notice with respect to all agreements potentially affected thereby if the other Party has not implemented an ISMS with appropriate basic protection or cannot provide evidence of such protection, even upon request, by means of certificates that comply with the current standard or similar relevant evidence specified by the BSI.

(3) If a Party has not implemented an ISMS appropriate to the respective circumstances and the other Party has suffered damage as a result, it shall be obligated to provide information, to refrain from doing so and/or to take remedial action. In addition, it shall be held liable for damages to the affected Party, unless the Party causing the damage proves that the other Party did not suffer any damage as a result or that its actions or omissions were not the cause of the damage incurred.

The Parties further agree to indemnify the other Party against any claims for damages or costs arising from a lack of ISMS implementation. This obligation shall also extend to any breach by agents and shall include, in addition to the expenses, the related fines, court and attorney fees.

### **§ 11 Other Regulations**

(1) Deviations from these license conditions must be in writing to be effective. This also applies to the amendment of this text form requirement.

(2) All individual contracts with us and all related disputes are subject to the law of the Federal Republic of Germany with the exception of the United Nations Convention on Contracts for the International Sale of Goods of 11.4.1980.

(3) Place of fulfillment and subsequent performance and exclusive place of jurisdiction for all disputes arising from or in connection with individual contracts or these General Software Licensing Conditions is our place of business, provided that the customer is a merchant within the meaning of the German Commercial Code or has no registered office in the Federal Republic of Germany at the time of the lawsuit. If the location of our customer is outside Germany, an arbitral tribunal shall be deemed agreed in accordance with the rules of the International Chamber of Commerce in Paris, whereby the place of Munich and the language of the proceedings shall be English if the communication is predominantly in English.

(4) Before calling any court or tribunal, we will initiate a mediation process with our customer to obtain amicable settlement of any dispute arising out of or in connection with any specific contract or this Software License Conditions. Both regarding measures of interim relief and after termination of the mediation process, the way to a regular court or arbitration remains unaffected. Furthermore, the Mediation Act (MedG) applies.

(5) If any provision of these General Software License Conditions or an individual contract is wholly or partially incomplete, void or ineffective, the remaining terms and conditions remain unaffected. Instead of an incomplete, void or ineffective provision, we will negotiate an effective provision with you that comes as close as possible to the intended purpose of the incomplete, void or ineffective provision. This also applies to the closure of any gaps in this agreement.