



**Ergänzungen der AGBs hinsichtlich der Nutzung der Elektronischen-SoftwareDistribution (ESD) mittels td-activate-here, Stand der Informationen Dezember 2011, Verfügbar in englischer Sprache**

**Supplemental Terms and Conditions for the electronic distribution of Software (the “Supplemental Framework for Software”)**

**This Supplemental Framework for Software establishes the terms and conditions under which Tech Data will sell Microsoft and Symantec Software Products to Customer for resale to End-Users by allowing such End-User to download the Software Products via Tech Data’s Delivery Portal or fullintegrated XML Connection.**

**1. Definitions**

“activate-here.com Delivery Portal” means an online site hosted and maintained by Tech Data associated with the marketing and resale of each Software Product and on which EndUsers will be linked to manufacturer’s online site to download the Software Product purchased from Customer.

“Authorized Online Retailer” means a retail company who offers electronic software distribution directly to consumers and any entity and who also has their own web storefront with the link available to consumers to download activation key and has agreed to, and is in full compliance with, the Online Retailer Terms and Conditions which are attached as Schedule 2 to this Supplemental Framework for Software.

“End-User” means an individual who purchases a Software Product from Customer for use rather than resale or distribution.

“End-User License Agreement” means manufacturer’s End-User license agreement which governs the use of the Software Products by End-Users.

“InTouch” means Tech Data’s internet website, accessed solely through the address of [www.techdata.de](http://www.techdata.de).

“Personal Data” shall have the meaning as defined in Directive 95/46/EC or as defined in applicable local law.

“Software Product” means the manufacturer’s software products available at the activate-here.com Delivery Portal.

“Software” means the executable object code for manufacturer software accessed by a Software Product Key, including all subsequent versions thereof provided by the manufacturer.

“Software Product Key” means the unique confidential, non-transferable series of alphanumeric data elements that uniquely identify End-User’s entitlement to a Software Product, including its installation, activation and use.

“Terms of Use” means the terms applicable for using the activate-here.com web site

**2. License Grant and Restrictions**

2.1 For the duration of this Contract, Tech Data grants to Customer a non-exclusive, limited, nonassignable license to distribute Software Products to EndUsers. The foregoing license shall be (x) nontransferable, and (y) royaltyfree, with the exception of Customer’s obligation to pay for Software Product purchases.

2.2

- (i) Customer will not:
- disassemble, de-compile or otherwise reverse engineer the Software, Software Products, other product components, activate-here.com Delivery Portal or otherwise attempt to learn the source code, structure, algorithms or ideas underlying such items;
  - take any action contrary to the End-User License Agreement except as expressly and unambiguously allowed;
  - copy or otherwise reproduce any Software, Software Product, product component or activate-here.com Delivery Portal except as expressly permitted;
  - modify, alter, tamper with or reduce the content of any Software Product, Software, product component or activate-here.com Delivery Portal in any way; or
  - introduce any computer virus or other illicit code into any Software, Software Product, product component, activatehere.com Delivery Portal or manufacturer system.

(ii) Customer will not link or bundle the sale of any Software Product or product component with any unauthorized third-party product that creates a likelihood of confusion as

to the source or origin of the product, without prior written approval from manufacturer.

- (iii) Customer will distribute Software Product only with and subject to the terms of the applicable EndUser License Agreement or such other materials as may be included by manufacturer in any Software Product.

**3. Additional Order requirements and Delivery**

3.1 Software Products can be ordered via e-mail, fax, InTouch, EDI or web interface. The order for Software Products shall include the correct e-mail address of End-User. Tech Data reserves the right to reject an order placed by Customer.

3.2 Tech Data shall provide to End-User’s e-mail address a URL, and password to access the activatehere.com Delivery Portal. This enables EndUser to login on the activate-here.com Delivery Portal and retrieve the Software Product Key Code and to download the Software and activate it.

**4. Returns, Replacements**

4.1 No returns will be accepted for Microsoft Software Product Keys. For Symantec Software Product Keys, returns will only be accepted if a Software Product Key or Software Product itself is deemed to be defective in accordance with the End-User License Agreement or if End-User returned the Software Product to Customer by exercising his mandatory given legal rights under the applicable jurisdiction. In this case End-User will return the Product Key to Customer that will return the Software Products to Tech Data.

4.2 Tech Data will immediately replace any damaged or non-conforming Software Product Key or product component upon receipt of Customer’s or EndUser’s notification of such non-conformity or damage and the Customer’s or End-User’s completion of any return requirements specified in this Contract.

4.3 Customer shall not salvage or re-sell any damaged Software Key returned

by End-User, and shall take all steps required of it to prevent others from salvaging such items.

4.4 Tech Data shall use best commercially endeavors to provide reasonable EndUser support.

## 5. activate-here.com Delivery Portal

5.1 Customer ensures that End-User shall accept the Terms of Use of the activate-here.com Delivery Portal.

5.2 Tech Data shall use best commercially endeavors that the activate-here.com Delivery Portal is fully functional and accessible to End-User at all times. Nevertheless Tech Data reserves the right to suspend activate-here.com Portal temporarily or permanently and without prior notice. Tech Data will not be liable for any losses or damages resulting from activate-here.com Delivery Portal being unavailable.

