

Licence conditions for DirectSmile®

PLEASE READ THROUGH THE FOLLOWING CONDITIONS CAREFULLY BEFORE YOU OPEN THIS PACKAGE OR CLICK ON THE "ACCEPT" BUTTON. IF YOU OPEN THIS PACKAGE OR CLICK ON THE "ACCEPT" BUTTON, YOU ARE CONSENTING TO THESE CONDITIONS AND AGREEING TO ACCEPT THEM AS BINDING.

Chapter 1: General

This programme is made available for use, insofar as you use its commercial version, which is against payment, on the basis of a hire agreement. For this purpose, the stipulations of Chapter 2 of these licence conditions apply in addition to those of this chapter. Insofar as you use the non-commercial, free-of-charge version of the programme, it is made available for use on the basis of the stipulations contained in Chapter 3 of these licence conditions.

Section 1: Subject matter of the contract, conclusion of the contract

The subject matter of this contract is the right to use the "DirectSmile®" computer programmes including the accompanying documentation and dongles. DirectSmile holds all the rights to the software. The company claims copyright protection, trademark protection and patent protection for the programme. Any infringement of these rights is punishable by law.

The programme is made available for use on the basis of whatever are the current licence conditions, which can at any time be called up and viewed on "www.directsmile.de/licence".

By calling up and confirming the contractual conditions for "DirectSmile®" you have taken note of them. In every case, the contractual conditions become valid for all contractual agreements as soon as you request the granting of a licence number and the release of the programme.

Should you not agree to the contractual conditions, you are not entitled to use or to copy the software. In such a case, please contact us so that we can tell you how you can return the unused product and get a refund. In the case of download versions it is sufficient to delete them completely from all data storage devices.

Insofar as the licensee is a company, the inclusion of its general terms of business is not agreed to. The licensor is entitled to make use of sub-contractors in order to fulfil the obligations it has according to this agreement and to assign rights from this agreement to third parties.

Section 2: Use, reproduction

You are allowed to reproduce the programme that has been delivered provided that the reproduction in question is necessary for using the programme. Necessary reproductions include the installation of the programme from the original data storage device to the mass storage of the hardware being used or the loading of the programme into the virtual memory (RAM).

In addition, you can make a reproduction for security purposes. Further reproductions, in particular printing out the programme codes, are not permissible and will result in an immediate termination of the right of use.

You may use the software on any hardware that you have available. However, if you change the hardware, you must delete the software from the mass storage of the hardware you have used up till now. To store, keep in reserve or use the software simultaneously on more than one piece of hardware is not permissible. This also applies to running the software in a network which makes possible the simultaneous multiple use of the software.

Section 3: Decompiling, altering the programme

Decompiling (the translation of the programme code which has been delivered into other code forms) and reverse engineering (other forms of recreating the steps in the creation process of the software) are not permissible. The

system requirements which are necessary for the purpose of creating a functioning interface with an independently created software programme can be found in the documentation part of the Help file.

Alterations to the programme, in particular for the purpose of removing errors or extending the scope of its functions, are only permissible if the altered programme is employed solely for one's own use. For one's own use in this context includes the private use of the user. Copyright notes, serial numbers or other features that serve to identify the programme may on no account be altered or removed.

Any manipulation of the dongle(s), its/their data or environment is not permissible and will result in the loss of the right of use and/or will provide grounds for the extraordinary termination of the contract without notice.

Section 4: Subletting and passing on of print files

You have only acquired the right to use the software and you are therefore not allowed to sell or to make the software available to third parties. In case of a wrongful passing on of the software your right to use the programme ceases.

To sublet the software for the purpose of personal gain is, as is the case for passing on user data (pictures, print data), not permissible and will result in an immediate loss of your right to use the programme.

Section 5: Liability of the licensee

The licensee is liable to the licensor for any and every form of infringement of copyright, trademark rights or patent rights from this contract and for any and every contract violation. At the same time the licensee is also liable for employees and such persons as have been employed for the purpose of fulfilling the licensee's own obligations and for the violations by third parties who, for whatever reasons, have come into possession of the software unlawfully, unless the licensee can prove that this lay outside the scope of his responsibility.

