

Runtime Licence for the Software Product FlexGantt

1. Scope

¹ This runtime licence (hereinafter also the “Licence”) is valid for the software product FlexGantt produced by Dirk Lemmermann Software & Consulting (hereinafter the “Licensor”). FlexGantt (hereinafter the “Software”) is a framework for the creation of so-called Gantt Charts based on the programming language Java.

² This Licence regulates the conditions applicable for passing on to end-customers Gantt Charts which have been created using the Software by a legitimate purchaser thereof (hereinafter the “Licensee”). Any use of the Software that differs from or exceeds the limits of this Licence is prohibited.

³ This Runtime Licence is valid only in conjunction with a Development Licence for the Software issued by the Licensor to the Licensee. The Runtime Licence is limited to passing on Gantt Charts which are passed on by the Licensee in a product or as the results of a project. This Licence shall become valid only after the Licensee has given the Licensor written notification of the product or project in connection with which the Licence is to apply. If Gantt Charts are passed on in several products or as the results of several projects, the Licensee shall purchase a separate Runtime Licence in connection with each of the products and/or projects concerned.

⁴ Any general terms or purchase conditions of the Licensee that may possibly exist are hereby refuted. They shall not become part of the agreement.

2. Subject matter of the Licence

¹ The subject matter of the Licence is the Software as it was purchased by the Licensee under a separate Development Licence.

3. Rights of use

¹ Supplementing the rights of use granted to the Licensee under the Development Licence, the Licensor grants the Licensee by means of this Runtime Licence the non-exclusive and, subject to the proviso set out in section 12 below, enduring right to pass on copies of the Software to end-customers, provided that such passing-on occurs only in conjunction with Gantt Charts created by the Licensee through use of the Software in relation to a product or project notified in writing to the Licensor and subject to restriction of the use of the Software by the end-customer exclusively for utilising the Gantt Charts for the end-customer’s own purposes. Within these limits the end-customers shall be entitled, within their company or organisation, to make the Software accessible to their staff, to install and use as many copies of the Software as they wish and to create the requisite copies of the Software for such use.

² Any use of the Software by end-customers over and above that described in para. 1 is expressly prohibited, in particular any use of the Software to create or modify Gantt Charts by end-customers themselves, or passing on the Software or copies thereof to third parties, the granting of access to the Software to third parties in any form whatsoever, in particular through networks, and any modification to the Software, with the exception of the right to eliminate errors, providing that such right is compulsorily granted to an end-customer under applicable law. In its agreements with end-customers, the Licensee is obliged to restrict their rights of use as stipulated in this section 3 and the other provisions of this Runtime Licence, in particular sections 4 and 6.

4. Copyright and other rights in the Software

¹ The copyright and all other intellectual property rights and rights against unfair exploitation in the Software, in particular the exclusive right to permanent or temporary, full or part duplication by any means and in any form, the exclusive right to modify the Software and to create works derived therefrom and the exclusive right to distribution, including the right to provide access through networks such as the Internet, the right to hire out and the right to loan, are held exclusively by the Licensor and shall remain the property thereof.

² With respect to the Software, the Licensee and the end-customer shall have only the non-exclusive rights granted through this Runtime Licence, which also include the right to eliminate errors and the right to make a copy for back-up and archive purposes. Copyright notices, trade marks, company and other business designations of the Licensor or third parties which appear in the programs or the documentation or in other material accompanying the Software may not be altered, deleted or removed by the Licensee and/or the end-customers, even in copies of the programs or documentation.

5. Transfer of the Licence to third parties.

¹ The Licence and the Licensee's rights of use pertaining thereto may be transferred to third parties only on the basis of special prior agreement with the Licensor, and such agreement must ensure that the Licence is applicable in unchanged form and only for Gantt Charts relating to that product or project for which the Licence was originally purchased by the Licensee and that the third party concerned possesses a valid Development Licence for the Software.

