



## Scania Specific IT Terms & Conditions for Software Licensing

These Specific IT Terms & Conditions for Software Licensing (“STC-S”) apply to the licensing of software ordered by Scania. The Supplier shall license software in accordance with these STC-S which form an integrated part of Negotiation Protocols, Frame Agreements, IT Contracts and Purchase Orders together with Scania General Terms & Conditions for IT Purchase.

### 1 DEFINITIONS

Unless the context or circumstances clearly suggest otherwise, the following capitalized terms shall have the meanings stated below:

“**Delivery test**” means a test performed by Scania to control that License Object and Installation Services (if any) is delivered in accordance with the Contract.

“**Delivery test period**” means period for performance of Delivery test. Delivery test period covers, if not otherwise agreed in writing, a period of seven (7) working days before Agreed Delivery Date.

“**Description Software**” means a description of License Object including comprehensive description of the purpose, functionality, operation, capabilities, features and environment for the Software, as specified in appendix to the Contract.

“**Installation Service(s)**” means the installation service(s) that are to be performed by the Supplier under the Contract”.

“**License Fees**” means agreed fees and other compensation for licensing, as specified in appendix under this Contract, to be paid by Scania to the Supplier for the License Object.

“**Licensing Model**” means the business model under which the License Object is licensed to Scania, such as per user, per server or as an enterprise license, as specified in appendix to the Contract.

“**License Object**” means the Software and Documentation granted by the Supplier to Scania under this Contract.

“**Object Code**” means the machine executable version of Software derived from source code of Software, including any human readable program interfaces delivered by the Supplier under the Contract and needed for the execution of this license.

“**Open Source**” means computer software with its source code made available to the public by the copyright holder with a license that regulates the rights to study, change, and distribute the software to anyone and for any purpose.

“**Platforms**” means any computer system for which the Supplier will make the Software available under the Contract.

“**Software**” means any computer program provided to Scania by the Supplier under the Contract in Object Code form and any Updates and copies thereof made in accordance with the Contract.

“**Source Code**” means the human

readable embodiment of the licensed Software, whether such embodiment is contained on paper or other form of media.

“**Specification Software**” means the specification of Software and Installation Services, which the Supplier is to deliver pursuant to appendix to the Contract, as well as subsequent changes thereto as agreed in writing.

“**STC-M**” means Scania Specific IT Terms and Conditions for Maintenance and Support.

“**Updates**” means any and all updates, upgrades, revisions, additions, modifications, enhancements and versions and releases of License Object as the context may require and/or as further defined in the Contract.

Definitions governing this STC-S are also found in Scania General Terms & conditions for IT Purchase (hereinafter also referred to as “**SGTC-IT**”).

### 2 LICENSE GRANT AND SCOPE OF LICENSE

2.1 The Supplier hereby grants to Scania the world-wide, non-transferable (except as set forth in f) below) and non-exclusive, irrevocable, perpetual rights and licenses to:

- a) use, adapt, modify and make extracts from the number of copies of the License Object licenced under the Contract,
- b) install, incorporate or merge the Software into any equipment, network or other software wherever located and in whatever configuration of Scania.
- c) incorporate, merge or install the Documentation or modifications thereof into any other documentation,
- d) grant the right to use the License Object stated in a) and c) above to Scania Affiliated Companies and Scania Dealers,
- e) make as many copies of the License Object as required for exercise of the licenses granted under the Contract,
- f) assign the rights to use the License Object stated in this Clause 2 to Scania Affiliated Companies.

The rights and licenses to the License Object granted above shall include a right for any third party consultant, supplier, sub supplier and/or partner to use the License Object on behalf of said rightful user. The right to use applies irrespective of where the third party operates.

2.2 The Supplier shall retain on behalf of itself or the original owner title to any Intellectual property rights in the License Object.

2.3 Should Scania need modifications and/or additional licenses of the License Object, the Supplier shall offer to make such modifications and/or additional licenses on reasonable conditions. The modifications shall be deemed License Object and the License Fees shall apply.

2.4 Except as expressly permitted in the Contract, Scania may not, at any time during or after the termination of the Contract, (i) sell, assign, lease, distribute or otherwise transfer or make available to a third party the License Object, or (ii) copy or reproduce the License Object, or (iii) modify translate, reverse engineer, decompile, disassemble, or create derivative works based on the Software, save to the extent permitted by applicable legislation.

