



General Terms and Conditions of SVA GmbH for some Software Products – BVQ

Status: February 2013

§1 Subject matter of the Contract – Usage Rights

1. Insofar as SVA GmbH (“the licensor”) makes software available to the license holder, a non-exclusive, non-transferable license for use of the software, as well as the appropriate written materials in accordance with the following conditions is hereby granted. All rights not specifically mentioned to the license holder are reserved by SVA GmbH.
2. The following usage rights are granted to the license holder:
 - 2.1 the use of the software for internal business purposes. Insofar as the license holder installs the software on a network server to which more users have access, he has to acquire a special client access license for every client that has access to the software, company or enterprise licenses need a special agreement.
 - 2.2 the copying of the software, as far as it is necessary for backup or archive purposes, whereupon the license holder is only authorized to make additional copies if he has acquired an additional server or client license from the licensor and has marked every copy made by him with the same copyright or other property annotation as the original.
 - 2.3 the copying of the documentation (insofar as it was not made available) equivalent to the number of the acquired licenses of the license holder.
3. The condition for the permanent transfer of the software to a third party is that the software as well as all appropriate documentation be transferred completely to the third party (this means documented transfer of all copies as well as complete deletion of all appropriate data by the license holder) and that said third party declares to SVA GmbH that he fully understands and accepts the provisions of these general terms and conditions. The license holder undertakes to immediately inform the licensor in writing of every further transferral of the software as well as the name and address of the third party involved. The transfer of software pertaining to paragraph 5 subsequently, for analyzing purposes outside the own private business premises is prohibited.
4. The following uses are strictly prohibited for the license holder:
 - 4.1 every copy of the software or documentation which is not in strict accordance with the provisions in paragraph 2.2.
 - 4.2 every change or decompilation of the software that is not in strict accordance with legal laws and provisions. Insofar that the license holder is entitled to establishing the interoperability of the software with other computer programs or is entitled to the decompilation of the software, the licensor declares himself willing towards the license holder to either provide the necessary information pertaining to the source code of the software or to make the necessary changes to the software at an appropriate price.

- 4.3 all distribution and all sub-licensing, especially all renting or other commercial cession of the software to a third party. In particular, the product is under no circumstances allowed to be imported into the system of a third party.
- 4.4 every use for other than internal purposes, e.g. the processing of data belonging to third parties (task data processing).
- 4.5 Licensing is carried out according to the SVC capacity levels. In the case of changing the capacity levels, a re-licensing according to the current SVA price list is required. The license holder is thus legally bound to report changes in the SVC capacity levels.

§2 Copy right, the Right of Reproduction and Access Protection

1. The delivered software program is copyright protected (§§ 69a ff. UrhG). This also applies to further programs acquired along with a program package and its contents, e.g. data carriers, user manual, keyboard stencil, etc.
2. The license holder obtains through the acquisition of the software only the ownership of the data carriers on which the software has been stored, of which SVA GmbH reserves the right of ownership until the ultimate settlement of the account. All rights of the license holder are regulated completely in the licensing agreement. Apart from his lawful rights, the license holder is not entitled to any other rights.
3. SVA GmbH particularly reserves all rights of reproduction, publication, processing and utilization (see § 1 fig.3).

§3 Delivery Period

1. The commencement of the delivery period given by us presupposes the previously concluding clarification of all relevant technical queries.
2. The compliance with our obligations for delivery further presupposes the timely and proper compliancy of the commitments of the license holder.
3. In the case of default of acceptance on the side of the license holder or violation of other obligations to co-operate, we are entitled to reimbursement of the resulting damages including any additional expenses incurred. The right to further claims is reserved.
4. Insofar as the provisions of Fig. 3 are applicable, the danger of an accidental perishing or an accidental deterioration of the software at the specific point in time when the license holder defaults acceptance or defaults as debtor, is carried over to the license holder.
5. In the case when the software license is not directly obtained from the licensor but from another authorized distributor, the conditions of delivery of said distributor are applicable.

