

Conditions of Use for RPLAN Software Licences

Section 1 Subject of the agreement

(1) The subject of these Conditions of Use is the granting of rights to use and exploit the computer programs described in the quote (hereinafter referred to as the Subjects of the Licence).

Section 2 Rights to the product

(1) ACTANO shall grant the Customer the non-exclusive and non-transferable right to use the named products for the described number of users of the Subjects of the Licence. Users are all users of the Subjects of the Licence whose names are registered on the RPLAN server (Named User Principle).

(2) The above rights are unlimited in time.

(3) The above rights apply exclusively to the Customer, no third parties. Third parties in these terms are companies not associated with the Customer. In particular, third parties include sub-contractors or consortium partners or joint venture partners of the Customer. In the case of associated companies (between 51 and 100% of shares in the company owned by the direct customer/buyer) the usage rights may be transferred "downwards", regardless of the location.

(4) The Customer shall inform ACTANO of the installation location (in case of several installations, the installation locations) of the Subjects of the Licence and of any changes to these locations. The number of clients may not exceed the number of defined users.

(5) In all other respects, copyright and exploitation rights for the software remain exclusively with ACTANO.

Section 3 Back-up copies, editing and decompilation

(1) The Customer is granted the right to copy the Subject of the Licence. This shall be limited to copies on computer systems in its direct ownership used for the Subject of the Licence and to copies which require loading, displaying, playing, transferring or storing of the Subject of the Licence. In all other respects the Customer has the right to make back-up copies required to back up the data, which shall be marked as such.

(2) The software must not be decompiled.

Section 4 Delivery of the software

(1) The Customer shall have the Subject of the Licence, including object code or Java code in machine-readable form delivered on state-of-the-art data media which can be read on the Customer's computer systems or shall have it delivered by remote data transfer. The Customer shall receive a program description as an electronic document in English and a copy of the user manual as a hardcopy.

(2) Delivery shall be according to Incoterms CPT destination.

(3) If it is planned that ACTANO carries out installation at the Customer's premises, the Subject of the Licence according to Section 4, Paragraph (1) shall be delivered by an ACTANO employee who is responsible for the installation.

Section 5 Prices and terms of payment

(1) The Customer shall pay ACTANO the agreed licence fee in accordance with the latest valid regional price list or according to the agreed terms and conditions. The regional classification is based on the respective registered office of the Customer/contractual partner.

(2) All prices are net plus statutory value added tax.

(3) The licence fee shall be due upon delivery of the Subject of the Licence according to Section 4 of this Agreement to the Customer.

(4) The invoice shall be sent when the Subject of the Licence is delivered. The Customer shall pay the net price within 30 days from the date of invoice; the Customer shall pay the net price for services rendered within 30 days from the date of invoice. Other fees (software maintenance and other fees) shall be due in accordance with the terms listed in the quote or in the Agreement.

(5) ACTANO may review the number of users at any time using suitable measures. For this purpose the Customer shall procure the respective information and data for ACTANO in the necessary scope and format - also electronically if so required. If the number of users exceeds the number that is agreed in the quote or in the Agreement, the Customer shall immediately purchase an extended licence at the respective valid list price.

Section 6 Warranty

(1) ACTANO shall guarantee that the software essentially complies with the functions described in the user documentation and that it is free of defects that could nullify or reduce the software's value or suitability for the use intended in the Agreement or the typical use. ACTANO shall not be liable for minor deviations or shortfalls.

(2) The warranty period shall begin with delivery of the first copy of the Subject of the Licence, including user documentation. The warranty period for software maintenance shall begin when the maintenance service has been provided, when the defect is actually remedied and upon delivery of the update or upgrade. The warranty period is 24 months.

(3) In case of defects ACTANO is entitled and obliged to remedy these at its own expense. ACTANO may also deliver a replacement of equal quality.

(4) If, in spite of attempting to rectify a defect twice, ACTANO should be unable to eliminate a defect which the Customer has complained about in the proper manner, and if this considerably reduces or makes impossible the Subject of the Licence's fitness for use in terms of the description in the user documentation, after setting a reasonable period of grace in written form, the Customer may withdraw from the Agreement relating to the respective software module or may demand that the fee is reduced for the respective software module. In case of defects that ACTANO is responsible for due to a breach of its duties, instead of a reduction or withdrawing from the Agreement, the Customer may demand compensation due to non fulfilment of performance.

