

## TMS ATM Software Products

# General Terms & Conditions

NOTE: The General Terms and Conditions below apply to all software products from TMS ATM Software B.V. (TMS).

### **IMPORTANT - READ BEFORE COPYING, INSTALLING OR USING**

Do not copy, install, or use the Materials (as defined below) provided under these General Terms and Conditions and/or any coinciding agreement until you have carefully read the following General Terms and Conditions.

By entering into an agreement, copying, installing, or otherwise using the Materials, you agree to be bound by these General Terms and Conditions. If you do not agree to the General Terms and Conditions, do not copy, install, or use the Materials.

## General terms and conditions for TMS Software Products

### **1. DEFINITIONS**

- A. "Agreement" means any agreement between TMS ATM Software B.V. and the Client, any alteration or amendment thereto, as well as any (legal) acts in preparation of the Agreement or in relation to the execution thereof.
- B. "ATM" means an automated teller machine, i.e. an electronic telecommunications device enabling customers of financial institutions to perform financial transactions, such as cash withdrawals, deposits, transfer funds, or obtaining account information.
- C. "Client" means the counterparty of TMS ATM Software B.V., including any possible third parties involved by or through the Client.
- D. "Communications" means any materials, information or other communication transmitted or posted by the Client to a TMS ATM Software B.V. website or provide to TMS ATM Software B.V. under this Agreement.
- E. "Evaluation License" means a License, yet restricted so the Client may use the Materials only for internal evaluation purposes and only for the term of the evaluation time period, which is controlled by the relevant Agreement. For the avoidance of doubt, the Client may not distribute any portion of the Materials. The Client may install copies of the Materials on a limited number of computers provided that the Client is the only company using the Materials. A separate license is required for each additional and/or individual Software Agent to be installed on an ATM in all other cases. The limit of the number of Licenses shall be mentioned in the Agreement and is defined in the license file provided by TMS ATM Software B.V.
- F. "Excluded License" means a license that requires, as a condition of use, modification, or distribution, that (a) the code be disclosed or distributed in source code form; or (b) others have the right to modify it.
- G. "General Terms" means these General Terms and Conditions of TMS ATM Software B.V.



- H. "License" means a non-exclusive, non-assignable, single copyright license to use the Materials in conjunction with a single Software Agent to be installed exclusively on the Clients' hardware, and a license to install the central part of the software on a server used or leased by the Client, which server communicates with the Software Agent.
- I. "Materials" means the Software, documentation, Sample Source, sample programs and other materials, including any updates and upgrade thereto, for the applicable Software, that is provided to the Client under a/an (license) Agreement by TMS ATM Software B.V. Materials also include the Redistributables.
- J. "Party" means either TMS ATM Software B.V. or the Client, and "Parties" means TMS ATM Software B.V. and the Client together.
- K. "Perpetual License" means a License with one-time payment, in combination with an annual software maintenance fee of 18% of the original list price of the License. TMS ATM Software B.V. shall have the right to adjust such software maintenance fee on a yearly basis.
- L. "Redistributables" means the Software Agent installation files used on the PC of the ATM to manage the communication between ATM modules and the relevant server or any other system that can communicate through the software products from TMS ATM Software B.V. with TMD Security ATM Security Products.
- M. "SaaS License" means a License where the price is based on a monthly fee, to be paid annually in advance, and includes the software maintenance fee. The Software under the SaaS License will run on the computer hardware of the Client.
- N. "Sample Source means example of group of computer instructions
- O. "Software" means group of computer instructions
- P. "Software Agent" means group of computer instructions that runs on the computer in an ATM that communicates with the central monitoring system of TMS ATM Software B.V.
- Q. "Software Module" means group of computer instructions that performs a specific task.
- C. By entering into an agreement with TMS ATM Software B.V., the Client accepts and acknowledges these General Terms.
- D. These General Terms in connection with the Agreement contain all rights and obligations of the Parties and supersedes any and all prior agreements, statements and or (legal) acts between the Parties, whether in writing or not. In case of conflict between these General Terms and the Agreement, the terms of the Agreement prevail.
- E. If any of these General Terms shall be null of void or if one or more General Terms are annulled, this shall have no consequences for the applicability of the other General Terms. Should such situation occur, then Parties shall agree on new terms in replacement of such annulled or null or void General Term(s), which shall be consistent with the purpose and purport of the annulled or null or void General Term(s).
- F. Client hereby renounces its right to dissolve, annul and/or alter these General Terms based on article 6:265 and further, article 6:228 respectively article 6:230 of the Dutch Civil Code.
- G. These General Terms have been made available to the Client and shall again be made available to the Client at first request. These General Terms are also published on [www.tmsatmssoftware.com](http://www.tmsatmssoftware.com).
- H. An Agreement is entered into by ordering any Materials, either in writing, electronically or orally, or by using the Materials.
- I. The Client guarantees that the individual who requests or accepts any offers, orders, quotations and/or requests thereto and/or performs any other (legal) acts in relation to the sale, distribution, installation, maintenance and/or any other acts in relation to Materials, is lawfully representing the Client, regardless the legal form of the Client.

