

General Terms and Conditions of ITEMIS AG for YAKINDU Products for non-commercial and academic Licences

itemis AG

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IMPORTANT! This English version is merely for the purpose of information. The legally binding text is the [German text](#).

1. Applicability of the contractual conditions

- a. These General Terms and Conditions (hereinafter: "**GTC**") shall exclusively apply to the provision of the proprietary software product YAKINDU Statechart Tools of ITEMIS AG, Brambusch 15 - 24, D-44536 Luenen, Germany, for non-commercial and academic software licenses in the version retrievable for placing orders under legal.itemis.com/revisions/products/, provided that nothing otherwise is stipulated. Other contractual conditions shall not become substance of the contract, even if ITEMIS AG does not expressly object to them. Such shall also apply if, upon entering into similar contracts, no reference thereto is made.
- b. These GTC shall not apply to any ITEMIS AG open-source products.

2. Purpose of the contract

- a. The purpose of these GTC shall be the delivery of standard software and its related preparation for a non-commercial and academic use, and the granting of usage rights contemplated under Clause 4.
- b. Services of another nature (e.g., software maintenance, setting up and installing software, training, etc.) shall not be the purpose of these GTC and shall be described in separate GTC of ITEMIS AG as necessary.

3. Services

- a. ITEMIS AG shall make the software products available to the person and/or party placing the order (the "**PPO**") for a usage period of twelve months for a non-commercial (private) use or the usage within an academic environment. No hand-over by data carriers shall be owed. The PPO will receive the licence key via email to.
- b. The PPO shall have no claim to hand-over the source program.
- c. The product description retrievable at the time of ordering at YAKINDU Products (www.yakindu.de) shall be decisive for the scope, for the type, and for the quality of the services. Subsequent changes to the scope of the service shall require written agreement or written confirmation by ITEMIS AG. Other information or agreements will solely become object of the contract if both parties agree upon these amendments in writing.
- d. Product descriptions and depictions in test programs are specifications; however, they shall not be guarantees.
- e. The PPO will receive new versions of the software to keep it updated and prevent malfunctions. These updates include technical modifications, improvements, small functional extensions and patches for corrections or other workarounds for technical issues. These updates and revisions will be called a new version of the program.
- f. Not part of these GTC is the delivery of updates with major functional extensions or new products or the obligation to develop the software further.
- g. ITEMIS AG will deliver such updates solely via download from the internet.
- h. In each instance, ITEMIS AG shall render all services in keeping with proven state-of-the-art technology.

4. Rights of the PPO in the software

- a. The software (program and user handbook) is legally protected. Provided that nothing to the contrary is expressly mentioned, ITEMIS AG shall have the right, in the relationship of the contracting partners, to copyrights, patent rights, trademark rights, and all other service intellectual property rights in the software and in other objects which ITEMIS AG hands over to or makes accessible to the PPO.
- b. ITEMIS AG makes use of the third-party software product *eclipse.org*. Third-party software products shall be made available "as is" without any guarantees extending beyond the guarantee provided by law.

For the mentioned third-party software the following licence terms apply:

Eclipse public license, Version 1.0 (www.eclipse.org/legal/epl-v10.html)

- c. Apart therefrom, the PPO shall acquire usage rights in the software in order to use it for twelve months in a non-commercial or an academic environment for its own purposes. Such shall include the authorization to copy the programs on random access memory and on hard drives, and to create the back-up copies of the programs necessary for such a secure operation. The PPO shall not be allowed a usage of the software extending beyond the rights granted below.
- d. It shall be prohibited to copy the user handbook and other documents handed over by ITEMIS AG, if these documents were handed over to the PPO not as downloads but rather in printed form.
- e. The forwarding of the software (in whole or in part) to a third party is forbidden.
- f. The PPO shall be able to decompile the interface information of the software only in accordance with § 69e of the German Urheberrechtsgesetz (the Copyright Act), and then only if it has informed ITEMIS AG of its intentions in writing and has asked for transfer of the necessary information with a notice period of at least two (2) weeks. Prior to each activation by third parties, the PPO shall procure for ITEMIS AG a written declaration from the third party stating that this party is directly obligated vis-a-vis ITEMIS AG to comply with the provisions established in Clauses 4 and 8.
- g. The PPO shall have only a provisional, revocable usage right. ITEMIS AG shall, in particular, revoke this provisional usage right if the PPO does not use the software within a non-commercial or an academic environment. In this event, ITEMIS AG shall be able to demand from the PPO the return of the objects handed over or the written assurance that they are destroyed, in addition to the deletion or destruction of all copies and the written assurance that such has taken place.
- h. All other exploitation activities, including, but not limited to, leasing, renting out, and dissemination in physical or non-physical form, are forbidden without prior written permission by ITEMIS AG.
- i. Contractual objects, documents, suggestions, test programs, and so forth belonging to ITEMIS AG, which are made accessible to the PPO before or after entering into the contract, shall be considered - if not freely accessible - as business and operational secrets of ITEMIS AG and shall be kept confidential pursuant according to Clause 9.

5. PPO's duties to cooperate

- a. Prior to entering into the contract, the PPO shall have reviewed that the specifications of the

software meet its wishes and requirements. The essential functionality characteristics and conditions of the software are known to the PPO.

- b. The PPO shall implement appropriate precautions for the event that the program, in whole or in part, does not properly function (e.g., by backing up data, by disruption diagnosis, and by reviewing results regularly). The PPO shall be responsible for ensuring operation of the work environment.