2.5 Scania shall be entitled to make reasonable number of copies of the License Object, free of charge, for back-up and/or archival purposes.

2.6 Scania shall be entitled to transfer, free of charge, copies of License Object between users, computers, servers, platforms or networks at Scania.

### 3 OPEN SOURCE

3.1 The Supplier shall not include any Open Source in the License Object.

3.2 However, if the Parties have agreed that Open Source shall be included in the License Object, the relevant Open Source, special conditions and copyright owners shall be specified in appendix to the Contract. The Supplier shall in all other parts be responsible towards Scania for the License Object including Open Source according to the terms and conditions of the Contract.

### 4 INTELLECTUAL PROPERTY RIGHTS

The Supplier hereby grants to Scania the right to use the Supplier trademarks in connection with the distribution of the License Object in accordance with the terms of the Contract. Scania shall comply with the Supplier’s reasonable instructions regarding the use of such trademarks.

## **5 DELIVERY TERMS AND FORM, INSTALLATION SERVICES AND ACCEPTANCE**

5.1 The Supplier shall deliver the License Object, on requested media and format, in the Swedish or English language and the Installation Services (if any) in accordance with the Purchase Order and the provisions of the Contract.

5.2 License Object and Installation Services (if any) shall be delivered in accordance with Agreed Delivery Date by Agreed Delivery Date. Description Software and Documentation.

5.3 Scania shall have the right to perform a Delivery test of each delivery during the Delivery test period.

5.4 If the delivery is delayed the Delivery test period shall instead be calculated from the time when License Object is delivered or installation is completed.

5.5 The Actual Delivery Date shall be the date on which:

- i) Scania approves the delivery of License Object and Installations Services (if any) in writing; or
- ii) the License Object and Installation Service satisfies the Description Software after Scania makes a justified objection to the delivery and a new Delivery test was able to be performed, and Scania has accepted the delivery in writing.

5.6 The Supplier shall inform Scania immediately if there is a risk that the Supplier cannot fulfil its obligations relating to the delivery of License Object and Installation Services and shall take all reasonable actions to fulfil such obligations.

5.7 The Parties shall have designated contact persons, as set forth in the Contract, with relevant qualifications for exchange of information pursuant to this provision.

## **6 LATE DELIVERY AND PENALTY**

6.1 Unless otherwise agreed the Supplier shall be deemed to be in delay when the Actual Delivery Date for the License Object including Installation Services (if any) occurs after the Agreed Delivery Date.

6.2 The Supplier is entitled to a reasonable extension of time where the delay is due to circumstances for which Scania is liable or due to Force Majeure (according SGTC- IT).

6.3 In the event of a delay, of whole or part of the delivery, Scania shall be entitled to receive a penalty. The penalty shall be paid per each commenced day of delay, with two (2) percent of the compensation for the delivery (License Object including Installation Services (if applicable)), subject to a maximum of twenty (20) percent thereof.

6.4 If the (License Object including Installation Services (if applicable)), are delayed in any respect more than ten (10) days, Scania is entitled to terminate the Contract, including relevant Purchase Orders, in whole or part.

6.5 Scania shall also be entitled to damages due to the delay, subject to the limitations set forth in SGTC-IT (Limitation of Liability). Penalties which are paid due to delay shall be set off when the amount of damages is calculated.

## **7 INSTALLATION SERVICE**

7.1 The Supplier undertakes to perform the Installation Service with due skill, care and in a professional manner.

7.2 The Supplier shall in good time before the installation period request any necessary information and prerequisites from Scania relevant for performing the Installation Service.

7.3 Scania shall perform agreed preparations and take other steps necessary for installation in accordance with the Contract.

7.4 The Supplier shall perform the Installation Services at agreed premises and in accordance with generally applicable regulations and according to Scania Policies and Procedures.

7.5 The Parties shall cooperate and consult with each other in conjunction with performance of the Installation Service. Moreover, the Parties shall inform each other of any and all relevant circumstances and events or matters which may be of significance for provision of the Installation Service.