### 3. PRICES AND PAYMENT

### 2. APPLICABILITY

- A. These General Terms are applicable to all Agreements, including all offers, orders, quotations and/or requests thereto and all other (legal) acts in relation to the sale, distribution, installation, maintenance and/or any other acts in relation to the Materials.
- B. General conditions used or applied by the Client are hereby expressly rejected and shall not be applicable to offers, quotations, requests for quotations or offers by the Client, orders, sales and supply of products to the Client, any other agreements and/or legal relationships between TMS ATM Software B.V. and the Client, unless expressly stipulated otherwise in the Agreement and agreed upon in writing by TMS ATM Software B.V.  
If - notwithstanding the foregoing - the event occurs that both these General Terms and the Client's general terms and conditions apply, and there is a discrepancy or a dispute between any of the provisions of TMS ATM Software B.V. General Terms and one or more of the provisions of the client's general conditions, these General Terms shall prevail.
- A. All prices communicated by TMS ATM Software B.V. shall be in Euros and excluding VAT and other government levies or administration, installation, transport or dispatch costs, unless expressly stated otherwise in the Agreement. TMS ATM Software B.V. hereby reserves the right to implement price changes and/or to correct typing of printing errors regarding prices.
- B. TMS ATM Software B.V. shall provide the Client with a clear invoice stating which Materials and/or services shall be provided and for which prices these are provided.
- C. Payments to be made by the Client to TMS ATM Software B.V. shall be made within 30 days after the receipt of the invoice, to a bank account number indicated on the invoice.
- D. In the event that unforeseen circumstances arise between the date of entering into the Agreement and execution thereof, which circumstances have not been included in the invoice, TMS ATM Software B.V. shall be entitled to adapt its prices. In case of a price increase of 10% or more in relation to the originally invoiced amount, the Client shall have the right to terminate the Agreement.



- E. Any amount due shall be paid by the Client without any deduction, set-off or counterclaim. The Client shall not have the right to suspend payment. If any amount due under the Agreement and these General Terms has not been received within the period mentioned in the Agreement or in these General Terms, the Client shall be in default without any further notice being required.
- F. As from the moment of default, the Client shall be liable for any and all costs of (legal) representation in relation to the collection of payments by TMS ATM Software B.V. The extrajudicial costs (buitengerechtelijke kosten) shall be deemed to amount to a minimum of 20% of the amount invoiced, with a minimum of EUR 250. TMS ATM Software B.V. shall provide all invoices either by e-mail or by regular post to the Client.

#### 4. DELIVERY PERIODS

- A. None of the (delivery) periods stated or agreed by TMS ATM Software B.V. are final deadlines. TMS ATM Software B.V. will make a proper effort to honor the (delivery) periods as much as possible.
- B. TMS ATM Software B.V. is entitled to suspend fulfilling its obligations under an Agreement in the event that the Client fails to fully meet its (payment) obligations and/or fails to do so in time. Any adverse effects due to the suspension will be for the expense of the Client.

#### 5. COMPLAINTS

Comments or complaints regarding the Materials and/or any ancillary services must be submitted to TMS ATM Software B.V. within fourteen (14) days of receipt of the relevant Materials and/or services. In the absence of such notification, any claim against TMS ATM Software B.V. in relation to faults in the Materials or services lapses, except in case of willful misconduct (opzet) or gross negligence (bewuste roekeloosheid) of TMS ATM Software B.V.