Section 6: Data protection

The licensee is aware of and agrees to the fact that its personal details, which are necessary for this licence agreement to be carried out, will be stored. The licensee gives express consent to the collection, processing and use of its personal details. All such personal details will be treated in the strictest confidence by the licensor. Personal details will only be passed on to third parties for the purpose of carrying out the licence agreement.

At all times it is possible to demand information – free of charge – about the data which has been stored against your name and to correct this data or to have it blocked for advertising purposes. The licensee is entitled to withdraw its consent at any time, to take effect from that time on. In this case, the licensor undertakes to delete the personal data immediately, unless the licence contract has not been completely implemented. This restriction does not apply if the licensee does not consent to the collection, processing and use of the personal details which are necessary for the contract to be implemented and if it becomes clear upon inspection that the interest of the licensee, which merits protection because of his particular personal position, outweighs that of the licensor in collecting, processing and using his personal data. Should it not be possible in such a case for the licensor to carry out the licence agreement or should it be possible but only at unreasonable expense, the licensor has the right to an extraordinary termination in accordance with section 9 of the terms and conditions of this licence.

Section 7: Applicable law, place of jurisdiction, amendment clause

Applicable law is that of the Federal Republic of Germany - excluding UN sales law. The place of performance and the place of jurisdiction for all disputes arising out of this contractual relationship is – insofar as this is permissible – Berlin, Federal Republic of Germany. This applies to consumers if the licensee does not have a general place of jurisdiction in Germany, if, after concluding the agreement, he moves his address or his habitual place of residence away from Germany or if his address or habitual place of residence is unknown at the time when legal action is filed.

There have been no subsidiary agreements concerning this contract. Amendments or additions must be in writing. This also applies to a waiver of the requirement for amendments or additions to be in writing.

In the event of changes to the laws on which the terms and conditions of the licence agreement rest, changes occasioned by rulings by a supreme court which directly affect the licence agreement and in the event of terms and conditions being null and void, the licensor is entitled to add to or to replace single licence conditions to be effective for existing agreements. The new terms and conditions shall be both legally and commercially as close as possible to the terms and conditions they have replaced. They may not cause unreasonable legal or commercial disadvantage to the licensee and must take into consideration the interpretation of the agreement to date.

The changed terms and conditions of the licence will be communicated to the licensee in writing or by e-mail. They will be deemed to have been accepted if the licensee does not object in writing within one month of the written notification. This will be specifically pointed out to the licensee in the written notification. If the licensee objects, either party has the right to cancel the agreement by e-mail or in writing whilst observing the standard period of notice.

In order to remove doubts concerning the interpretation of the agreement the licensor can amend the wording of terms and conditions if this amendment is covered by the original text and takes into consideration the objective will as well as the interests of both parties. Furthermore, the licensor is entitled to amend or add to the terms and conditions of this agreement provided that the purpose of the agreement is not thereby substantially impaired or changed.

Should particular terms and conditions of this contract become void, the effectiveness of the remaining agreements between the parties shall remain unaffected.

Chapter 2: Commercial Use

Section 8: Hire charge dependent on use

When the software is made available to you, you are informed that, alongside the basic licence, a hire charge, which is dependent on use, must be paid. For this purpose, the licensor offers two charge models:

1. The "Print Credit Model", to which the stipulations contained in Appendix 1 apply.
2. The "Flat Fee Model", to which the stipulations contained in Appendix 2 apply.

The appendices are a component part of the contract.

Furthermore, you were informed that a continuous Internet connection is necessary in order for the software to be run.

Section 9: Duration and extraordinary termination

The duration of the contract is 5 years initially and is extended thereafter by one year at a time provided that one of the parties does not give written notice to terminate 3 months before the end of the term. Whether the notice to terminate was served in time or not will be determined by the point in time at which the other party received this notice.