7.6 The Supplier is obliged in the course of performing the Installation Services to collaborate with any other suppliers designated by Scania.

7.7 The Supplier may only use its own personnel for the Installation Services and may not engage subcontractors unless agreed in writing with Scania. If Supplier, following approval by Scania, engages the services of a subcontractor, the Supplier is responsible for the work performed by the subcontractor in the same way as for its own work.

## **8 LICENSE FEES AND LICENSING MODEL**

8.1 The Supplier is entitled to License Fees for License Object in accordance with agreed Licensing Model in an appendix to the Contract, and compensation for Installation Services (if any) in accordance with applicable terms in the Contract.

8.2 Terms and conditions governing compensation, currency, invoicing and payment etc. are regulated in Clause 4-6 in SGTC-IT and in an appendix to the Contract.

## **9 PAYMENT**

9.1 The License Object and Installation Services (if any) shall be invoiced after Actual Delivery Date, unless otherwise stated in the Purchase Order, determined payment plan or other agreement between the Parties.

9.2 All invoices issued by the Supplier shall include at least the following details.

- (i) Reference to the Contract number and Purchase Order number;
- (ii) Supplier company name and address;
- (iii) Supplier VAT-number and Supplier company registration number;

- (iv) Scania's invoice address (as shown in the Purchase Order);
- (v) Scania Requestor and Requesting Department;
- (vi) Quantification and Identification of invoiced License Object and Installation Services.

## **10 DOCUMENTATION (USER AND PLATFORMS)**

10.1 The Supplier shall provide Scania with relevant and complete Documentation related to the License Object including instructions for the users as well as information about the Installation Services, which is to be available to Scania at Agreed Delivery Date.

10.2 The Documentation shall be made available to Scania at the latest ten (10) day(s) before the start of the Delivery test period and included in the License Fees.

10.3 The Documentation shall be written in English, unless otherwise agreed by the Parties.

## **11 WARRANTIES AND LIABILITY FOR DEFECTS**

11.1 The Supplier acknowledges that Scania has entered into this Contract in reliance upon the Supplier's expertise in selecting and supplying Software fit to meet Scania's business requirements.

11.2 The Supplier warrants that;

- a) it has sufficient rights and interest in the License Object and other materials supplied hereunder to grant the rights and licenses granted hereunder,
- b) the License Object shall function properly for its intended use,
- c) the License Object will operate on the Platforms and operate and conform to the Description Software and the Documentation (except for defects or non-conformities causing minor and trivial deviations there from).

11.3 The Supplier warrants that the Software does not and will not contain program code, programming instruction or set of instructions that is intentionally constructed with the ability to damage, interfere with, disable or otherwise adversely affect any software or any trap door or other mechanism enabling unauthorized access or modifications.

11.4 The Supplier warrants that Updates of the Software provided by the Supplier to Scania will not have a material adverse effect on the overall performance of the Software or the functioning of the Software or be incompatible with the previous version of the Software.

11.5 The Supplier warrants that the media on which the Software is delivered to Scania will be free from material defect in design, workmanship and materials and that the Documentation fulfils the requirements set forth in Clause 10.1.

11.6 The Supplier warrants that it has not included or used any Open Source or anything similar in the Software, or in the development of the Software, nor does the Software operate in such a way that it is compiled with or linked to any of the foregoing.

11.7 The Supplier warrants that the Installation Service are performed in accordance with the Contract.

11.8 The warranties in Clause 11.2-11.5, 11.7 shall only apply to defects and non-conformities reported in writing during a period of one (1) year from Actual Delivery Date of the Licensed Object, Installation Service or Update. The Supplier's responsibility under the said warranties shall be to

- a) Use its best efforts to correct any non-conformity or defect; or
- b) If, in spite of the Supplier using all its best efforts, it proves impossible to correct the defect or non-conformity in the Licensed Object, Scania may return the affected Licensed Object against repayment by the Supplier of the License Fees paid in relation to such Licensed Object or,
- c) demand compensation for the loss which arose as a result of defects or shortcomings in the License Object, Installation Service or Update.

## 12 THIRD PARTY SOFTWARE (DEVELOPMENT KITS ETC.)

12.1 The Supplier is responsible for any defects and/or shortcomings from third party software (development kits etc.) included and/or used in the Software.