#### 6. LICENSE GRANT

Subject to all of the terms and conditions of the Agreement and these General Terms, TMS ATM Software B.V. grants one or more Licenses to the Client. The scope and duration (time period) of such License(s) depends on the type of License(s) obtained. The Agreement shall state whether (i) an Evaluation License, (ii) Perpetual License, and/or (iii) SaaS License has been granted.

#### 7. LICENSE RESTRICTIONS AND COPYRIGHT

- A. The Client may use the Materials only in accordance with the number of applicable Licenses obtained from TMS ATM Software B.V., or for backup or archival purposes. The Client may not provide or sell any copies to another user.
- B. TMS ATM Software B.V. Software products are not free of charge and are protected by international copyright laws and international treaty provisions. The Client will not remove any copyright notice from the Materials. The Client agrees to prevent any unauthorized copying of the Materials. Except as expressly provided herein, no license or right is granted to the Client directly or by implication, inducement, estoppel or otherwise, specifically TMS ATM Software B.V. does not grant any express or implied right to the Client under any patents, copyrights, trademarks, or trade secret information.

- C. The License is applicable per copy of the Software used per installation of a single Software Module. The Client is responsible for obtaining the correct number of Licenses from TMS ATM Software B.V. In case of dispute on the required number of Licenses for the installed base from the Client, it is the Client's duty to prove the correct number of Licenses that should have been obtained. A License is valid after the Client has placed a purchase order for the correct number of Licenses with TMS ATM Software B.V., and TMS ATM Software B.V. has confirmed the acceptance of beforementioned purchase order in writing. Software is delivered in the form of a client-server system, licensed per ATM connected to the server, that can be used by the Client to manage information retrieved from the modules inside an ATM that enables remote monitoring of the aforementioned ATM modules.
- D. The Client nor any third party may: (i) use or copy the Materials except as provided in the License; (ii) rent, lease or otherwise provide the Materials to any third party; (iii) assign the License or transfer the Materials without the express written consent of TMS ATM Software B.V.; (iv) modify, adapt, or translate the Materials in whole or in part except as provided under the License; (v) reverse engineer, decompile, or disassemble the Materials; (vi) attempt to modify or tamper with the normal function of the Materials or Software; (vii) distribute, sublicense or transfer any parts of the Software or any components of the Materials or Redistributables and Sample Source and derivatives thereof to any third party except as provided under the License; (viii) modify or distribute the (source) code of any part of the software so that any part of it becomes subject to an Excluded License, (ix) include the Redistributables in malicious, deceptive, or unlawful programs or (x) transfer the Materials and/or any of its rights under the Agreement to another party.
- E. Distribution of the Materials is subject to the following limitations. The Client (i) shall be solely responsible towards its customers for any update or support obligation or other liability which may arise from the distribution of the Materials, (ii) shall not make any statement that its product is "certified" or that its performance is guaranteed by TMS ATM Software B.V., (iii) shall not use TMS ATM Software B.V. name or trademarks in any way, (iv) shall prohibit disassembly and reverse engineering, (v) shall not publish reviews of Materials designated as beta (i.e. software under development) and (vi) shall indemnify, hold harmless, and defend TMS ATM Software B.V. and its suppliers from and against any claims or lawsuits, including attorney's fees, that arise or result from the distribution of any product.

#### 8. NO WARRANTY AND LIMITATION OF LIABILITY

- A. The Materials and information are provided "as is" with no warranties, express or implied, including but not limited to any implied warranty of merchantability, fitness for a particular purpose, non-infringement of third party intellectual property rights, fitness for a particular purpose or any warranty otherwise arising out of any proposal, specification, or sample. If the media on which the Materials are furnished are found to be defective in material or workmanship under normal use for a period of ninety (90) days from the date of receipt, TMS ATM Software B.V.'s entire liability in any case and



the Client's exclusive remedy shall be the replacement of the Materials. This offer is void if the media defect results from accident, abuse, or misapplication.

