

COMMERCIAL TERMS AND CONDITIONS

of

Global TCAD Solutions GmbH,

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GTS operates a software on the numeric simulation of semiconductor devices (hereinafter referred to as the "**Software**") and grants licenses for the Software. Moreover GTS provides services on customization, consulting and project management with regard to the Software. Furthermore GTS provides hardware locks to protect the software (dongle, hereinafter referred to as the "**Dongle**").

These Commercial Terms and Conditions ("**CTC**") govern the legal framework for providing individual services by GTS to its business and/or service clients as well as research and education institutions (the "**Client**"), whereby the latter exclusively consider a non commercial use and distribution of the Software.

§ 1 Scope of application

(1) On the date the Contractual Relationship pursuant to § 2 (1) is established, the Client acknowledges these CTC and these shall henceforth apply over the entire term of the Contractual Relationship. The Customer's commercial terms and conditions or terms and conditions of purchase, if any, do not automatically become part of the Contractual Relationship and shall apply only if GTS acknowledges these in writing in a particular case by virtue of an individual agreement.

(2) GTS employees and other vicarious agents or assistants GTS relies upon to provide the contractual service are not authorised to reach side agreements the contents of which exceeds the scope of the Contractual Relationship reached with the Customer or that of these CTC.

§ 2 Conclusion of contract and contract terms

The contractual relationship between the Customer and GTS ("**Contractual Relationship**") is exclusively based on a written offer to be provided by GTS and by an End User License Agreement (the "**EULA**"), both established by virtue of the Client's written and duly signed acceptance notice (the "**Acceptance Notice**").

§ 3 Subject-matter of the Contractual Relationship and scope of services

(1) The subject-matter of the services to be provided by GTS may be, alternatively or jointly:

(a) granting of an ordinary right of use with respect to the Software that is neither exclusive nor transferable and confined in fact and time to the term of the Contractual Relationship with the Client (*Werknutzungsbewilligung*);

(b) providing a Dongle

(b) participating in properly implementing and putting into operation the Software and provide support in the changeover, if any, to a new software system;

(c) conducting product training and provision of an e-mail service for enquiries of clients (customers) and error reports, if any;

(d) carrying out on a regular basis repair and maintenance work on the Software as well as Software updates. Software updates by GTS shall be billed separately. If it should become necessary to update the Software directly at the Client's premises, the related expenses (travel expenses, employee costs, etc.) incurred by GTS shall be invoiced separately.

(e) carrying out work to rectify a malfunction of the Software that has been reported in accordance with § 5 (2);

(f) providing services on customization, consulting and project management with regard to the Software

(2) The type and scope of GTS's services are exclusively subject to the written offer to be provided by GTS and to the EULA, as agreed by Acceptance Notice of the Client.

(3) Any changes of the volume of services to be carried out by GTS requested by the Client are subject to a written approval by GTS and may result in separately agreed dates and prices.

(4) If the Client fails to create the conditions required to enable GTS to provide services, GTS may refuse to execute a service. In this case, the costs of and expenses so far incurred for GTS's activities as well as costs of demounting, if any, shall be reimbursed by the Client.

(5) Program carriers, documentation and function specifications will be shipped at the Client's own cost and expense and risk. Any additional training or information requested by the Client will be charged separately.

(6) The Software as well as any documentation, proposals and test programs etc. relating to the contractual services are GTS's intellectual property and may neither be reproduced nor made available to third parties that are not part of the Client's operations. Unless otherwise agreed, "third parties" within the meaning of this provision also include the Client's branch offices or affiliated companies, if any. If no Contractual Relationship is concluded with the Client, those contractual items, documentation, proposals, test programs etc. shall be returned or deleted and may no longer be used.

(7) The Client is aware of the Software's essential functional features; the Client, itself, shall bear the risk that the Software may not meet the Client's desires and/or (operational) requirements, as the case may be. With regard to issues of doubt, the Client shall seek the advice of GTS' employees, its vicarious agents or third-party experts prior to concluding the Contractual Relationship.

(8) Any information on technical data or product features GTS provides in printed matter, catalogues, advertisements, price lists and other information and promotional materials merely represent a general description and labelling of GTS's services and may not be relied upon for asserting Client claims, if any. A guarantee as to a certain condition shall only be deemed to exist if such guarantee has been expressly indicated and agreed.