6. Material and title defects

- a. The software shall have the stipulated quality, shall be suitable for usual use, and shall have the usual qualities of software of this type; however, it shall not be error-free. The qualities represented in the respective product description shall be deemed stipulated. A functional impairment of the software which results from hardware defects, environmental circumstances, operator error, or the like, shall not constitute a defect. A negligible deviation in qualities shall not be taken into consideration.
- b. The liability of ITEMIS AG against the PPO for material defects in the software is limited to the fraudulent concealment of such defects in the software. In this case, ITEMIS AG will according to § 524 (1) of the Buergerliches Gesetzbuch (the Civil Code) compensate the purchaser for the resulting damage.
- c. The liability of ITEMIS AG against the PPO for deficiencies in the right to the software is limited to the fraudulent concealment of such defects on the software. In this case, ITEMIS AG will according to § 524 (1) of the Buergerliches Gesetzbuch (the Civil Code) compensate the purchaser for the resulting damage.
- d. The PPO shall instruct ITEMIS AG in writing and without undue delay in the event that a third party enforcing intellectual property rights (e.g., copyrights or patent rights) against it. The PPO shall authorize ITEMIS AG to pursue the dispute alone against the third party. If ITEMIS AG makes use of this authorization, the PPO shall not be able to acknowledge the third-party claims itself without the consent of ITEMIS AG. ITEMIS AG shall defend against the claims of the third party at its own expense and shall release the PPO from all costs associated with the defense of these claims, provided that these are not based upon duty-breaching conduct of the PPO (e.g., duty-breaching usage of the programs).
- e. Claims of the user for the removal of defects by the ITEMIS AG do not exist when delivering free software (at no charge).

7. Liability

- a. ITEMIS AG shall tender compensatory damage payments or reimbursement of unavailing expenditures, regardless of legal grounds (e.g., for debt or similar obligations based in commercial law, for breach of duty, and for tortious acts), unlimitedly for malice or gross negligence, for injury to life, body, or health, in accordance with the provisions of the German *Produkthaftungsgesetz* (the Products Liability Act). ITEMIS AG shall have no further liability.
- b. The limitation of liability shall also apply to the personal liability of employees, representatives, organs, and vicarious agents of ITEMIS AG.
- c. Objections based on contributory negligence shall remain available to ITEMIS AG.

8. Audit right

- a. The PPO shall enable ITEMIS AG to review upon demand whether the PPO is qualitatively

and quantitatively using the program within the purpose of the licenses it has acquired. For this purpose, the PPO (i) shall provide ITEMIS AG with information, (ii) shall guarantee access by ITEMIS AG to view relevant documents and files, and (iii) shall facilitate review by ITEMIS AG or by an auditor appointed by ITEMIS AG of the hardware and software environment employed.

9. Non-disclosure

- a. "Confidential Information" shall mean all information and documents of each party, labeled as confidential or, based upon surrounding circumstances, are to be regarded as confidential, including, but not limited to, information concerning operational processes, business relationships, and know-how.
- b. The parties are to keep such Confidential Information in confidence. This obligation shall continue to exist for a term of three (3) years following the order.
- c. Excepted from this obligation shall be such Confidential Information,
 - i. which, upon entering into this contract, was already demonstrably known or thereafter became known to a third party, without the nondisclosure agreement having been breached or provisions of law or official regulations having been violated;
 - ii. which, upon entering the contract, is publicly known or thereupon is made publicly known, insofar as such is not due to a breach of this contract;
 - iii. which must be disclosed due to obligations under law or by order of a court or of an official agency. To the extent possible and permissible, the recipient obligated to disclosure shall notify the other party in advance and shall provide it the opportunity to make legal objections to the disclosure.

10. **Data protection/data security** The contracting partners shall observe the pertinent data protection regulations as provided by law. If and to the extent that ITEMIS AG, when rendering services, obtains access to personal data within the meaning of § 11 sentence 5 of the German *Bundesdatenschutzgesetz* (the Federal Data Protection Act, the "*BDSG*"), ITEMIS AG shall collect, process, or use these data only within the parameters of the instructions of the PPO as the "owner of the data". The PPO shall advise ITEMIS AG, without being requested to do so, if there exists, within the parameters of the remote access, any possibility of access to the personal data of customers, employees, or other concerned persons. For this purpose, it shall be possible to agree upon additional provisions as needed in the individual case, under a separate agreement in accordance with § 11 (2) BDSG. Pursuant to § 5 BDSG, the contracting partners shall obligate their employees comply with data confidentiality.

11. Final provisions

- a. The PPO shall be able to transfer to third parties any claims against ITEMIS AG based upon this contract only following written consent of ITEMIS AG.
- b. Amendments to and restatements of to these GTC shall require the written-form (*Schriftform*). Such shall also apply to the amendment to or deletion of this clause. The written-form (*Schriftform*) shall be satisfied only by transmitting the signed original.
- c. German law is to be applied to this contract, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods dated 11 April 1980 (UN sales law).
- d. The place of performance shall be the seat of ITEMIS AG. The sole venue shall also be the

seat of ITEMIS AG, to the extent that the PPO is a merchant or a legal person under public law.

- e. Should individual provisions of these GTC be ineffective, such shall not impair the effectiveness of the remaining provisions. In lieu of the ineffective provision, the contracting parties shall implement one which legally and financially is best attuned to the objective of the contract.