An ordinary termination by DirectSmile is not possible if 3 months before the end of the term you purchase a minimum Smily quantity of 1,000 for the following contract year at the prices applicable at that time. This rule continues in the following years for each single contract year. Should DirectSmile have already given notice to terminate, you will be able to render such notice null and void by invoking this rule.

The right to an extraordinary termination without notice remains unaffected and exists in all cases in which these agreements provide for the loss of the right to use the programme. In the event of a termination of the contract without notice there is no entitlement to a partial refund of the basic licence. Furthermore, continuing to use the software after a termination without notice does not mean the extension of the contract for an indefinite period.

Section 10: Software maintenance

A component part of every commercial version is a software maintenance contract. The licensor provides software updates at regular intervals. The installation of the updates is extremely important for ensuring that the

licensee can use the most up-to-date version of the software and can make use of its most up-to-date functionalities. The licensee hereby consents to the licensor loading the currently available update versions of the programme onto the storage devices of the licensee and to his establishing, for this purpose, an online connection with his server. When the licensee goes online he will automatically be informed (e.g. by a pop-up) that there is an update available and he can decide if he would like to install it or not. The licensor undertakes to ensure that the installation of an update without the consent of the licensee is not possible.

For non-commercial versions the licensee is not entitled to software maintenance. Notwithstanding this, should the licensor provide software updates, this will be done on the basis of the above-mentioned conditions.

Section 11: Warranty, liability limitation

The licensor provides warranty according to the provisions of the Civil Code of the Federal Republic of Germany (BGB) that apply at the time that a particular contract is concluded on the following conditions:

The licensor is not liable for defects which were caused by changes to or interference with the programme in ways that were contrary to the terms of the contract or by wilful damage.

The licensor points out that the functionality cannot be used or can only be used to a limited extent if the installation of current updates is not carried out regularly. The licensor is in this case free of any liability insofar as he demonstrates that the defect would not have occurred if the most up-to-date software version available at that time had been installed.

The licensor also points out that, for the software to function properly, the system on which it is to be installed must correspond with the system requirements recommended by the licensor at the time in question. These requirements can be viewed at any time on the licensor's homepage under "www.directsmile.de/requirements".

The licensor does not provide warranty for the fact that the software is suitable for the purposes of the user or that it is compatible with the existing software of the licensee or of any other user. It is the obligation of the licensee to check if the product fulfils his requirements.

In the context of statutory compensation claims the licensor is liable only for intent and gross negligence. Liability for negligently caused loss or damage arising from injury to life, limb or health remains unaffected by the above.

In the context of contractual claims for damages and expense the licensor is only liable for making good loss that was typically foreseeable. For misprints that can be proved to have been caused by a defect in the software, liability is limited to the cost of reprinting 100 copies. Damages for loss that could have been prevented by careful checking are expressly excluded.

In the case of loss of data the licensor is only liable for the time and money which is necessary to restore the data where the licensee is securing his data properly on a daily basis.

Chapter 3: Non-commercial use

Except where in this chapter the stipulations differ from those in Chapter 1, the stipulations of Chapter 1 of these licence conditions apply additionally.

Section 12: Temporary availability for non-commercial purposes

The software is made available free of charge exclusively for non-commercial purposes. Any action is to be understood as commercial which serves, directly or indirectly, to earn income for oneself or for someone else. The passing on or distribution of print products free of charge, in the knowledge that these will be used for commercial purposes, is also understood as a commercial action. The use of this programme as part of another free of charge service (presentations, advertising events etc.) is also understood as a commercial action.

Any failure to comply with the above will result in the immediate loss of the licence that has been granted.

Section 13: Proviso

DirectSmile is entitled to withdraw at any time the right to use this programme and to cancel the licence that has been granted. In this context DirectSmile is permitted to employ technical devices in order to switch off the programme. On no account is there any entitlement to the programme being made available for further use.

The user is expressly forbidden from carrying out changes to the programme of any type whatsoever. Furthermore, it is not allowed to pass on the programme as such to others, whether free of charge or against a charge.