(9) Subject to timely prior notice, GTS may change, extend or limit the contents and scope of contractual services at any time in a manner that is reasonable for the Client. GTS will particularly take such measures if technical or legal circumstances so require or if this serves to protect the functionality of the Software.

§ 4 Client's services and obligations

(1) The Client undertakes to use the Software according to its intended purpose and the terms of the written offer to be provided by GTS and of the EULA, as agreed by Acceptance Notice.

(2) Changes to the system requirements that are within the Client's control shall be notified in due time prior to completion of service provision by GTS. Any delay and additional costs which arise due to any change in the performance of the services shall be borne by the Client.

(3) The Client shall timely make available free of charge any documentation, information and equipment within its control that may be necessary for the provision of contractual services owed by GTS. Moreover, the Client shall timely request any cooperation and the provision of documents by third parties which are required for the provision of GTS's services.

(4) If the Client fails to timely participate or provide or request deliverables, GTS's delivery and service dates shall be postponed accordingly and GTS shall separately charge additional expenses thus incurred.

(5) The Client shall immediately report to GTS in writing any change to its company name or legal form, if any, as well as its business address, invoice address and bank details. If no such change is reported, documents shall be deemed received by the Client if these were sent to the address or paying agent most recently indicated by the Client.

(6) Provided that a duly registered company name exists, the Client shall grant GTS the right to include the Client's company name or logo, if any, or trademark in a list of partners or references and to publicly announce the Client's Contractual Relationship with GTS.

§ 5 Acceptance and trouble shooting

(1) The Client shall accept from GTS the contractual services at the terms being determined in the written offer to be provided by GTS and in the EULA, as agreed by Acceptance Notice of the Client.

(2) Upon delivery, the Client shall subject the Software to a diligent performance test. Program defects or improper use of the Software, if any, occurring during the performance test shall be notified to GTS within a reasonable period of time, however, no later than within 5 (*five*) working days after delivery. Hidden defects of the product shall be reported within 3 (*three*) working days as of the date the defect becomes evident.

(3) Complaints shall initially be made electronically by e-mail to info@globaltcadsolutions.com and thereafter in writing addressed to the business address of GTS, accompanied by a detailed report on

(i) the type of defect;

(ii) the application where the defect occurred; and

(iii) measures, if any, already taken to rectify the defect.

If no error report is made within the period set forth in § 5 (2), the delivery shall be deemed approved by the Client.

(4) If the Client should already use the Software in real time operation, the Software shall be deemed accepted in any case.

(5) In case of a complaint pursuant to § 5 (2), the Client shall

(i) name a contact person; and

(ii) describe in detail the error that occurred.

If substantial defects exist that make real time operation of the Software impossible and if these are timely reported in an appropriate manner, the Client shall be required to declare acceptance again after the defects have been rectified.

(6) For purposes of error analysis and rectification of defects, the Client shall appropriately cooperate within the meaning of § 4 (providing all necessary information material) and shall grant access to the business premises. If GTS error analysis shows that there is no defect, which GTS would be required to rectify, GTS may charge the Client for frustrated expenses resulting from the error analysis at applicable hourly rates.

(7) If, in an unjustified manner, the Client fails to timely accept contractual services or can be held responsible for a defect, if any, in service provision, GTS shall be reimbursed for any damage it suffers as a consequence. The same applies if the rectification of a defect is affected or an existing damage is increased due to the Client having culpably neglected its cooperation duties.

(8) Power failures, malfunctions, maintenance work or other unavoidable events that are outside GTS's control may interrupt the provision of services. In such case, GTS will honestly and to its best belief strive to rectify malfunctions and interruptions as fast as technically and economically feasible.

§ 6 Copyright and use

(1) The Client shall herewith be granted a non-exclusive, non-transferable and timely – to the term of the Contractual Relationship – limited right to use the Software (the "**License Right**"). The nature and the scope of the License Right shall be derived from the written offer to be pro-

vided by GTS and from the EULA, as agreed by Acceptance Notice of the Client. The License Right shall be restricted to the Client's hardware (contractual system environment), that meets the conditions necessary for a proper use and implementation of the Software.

(2) In case the License Right is not being used in accordance with the written offer to be provided by GTS, the EULA and the provisions stated in these CTC, as agreed by Acceptance Notice of the Client, the License Right will terminate automatically with immediate effect and without notice from GTS. In this case GTS is entitled to stop any contractual services with immediate effect. Assertion of a GTS' claim for damages shall be expressly reserved.