6. Decompilation.

¹ Any decompilation of the Software, also when carried out by end-customers, is permitted only if (i) this is essential to achieve interoperability of the Software with independently created software, (ii) the information necessary for achieving interoperability was not made accessible by the Licensor within a reasonable period after receiving a written enquiry from the Licensee or the end-customer concerned, and (iii) it is restricted to such parts of the Software as are necessary for achieving interoperability.

² The right pursuant to para. 1 does not allow the information obtained within the limits of the exercise thereof to be used for purposes other than the achievement of interoperability, or to be passed on to third parties, or to be used for the development, production or marketing of computer programs substantially similar in their expression to the Software, or for any other actions infringing the exclusivity rights of the Licensor in the Software.

7. Maintenance and support

¹ No Software maintenance or support services shall be supplied by the Licensor, even for end-customers, unless the parties have concluded a separate maintenance or support agreement.

8. Prices and payment conditions

¹ Except where there exists express agreement to the contrary, the Licence fees for the Software shall be determined in accordance with the Licensor's prices in force on the date of conclusion of this Runtime Licence. The Licensor reserves the right to alter the prices at any time. The Licence fees do not include any services such as, for example, installation, implementation, training or support. If the Licensor provides any services, it shall be entitled to invoice these in accordance with current rates on a time-and-materials basis subject to the existence of other agreements in any separate contracts for services.

² Providing nothing else has been expressly agreed, all fees, rates and prices are in Swiss francs exclusive of VAT and other taxes, levies, customs duties or fees of any type and excluding incidental costs such as insurance, expenses etc.

³ Invoices from the Licensor are due for payment within 30 days of the date of the invoice. In case of non-compliance with payment periods or dates, the Licensee shall additionally owe default interest of 1% per month, without any reminder, with effect from the due date for payment. Set-off of any counter claims by the Licensee is permitted only with the prior approval of the Licensor, or if there has been a non-appealable judgment.

9. Infringement of intellectual property rights

¹ The provisions of the Development Licence concluded between the parties shall apply. Any warranty by the Licensor in respect of the Licensee's end-customers covering possible infringement of third party rights through the Software is excluded.

10. Warranty

¹ The provisions of the Development Licence concluded between the parties shall apply. Any warranty by the Licensor in respect of the Licensee's end-users for defects in the Software is excluded.

11. Liability

¹ The provisions of the Development Licence concluded between the parties shall apply. Any liability by the Licensor in respect of the Licensee's end-customers is excluded.

12. Termination of the Licence

¹ In the event of any infringement of the provisions of this Licence by the Licensee, such as infringement by the Licensee of the Licensor's rights in the Software, in particular in the case of use of the Software above and beyond the rights of use stated in section 3, or in the event of default in payment on the part of the Licensee, the Licensor shall be entitled to terminate this Licence with immediate effect after the expiry without result of a 10-day grace period, set in writing, for restoration of the lawful circumstances. In this case, any outstanding claims for remuneration on the part of the Licensor shall become due immediately, and shall be settled by the Licensee within 10 days. Any payments already made by the Licensee shall be forfeited and shall remain the property the Licensor.

² On termination of this Licence, the Licensee shall, at the request of the Licensor, immediately and irretrievably delete the Software and all complete or part copies thereof and shall confirm this to the Licensor in writing, or shall return them to the Licensor.

13. Partial invalidity

¹ If individual provisions of this Licence agreement are or become fully or partly invalid or non-enforceable, this shall not affect the validity of the remaining provisions. The parties shall replace the ineffective provision with an effective one which, as far as legally possible, most closely approaches the economic purpose of the ineffective provision.

14. Applicable law and place of jurisdiction

¹ This Licence agreement and the complete legal relationship between the parties are subject to substantive Swiss law. The United Nations Convention on Contracts for the International Sale of Goods (CIKSG) and the Hague Convention Relating to a Uniform Law on the International Sale of Goods shall not apply.

² In the event of disputes arising from or in connection with these conditions or the legal relationship between the parties as a whole, the courts in the place where the Licensor's registered office is located, at present Zurich, shall have exclusive jurisdiction.