## 6. Customer's other Rights and Obligations

6.1 Customer shall have processes and procedures in place, to the reaso-Ergänzungen der AGBs hinsichtlich der Nutzung der Elektronischen-SoftwareDistribution (ESD) mittels td-activate-here Stand der Informationen Dezember 2011, Verfügbar in englischer Sprache Supplemental Terms and Conditions for the electronic distribution of Software (the "Supplemental Framework for Software") This Supplemental Framework for Software establishes the terms and conditions under which Tech Data will sell Microsoft and Symantec Software Products to Customer for resale to End-Users by allowing such End-User to download the Software Products via Tech Data's Delivery Portal or fullintegrated XML Connection. nable satisfaction of manufacturer/ Tech Data, which are designed to prevent fraud relating to the Software, Software Products and Software Product Key. Customer will (i) ensure that the distribution, sale and disposition of Software Products comply with all applicable laws, rules and regulations, including but not limited to any applicable export laws and tax regulations as well as any European consumer regulation applicable towards consumers; (ii) prevent unauthorized distribution, duplication or pirating of Software Products; and (iii) not knowingly distribute or aide in the distribution of any counterfeit product components or Software Products.

6.2 Customer hereby acknowledges that it is its sole responsibility that End-User complies with the EndUser License Agreement.

6.3 Customer agrees to comply with the applicable data protection laws when collecting, storing, transferring, sharing and/or otherwise processing any

Personal Data in connection with this Contract. Customer guarantees to obtain End-User's express written consent to process, transfer and use its Personal Data that are provided by Customer or End-user to Tech Data for the objectives of this Contract. Customer further agrees to indemnify Tech Data in respect of any costs, charges or expenses incurred by Tech Data as the result of any breach of the data protection rules.

6.4 Customer agrees to indemnify Tech Data against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation, loss of data, the cost of labour and materials used and overheads incurred and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by Tech Data arising out of or in connection with use of the Software Products, Software, "activate-here.com" Delivery Portal and/or these Software Supplemental Framework for Software Terms.

6.5 Specific requirements for Symantec Software Products:

- Customer should use his best efforts to promote market and distribute the most current version of Symantec Software Products

- In case that Customer is running an eCommerce Site for selling to its customers he shall make links to any additional products (including new versions and updates of existing Software Products) available within two (2) days of their receipt by Tech Data

- Customer acknowledges and agrees, that Symantec shall retain all right, title and interest in and to any EndUser Data collected or received by Symantec (or any other reseller or entity that provides hosting, fulfillment or other services that is contractually engaged and appointed by Symantec)

- Customer shall use its best efforts to protect the Symantec intellectual property

- Customer shall comply with the Global Brand Protection Requirements, IT Security & Privacy Requirements, marketing & branding guidelines of Symantec which are attached as Schedule 1.

- Customer shall develop and maintain an online transaction system that allows End-Users to purchase one or more Software Products.

- Customer shall issue Software Product Key to End-Users, after product purchase, by the electronic delivery method(s) outlined in this Contract

- Customer shall develop and maintain a fulfillment system. End-User downloads the purchased Software Product using the electronic reseller's fulfillment system

- Customer shall provide customer services concerning the eCommerce transactions (including inquiries with respect to download, orders, credit card transactions and Software Product Keys) to End-User through a contact telephone number in the territory during the business hours (as required by local law), and by e-mail in the appropriate languages. In particular Customer shall be required to:

- (i) answer inquiries regarding Software Product order transactions and status by e-mail and/or telephone;
- (ii) answer End-Users' e-mail inquiries;
- (iii) respond to failed credit card or wire transfer transactions inquiries;
- (iv) process internet and telephone orders with payment options provided by Customer;
- (v) respond to failed download inquiries of Software Products;
- (vi) respond to order disputes and billing questions;
- (vii) answer pricing questions;
- (viii) resolve authentication problem inquiries of Software Products;
- (ix) respond to subscribe and unsubscribe requests from End-Users regarding broadcast e-mail messages on product upgrades and updates, online technical notes, and newsletters and promotions that are sent by Customer; and
- (x) respond to return and refund credit requests in accordance with the policy set forth in the applicable Symantec End-User License Agreement.

### 6.6. Online Retailers

In case Customer is an Authorized Online Retailer, the terms and conditions in Schedule 2 ("Online Retailer Terms and Conditions") attached to this Supplemental Framework apply.

For the avoidance of doubt, these Supplemental Framework for Software terms are hereby incorporated into Tech Data's General Terms and Conditions for deliveries and Conditions for Intouch/LOL. (both together the "Contract"). If there is any inconsistency between the provisions of this Supplemental Framework for Software and the Contract the provisions of Supplemental Framework for Software shall prevail.

Customer hereby agrees to abide by and comply with the Contract and this Supplemental Framework for Software at all times.

These Supplemental Framework for Software terms apply from 1 December 2011.

Customer accepts that these Supplemental Framework for Software terms may be amended upon notice or by posting on Tech Data's internet sites.