(3) All copyrights to the Software and the contractually agreed services (programs, documentations, etc.) currently are and shall unrestrictedly be owned by GTS or its licensors' Technical University Vienna (TUW) also after the Contractual Relationship has been terminated. All specifications, further developments and adjustments of the Software or of programs based thereon that come into existence as a result of the Contractual Relationship with the Client shall belong to GTS's or its licensors' (TUW) (intellectual) property when they come into existence. These also include any rights that may arise worldwide from copyright or other provisions governing intellectual property rights.

(4) In the context of using the Software according to the terms of this Agreement, the Client may not edit, change or otherwise shape the Software, transfer it to third parties, connect it to other programs or retranslate (decompile) it into another display format. Likewise, it may not remove, bypass or change copying or safety mechanisms, program elements of digital rights management (DRM) security codes or the Software's marker features (property notices, brands, copyright notice).

(5) The Client may not allow third parties that are not part of the Client's operations to use the Software or temporarily or permanently transfer it to third parties. Unless otherwise agreed, "third parties" within the meaning of this provision also include the Client's branch offices or affiliated companies, if any.

(6) The Client shall hold harmless and indemnify and grant full satisfaction to GTS for noncompliance with the present conditions of use, including, but not limited to infringement of copyright or other intellectual property rights of GTS or third parties.

§ 7 Compensation, terms of payment

(1) GTS shall charge its regular fees, as announced to the Client, for providing the services described in § 3 (1). GTS is free to amend these rates from time to time in an adequate manner.

(2) Based on the regular rates as announced by GTS and amended from time to time, GTS shall charge the following surcharges for services (e.g. error analyses) it provides outside ordinary business hours:

surcharge of 50 % outside ordinary business hours and
100 % on Sundays and public holidays.

"Ordinary business hours" within the meaning of this provision are: Monday through Friday, 8 a.m. – 6 p.m. Central European Time (during the time of the year where Daylight Saving Time is in operation in Austria: Central European Daylight Saving Time)

(3) All fees are denominated in Euros exclusive of value added tax. Shipping costs, if any, shall be charged separately.

(4) If not agreed otherwise, fees are payable after receipt of the invoice on the due date indicated in the invoice or, in the absence of a due date, within seven calendar days after receipt of the invoice by the Client. If the Client is in default of payment, GTS may put the provision of the relevant services on hold until the relevant service (utilisation) fee has been paid in full. In case of default of payment, permission to use the Software may be revoked. If the Client is in default with two partial payments, GTS may accelerate payment of the full amount (*acceleration of maturity date*).

(5) Payment shall be deemed received on the date the amount is available to GTS or credited to GTS's bank account indicated in the invoice. In case of delayed payment by the Client, GTS shall charge default interest at a rate of 12 % p.a. as of the 15th day after the invoice date, unless costs in excess thereof have been incurred. In case of consumer transactions, the generally applicable default interest rate of 4 % p.a. shall apply. Dunning, enquiry and other costs incurred in the context of recovering a claim shall be borne by the Client. This shall not restrict GTS's right to assert any further damages.

(6) The Client shall bear all expenses arising in connection with payment transactions.

(7) The Client waives its right to set off any counterclaims against GTS's compensation claims, unless these counterclaims have been acknowledged by GTS in writing or determined by a court. Moreover, the Client may not withhold payments on the grounds of incomplete total delivery, guarantee or warranty claims or complaints.

(8) All tax liabilities arising from the Contractual Relationship with GTS, except benefit tax, shall be borne solely by the Client and do not constitute a part of the service fees hereunder. The Client shall hold harmless and indemnify GTS for any wrongful assertion of such tax claims.

§ 8 Warranty

(1) GTS provides its services on the basis of the generally valid industrial standards and practices. GTS warrants that the Software will be in operational condition on the provision date, possess the commonly expected qualities and will be consistent with the usual state of the art applicable at that time. However, the Client is aware that due to program errors it is impossible to provide an entirely error-free computer service according to the state of the art.

(2) If third parties assert claims or proprietary rights against the Client, GTS shall be notified immediately. The Client may not acknowledge third-party claims on its own initiative.