12.2 The Supplier will secure that Scania has all necessary rights to use any third party software included in the Software.

## 13 MAINTENANCE AND SUPPORT & RELEASE PLAN

Scania Specific IT Terms & Conditions for Maintenance & Support ("STC-M") shall apply on agreed maintenance and support services and/or agreed release plan provided by the Supplier to Scania, unless other terms are agreed in writing by the parties.

## 14 CONTINUITY OF SUPPLY

14.1 The Supplier shall six (6) months in advance inform Scania in writing of any plans to suspend or close down manufacturing of the Software, in order to permit Scania to place consolidated Purchase Orders for future demands.

14.2 Scania shall be entitled to place Purchase Orders within six (6) months of such written notice for delivery within twelve (12) months of said notice.

14.3 Scania retains the right to continue to use older versions and releases of Software instead of Updates and Upgrades introduced by the Supplier.

14.4 The Supplier shall have an obligation to provide maintenance and support services to Scania on the License Object, if Scania request so, for a period of three (3) years from the purchase of the License Object. After the end of such period the Supplier undertakes to use its best efforts to continue to provide support services, on a time and material basis, if so requested by Scania.

## 15 AUDIT

15.1 The Supplier is entitled to conduct audit(s) under the Contract to ensure that Scania fulfil its obligations under the Contract.

15.2 The Supplier shall not be entitled to conduct audit(s) during a period of six (6) months following signature of the Contract and the Supplier shall not be entitled to perform audit(s) during general industrial holiday.

15.3 All documentation and correspondence in connection with the audit shall be in English.

15.4 The Supplier shall request Scania's written consent no later than four (4) months prior to the date on which the Supplier wishes to conduct an audit.

15.5 The Parties shall mutually specify particulars of the audit process in a separate agreement prior to the performance of the audit.

15.6 Scania is entitled to require that each person involved in an audit enters into a non-disclosure agreement with Scania regarding that audit.

15.7 At the request of Scania, the Supplier shall provide such information which may reasonably be required by Scania in order for Scania to take part in the audit.

15.8 The audit can be performed by an independent firm of auditors appointed by the Supplier and approved by Scania. The Supplier shall compensate the independent firm of auditors for audits performed at Scania.

15.9 The Supplier shall be entitled, through the independent auditor, to review, during regular business hours, only those records directly relevant for Scania's compliance with its rights of use as defined in the Contract.

15.10 The Supplier, itself or through the independent auditor, shall not be entitled to install any software in Scania's IT environment when performing the audit.

15.11 If an audit reveals that Scania has underpaid fees to the Supplier, Scania shall be liable to pay for such underpaid fees in accordance with the License Fees. The liability given in this Clause constitutes the only obligation and liability of Scania with respect to underpaid fees and is in lieu of all other liabilities whether expressed or implied.

15.12 Each Party is responsible for their own costs with respect to the audit.

## 16 ESCROW

16.1 Upon Scania's request, the Parties will negotiate in good faith an escrow agreement regarding the deposition of the source code of any software that is part of the Contract or a global key file giving unrestricted access to such software. The terms and condition for such an agreement shall provide for the release of the source code or the key file if:

- a) Scania is entitled to terminate the Contract in accordance with Clause 30 of the SGTC-IT;
- b) The Supplier discontinues to market software that is part of the Contract; or

c) The Supplier discontinues to generally make available maintenance service and support service.

16.2 Upon source code or key file being released to Scania, Scania shall be automatically granted, free of charge, a non-exclusive, irrevocable, non-transferable license to use, copy and modify the source code and the key file in accordance with the Contract.

## 17 EFFECT OF TERMINATION

17.1 In addition to what is set forth in the Contract together with the SGTC-IT, regarding term and termination and effects of termination the following shall apply.

17.2 In case of termination of the Contract by either Party under the provision governing term and termination, all rights and the Supplier obligations in respect of the License Object furnished hereunder shall continue free of charge.

17.3 After termination of the Contract by Scania under the provision governing premature termination, all rights in respect of License Object furnished hereunder shall continue free of charge.

17.4 After termination of the Contract by the Supplier under the provision governing premature termination, all Scania's rights in respect of the License Object shall cease.