§4 Warranty

1. SVA GmbH guarantees the functioning of the software under normal usage conditions and in accordance with the specifications. The continuous and error-free operation of the software is not guaranteed.



2. The guarantee rights of the license holder presupposes that he has accordingly complied with his use of inspection obligations and his obligation to complain in accordance with § 377 HGB. The defects found during this inspection have to be immediately disclosed in writing in all instances by the licensor. Defects not identified during this orderly initial inspection but which occurred later, have to be reported in writing immediately by the licensor as soon as they are detected. The report must contain a reasonably adequate description of the defect to enable the license holder to identify and eliminate the defect. The disposal of the defect presupposes that the located defect can be reproduced by the licensor.
3. In the case of justifiable complaints about defects the licensor accepts responsibility through rectification of the defect or replacement delivery. Should it not be possible to rectify a defect within the appropriate time limit or should the supplementary performance not be possible or deemed unsuccessful, the license holder could demand a decrease in the compensation - insofar as the defect is not negligible – or a rescission of the contract. Insofar as the existence of not only negligible defects, the license holder has the right, with the presentation of the conditions (particularly with regard to blame), to claim for indemnity within the constraints of § 8.
4. The period of warranty amounts to 12 months from the date of delivery.
5. The warranty becomes null and void insofar as the license holder undertakes unauthorized changes or adaptations to the software, unless he can prove that said defects were not caused in whole or in part by these changes or adaptations and that the rectification of the defects through said changes or adaptations does not aggravate the problem.
6. The licensor points out that all software have been inspected against viruses with the help of an anti-virus program before surrendering it to the license holder, to reduce the risk of a computer virus infection. The licensor however recommends the license holder to also use anti-virus programs to protect his computer system if necessary from possible existing viruses.

§5 Violation of Proprietary Rights of a Third Party

1. Insofar as the license holder should be exposed to third party claims as a result of the violation of commercial proprietary rights due to the contractual use of software supplied by SVA GmbH, SVA GmbH undertakes to absolve the license holder from said claims as well as the appropriate legal costs of defense. However, this indemnity obligation applies only when:
 - a) the license holder notifies SVA GmbH in writing about the claims against him immediately after attainment of said claims,
 - b) SVA reserves the right to all defensive measures and settlement negotiations and
 - c) the license holder supports SVA GmbH with the defense or settlement of the claims through appropriate assistance.
2. When claims pertaining to the aforementioned section have been brought against the license holder or are

expected by SVA GmbH to be brought against him, SVA GmbH has the right at its own expense

- a) to modify or exchange the said software in such a way that the proprietary rights of the third party are violated no more, or
- b) to obtain the rights from said third party to use the software.

Should it not be possible for SVA GmbH to implement the aforementioned measures within an appropriate time, the license holder has the right to rescission of the contract or demand a decrease in the compensation.

3. Regardless of the indemnity obligation according to § 6 No.1 SVA GmbH is liable only within the constraints of § 7 for compensation for damages as a result of the violation of the proprietary rights of a third party.
4. The rights of the license holder according to this § 8 are not applicable, insofar as the violation of the proprietary rights of a third party is based on guidelines / specifications of the license holder or that the license holder implemented changes to the software not authorized by SVA GmbH, that the license holder used the software otherwise than the operating instructions of SVA GmbH or combines the software with programs or data processing facilities not authorized by SVA GmbH.

§6 Liability Limitation

1. The licensor is not liable for property damage caused by mild negligence on the part of the licensor or his assistant.
2. Liability is only applicable when the license material is left in the valid and original, unchanged condition.