(3) GTS does not warrant for errors or other failures of the Software,

(a) due to errors of the hardware, the operating system or the software of other producers beyond GTS control;

(b) due to improper use of whatever nature or inappropriate handling by the Client, which could have been avoided by proper and diligent use;

(c) resulting from

(i) changed operating system components, interfaces and parameters,

(ii) use of inadequate organisation resources and data carriers, as far as these are required,

(iii) atypical operating conditions (including, but not limited to non-compliance with the installation and storage conditions), and

(iv) damage in transit;

(d) due to virus infection or other external effects outside GTS's control, such as fire, accidents, power failure, etc.;

(e) due to transmission errors on data carriers or on the internet.

(4) Any warranty that the Software is suitable for a specific purpose sought by the Client is excluded.

(5) If an order concerns the change or supplementation of already existing programs, warranty refers to such change or supplementation. This will not revive warranty for the original program. Programs that are subsequently changed by the Client's own programmers or by third parties are excluded from the warranty.

§ 9 Software support and maintenance

GTS provides software support and maintenance subject to the written offer to be provided by GTS, as agreed by Acceptance Notice of the Client.

§ 10 Liability and damages

(1) GTS shall be liable within the scope of statutory provisions for damage to the Client caused by officers, employees, vicarious agents or other individuals contractually authorised to provide services to the Client, only if intent or gross negligence is proven. Any liability of GTS for slight negligence is excluded.

(2) Liability for loss, destruction or damage of data shall be excluded, if the Client failed to take adequate or security measures customary in the industry. Except for personal injury, payment of damages to companies is limited to EUR 5,000.00 per event of damage.

(3) Recourse claims, if any, asserted against GTS by the Client or third parties in reliance on product liability within the meaning of the Austrian Product Liability Act (PHG) shall be excluded, unless the relevant party entitled to assert recourse claims proves that the mistake was within GTS's control and was caused by at least gross negligence.

(4) Events of force majeure which make it significantly more difficult or impossible to provide the contractual services entitle GTS to postpone the fulfillment of its obligations as long as that obstacle continues to exist and by a reasonable start-up period. Force majeure shall include strikes, lock-outs, government interference and similar circumstances, to the extent these are unpredictable, serious and have not been caused by GTS. GTS disclaims any liability in these cases.

(5) In case of transactions with entrepreneurs, any damage claims the Client may have against GTS shall forfeit as early as six months after the damage and the injurer have become known.

(6) As far as GTS's contractual liability is excluded, the same shall apply to the liability of officers, employees, vicarious agents or other individuals authorized under an agreement to provide services to the Client.

§ 11 Confidentiality and privacy policy

(1) The Client shall be solely responsible for any personal (user) data, whether these are sensitive data or non-sensitive data that GTS transmitted, used or processed in the context of providing its services.

(2) The Client is required to obtain the relevant individuals' consent prior to handling or processing (personal) data and shall hold harmless and indemnify GTS for third-party claims, if any.

(3) GTS and the Client as well as officers, employees or vicarious agents of GTS or the Client will keep confidential and use only for purposes of the relevant Contractual Relationship all trade and business secrets of the other party which may come to their knowledge within the scope of the Contractual Relationship as well as all content of the Contractual Relationship, esp. prices. The recipient will not make available such trade and business secrets and such content to a third party, except with the other Party's prior written consent.

(4) Upon termination of the Contractual Relationship, each party is required to return to the other party or destroy any confidential documentation it received in connection with the performance of this Agreement.

(5) These confidentiality obligations shall remain also after termination of the Contractual Relationship between GTS and the Client.

§ 12 No assignment

The transfer of the Contractual Relationship and the assignment of rights and obligations thereunder shall require the other Party's written consent.

§ 13 Final provisions

(1) These CTC shall be governed by and construed in accordance with Austrian law, to the exclusion of the UN Sales Convention. All disputes arising out of or in connection with these CTC shall be referred to the relevant court for Vienna-Inner City having jurisdiction in commercial matters.

(2) Any amendment of and modification to these CTC and to any other agreement shall be valid only if confirmed by GTS in writing.

(3) Should any term hereof be or become ineffective, invalid or non-enforceable, this shall not affect the effectiveness, validity or enforceability of the remaining terms hereof. The invalid or non-enforceable term shall be replaced by a valid and enforceable term, the economic purpose and economic result of which closest reflects the invalid term and the Parties' original intent. The Parties undertake to immediately record in writing and sign such replacing term.