- B. If TMS ATM Software B.V. is unable to replace the Materials, the total damages shall under no circumstances surpass the amount of the invoice sent. Furthermore, the total obligation of TMS ATM Software B.V. to pay damages – if any – shall be limited to the amount payed out under the relevant liability insurance of TMS ATM Software B.V.
- C. Neither TMS ATM Software B.V. nor its suppliers shall be liable for any damages whatsoever (including, without limitation, damages for loss of business profits, business interruption, loss of business information, personal injury or death, or other loss) arising out of the use of or inability to use the Materials, even if TMS ATM Software B.V. has been advised of the possibility of such damages, except in the case of willful misconduct (opzet) or gross negligence (bewuste roekeloosheid) of TMS ATM Software B.V.
- D. The Client guarantees that it shall refrain from using the Materials in any unlawful manner, contrary to applicable laws and regulations and/or contrary to any provision of the Agreement or these General Terms.

#### 9. USER SUBMISSIONS

The Client agrees that any Communications will be considered non-confidential and non-proprietary. TMS ATM Software B.V. will have no obligations with respect to the Communications. The Client agrees that TMS ATM Software B.V. and its designees will be free to copy, modify, create derivative works, publicly display, disclose, distribute, license and sublicense through multiple tiers of distribution and licensees, incorporate and otherwise use the Communications and all data, images, sounds, text, and other things embodied therein, including derivative works thereto, for any and all commercial or non-commercial purposes. The Client is prohibited from posting or transmitting to or from a TMS ATM Software B.V. website or provide to TMS ATM Software B.V. any unlawful, threatening, libelous, defamatory, obscene, pornographic, or other material that would violate any law. If the Client wishes to provide TMS ATM Software B.V. with its confidential information, TMS ATM Software B.V. requires a non-disclosure agreement ("NDA") to receive such confidential information.

#### 10. PERSONAL DATA

TMS ATM Software B.V. aims to refrain from processing personal data as defined in the general data processing regulation (EU 2016/679) (GDPR). The Client indemnifies TMS ATM Software B.V. from any claim in relation to the processing of personal data, whether resulting from the use of the Materials or otherwise.

#### 11. INTELLECTUAL PROPERTY RIGHTS

- A. All intellectual property rights vested and/or contained in the Materials and/or services provided within the framework of the Agreement are held exclusively by TMS ATM Software B.V. and/or its suppliers. TMS ATM Software B.V. expressly reserves – in accordance with Article 15 subsection 1 of the Dutch Copyright Act (Auteurswet) – its copyrights.
- B. No part of these General Terms implies a transfer of IP rights. TMS ATM Software B.V. expressly does not waive its personality rights as referred to in Article 25 of the Dutch Copyright Act (Auteurswet).

#### 12. TERMINATION

The Agreement becomes effective on the starting date of the Agreement and will continue until terminated. If the Client uses the Materials under the control of a time-limited license, for example an Evaluation License, the Agreement terminates without notice on the last day of the time period, which is controlled by (i) the Agreement and (ii) the License key code for the Materials. The minimum contract term for a TMS SaaS License Agreement is 3 years, after 3 years the TMS SaaS License Agreement is automatically renewed for one year terms. If a customer would like to terminate the TMS SaaS License Agreement after the first 3 years, there is a notice period of 6 months applicable. For TMS SaaS License Agreements that have been automatically renewed after the first 3 years, the notice period for termination is 3 months. After termination of a TMS SaaS License Agreement there will be no refund of prepaid TMS SaaS License fees for the remaining period. TMS ATM Software B.V. may at its own discretion terminate the License at any time if the Client is in breach of any of the terms of the Agreement and/or these General Terms, without any right to compensation for the Client. Upon termination, the Client shall immediately return the Materials to TMS ATM Software B.V. or destroy the Materials and all copies thereof.

#### 13. APPLICABLE LAWS

The Agreement and these General Terms shall be governed by the laws of The Netherlands. The United Nations Convention on Contracts for the International Sale of Goods (CISG or Weens Koopverdrag) is hereby expressly excluded.

All disputes arising in connection with the Agreement and/or these General Terms, shall be exclusively submitted to the competent court in Amsterdam, The Netherlands.

#### 14. THIRD PARTY PROGRAMS

The Materials may include third party programs or materials. The license terms applicable to such programs or materials apply to the Client's use of them. TMS ATM Software B.V. shall not be liable for such programs or materials, nor for any damages whatsoever (including, without limitation, damages for loss of business profits, business interruption, loss of business information, personal injury or death, or other loss) resulting from such programs or materials.