§7 Confidentiality

1. The contracting parties commit themselves to indefinitely keep all information pertaining to the collaboration of said parties strictly confidential. Apart from the internal organizational structures and business processes this also particularly applies to all information and any other data explicitly labelled as confidential or labelled as business or trade secrets.
2. Excluded from the obligation of secrecy is only information which already had been legally in the possession of one party at the time of disclosure by the other party, is lawfully evident or legally obtained by a third party.
3. Exempted from the obligation of secrecy is remote information for whose disclosure a legal obligation exists, or which is disclosed to persons who have an obligation of secrecy. The contract party to whom such an exemption applies, carries the onus of proof of such exemption.
4. The parties ensure through appropriate contractual agreements that their employees who are respectively involved in this secrecy agreement are subject to the regulations contained in this General Terms and Conditions. The same applies to the provision of services by the parties to other third parties. On demand the parties will prove to each other in writing their compliance with these obligations, particularly within the constraints of



their official duty of the disclosure of information and where possible inform and support each other in the implementation thereof.

§8 Custodial Duty

The license holder will reposit the original data carriers delivered by SVA GmbH, as far as it is possible, in a secure location and will emphatically point out to his employees the importance of compliance with the contract conditions at hand.

§9 Extraordinary Notice of Cancellation

1. Both parties have the right to cancel the licensing contract on important grounds. An important ground is considered when the license holder:
 - a) does not pay due remuneration within 30 days, also after written extension of time by the licensor, or
 - b) to be in breach of the licensing conditions under § 1 or § 4.
2. Should an extraordinary cancellation occur as a result of the violation of a contract on the part of the license holder, said license holder is not entitled to the reimbursement of the license fees. All the rights of the license holder to the program expire. The license holder is obliged to delete all copies of the program. The right to claim for damages is reserved.

§10 Terms of Use for OEM Program Packages

BVQ contains the following IBM software:

DB2 BVQ Enterprise Authorized User single install (3 Authorized User pro BVQ License).

1. The license for the IBM software is an OEM version. The use of the IBM software is only allowed when used in combination with BVQ. The respective manufacturer license provisions of the deployed OEM software should be met and can be checked for compliance at any time by SVA.
2. The BVQ integrated software is the property of IBM or an IBM supplier and is copyright protected and licensed; IBM issues a non-exclusive license to the end customer for the use of the program.
3. The IBM software contained in BVQ may 1) be used in the above defined scope (3 authorized users per BVQ license) and 2) copies of the program including a security backup as support may be made and installed. The provisions of this license are applicable for every copy.
4. When the DB2 program is acquired as a program upgrade, it may not be used after the installation of the upgrade.
5. The license holder is obliged to ensure that every user uses the program in accordance with the regulations and provisions of this agreement, irrespective of whether access is gained locally or from a remote system.
6. Deviating from the provisions of this agreement, it is particularly not allowed to

1) use, copy, change or relay the program,

2) to reverse assemble or reverse compile the program, or
3) sub-license, rent out or otherwise relay the program.

7. SVA has the right to terminate the DB2 license without notice in the case of infringement upon the provisions of this agreement. In such a case the license holder is obliged to destroy all copies of the program, as well as the relevant proof of credentials.

§11 German Data Protection Act

In accordance with §§ 27, 28 BDSG SVA GmbH reserves the right to store, transfer nationally and internationally, use, change and delete personal data of the client for the implementation of business purposes. The data is stored at SVA GmbH. The client herewith receives notice in accordance with § 33 Section 1 BDSG. The client can contest the processing or use of his personal data for the purposes of advertisement, marketing and market research in accordance with § 28 Section 4 Clause 1. Objections should be addressed to the applicable instance [SVA GmbH, Borsigstraße 14, 65205 Wiesbaden-Nordenstadt, mail@sva.de].

§12 Applicable Law and Place of Jurisdiction

1. German law is applicable. The provisions of the UN Convention on Contracts for the International Sale of Goods (CISG) do not apply.
2. Place of execution and jurisdiction for commercial trade is Wiesbaden, Germany.

§13 Miscellaneous

1. Understanding of the contracting parties that deviate from the provisions of the General Terms and Conditions is to be made in writing. This particularly applies to the waiver of the written form.
2. Should one of the above provisions become obsolete, the remaining provisions will remain effective.