(5) The warranty does not include defects that are caused by the Customer or third parties commissioned by the Customer as a result of modification or incorrect use of the Subject of the Licence, or by the use of hardware components that do not comply with the specifications of the Contractor for operation of the Subject of the Licence.

Section 7 Liability

(1) Regardless of the legal basis, ACTANO shall be liable

a) in case of intent or gross negligence of its legal representatives and executive staff,

b) in case of intent or gross negligence on the part of any other agent only if a duty is breached which is of special importance for fulfilling the purpose of the Agreement.

c) in case a warranted property is lacking, only for typical and predictable damages that could have been prevented with due care and warranted properties, and

d) in all other cases only when an essential contractual duty is breached, inability to perform and delay, in which case compensation shall be limited to typical, predictable damage that is not rectified.

(2) ACTANO's liability for such damage - apart from intent and gross negligence on the part of legal representatives and executive staff - shall be limited in all cases

a) for the delivered Subject of the Licence to the amount of the licence fee the Customer has paid for the defective software module and

b) for the provision of services or software maintenance to the amount paid for the service that forms the basis for the claim, or the annual software maintenance fee

c) however, this shall not exceed €500,000.

(3) ACTANO expressly excludes any further liability.

(4) The Customer acknowledges that the individual limits shall apply independently of each other. If a limit cannot be implemented, this shall have no influence on the other limits.

Section 8 Act of God

(1) If one of the parties to the Agreement should be prevented from performing its contractual duties due to an Act of God, the duties that cannot be fulfilled shall be suspended for the duration of the Act of God. The party to the Agreement that is affected by the Act of God shall inform the other partner of this occurrence without delay. The party to the Agreement that is affected shall make every attempt to avoid the consequences of the Act of God and when the Act of God no longer exists, shall recommence its duties without delay.

Section 9 Infringement of an industrial property right

(1) ACTANO, at its own expense, shall defend claims against the Customer arising from infringements of industrial property rights based on deliveries and services supplied by ACTANO, assuming the Customer acknowledges these claims and informs ACTANO about the assertion of such rights by third parties without delay. The Customer shall grant ACTANO all authorisations and authorities that are required so that ACTANO, at its own expense, can take part in any legal actions, especially also by means of compromise.

(2) If third-party industrial property rights have been infringed, ACTANO may either procure the right for the Customer to continue using the product, replace the respective software modules or change them so that they no longer infringe any industrial property rights, or, if this is not within the scope of reasonable possibilities, take back the respective software module and repay the Customer the fee it has paid.

Section 10 Other provisions

(1) Supplementary or deviating provisions shall be regulated in writing in a separate agreement.

(2) ACTANO does not acknowledge the Customer's Standard Terms and Conditions, also not if ACTANO, knowing the Customer's Standard Terms and Conditions, provides the service to the Customer without provisos.

(3) If, when purchasing the Subject of the Licence, the Customer also requests services and software maintenance, the maintenance conditions for RPLAN software and the Standard Terms and Conditions for Services shall automatically become an element of the purchase order and/or the Agreement.

(4) In case of contradictions between the provisions of these conditions and/or other contractual agreements between the Customer and the Contractor, the following sequence shall apply:

a) Other appendices to this Agreement and their supplementary sheets in the order in which they are numbered

b) The text of this document

c) RPLAN software maintenance conditions and/or Standard Terms and Conditions for Services, assuming services are ordered

d) The text of an accepted purchase order

e) Customer's Standard Terms and Conditions, assuming they are an element of this Agreement

ACTANO may use subcontractors to provide services based on this Agreement.

(5) The validity and the interpretation of this Agreement are subject to the laws of the Federal Republic of Germany, The United Nations Convention on Contracts and the International Sale of Goods shall not apply.

(6) The place of jurisdiction shall be the Contractor's registered office.

(7) If the RPLAN reporting module is also purchased, the provisions of the Provider Agreements on the ACTANO web site under the heading AGB (Standard Terms and Conditions) between ACTANO and Business Objects, including stipulation of which law shall apply, shall apply exclusively. These conditions should be understood as if there were a direct contractual relationship between BO and the buyer.