Section 14: Duration of contract

For versions which are hired out/made available to the user free of charge the contract runs, unless something different was agreed, for a term of one month and is automatically extended by one month at a time unless one party serves at least 7 days' notice to terminate the contract to the end of the given month. Furthermore, an extension via a Smily purchase is not possible for these versions.

Section 15: Warranty, liability limitation

The licensee accepts versions of the software which are made available free of charge in the form in which they are available at the time.

The licensor provides no warranty, and in particular no warranty for loss or damage or consequential loss or damage caused to any of the user's software or hardware by a deficiency unless such loss or damage is due to an intentional or grossly negligent breach of duty on the part of the licensor.

There is no obligation to compensate for loss or damage arising from defects in the programme. In the context of statutory compensation claims the licensor is liable only for intent and gross negligence. Liability for negligently caused loss or damage arising from injury to life, limb or health remains unaffected by the above.

Appendix 1 – Print Credit Model

1. Hire charge depending on use (Smily-credit balance)

- a. In the context of the hire charge depending on use the licensee purchases Print Credits ("Smilys") up front. The licence fees which arise out of this and which have to be paid separately can be found in part 3 of this appendix.
- b. The licensee can set up and increase his "Smily credit balance" as he sees fit. The licensor will make this possible by using a suitable procedure which involves "loading" the relevant "Smily credit balance" of the licensee onto a dongle that the licensee has installed.
- c. The "Smily credit balance", which is only to be found on the dongle, is loaded by the licensee, after the corresponding payment has been made, using a code generated by the licensor and conveyed to the licensee. Any relevant enquiries or data transfers are made, according to the preference of the licensor, either online via the Internet, whereby the data transfer is encoded using SSL or a comparable procedure, or offline by the dispatch of a corresponding disk or similar data storage device at the licensor's expense. The licensor has no obligation to provide an online interface. If such an interface is provided, the licensor is obliged to ensure that its own technical infrastructure is available for an average of 99% of the year, excluding time for maintenance. The licensor has no influence on the telecommunications infrastructure of third parties.
- d. The licensor expressly points out that the "Smily credit balance", which is stored on the dongle, is to be treated like cash and so the dongle should be looked after accordingly. If the dongle is lost or damaged or is manipulated by the licensee, then the "Smily credit balance" stored on it is lost irretrievably and will not be reimbursed by the licensor. The codes, which up to that time had been transmitted for the purpose of loading the dongle, will also lose their validity because the licensor is unable to tell if these codes were transferred to the dongle or not.
- e. In the case of malfunctions in the procedure chosen by the licensee for loading the "Smily credit balance" which are not the licensor's responsibility, and in the case of *force majeure*, the licensor is entitled to demand that the dongle be sent to the licensor so that it can be "loaded". The licensee must bear the costs for this. Any delays caused by this, for example delays due to postal delivery times, provide no grounds for a claim for damages on the part of the licensee.

- f. Under certain circumstances the licensee is entitled to make payments or pay hire charges in “Smilys” from its existing “Smily credit balance” for possible additional services of the licensor, for example extensions, follow-up products, single sets (finished picture personalizations). Whether this is possible and how many “Smilys” have to be paid for the particular product or for further services provided by the licensor can be found on the price list that is current at the time or on an order confirmation or invoice from the licensor for these additional services/products.
- g. Hire charges are not in cash and must be transferred at the expense of the licensee to a bank account which is to be named by the licensor and which is held at a bank that is based in Germany.
- h. The basic hire charge and the hire charge depending on use in the form of the “Smily credit balance”, which is paid to the licensor, are not reimbursed – not even proportionately – in the event of this agreement being terminated. The provision contained in the sentence above does not apply if the licensor has given cause for an extraordinary termination of this agreement and the licensee has, therefore, terminated this agreement extraordinarily before the end of the minimum term of the contract.
- i. If there are grounds for assuming that credit balance data or the procedure for loading this data have been manipulated, the licensor itself has the right to inspect any of the accounts documentation of the licensee that is necessary for the hire charge to be established or to have this done by representatives who are sworn to professional secrecy. Should an inspection of the accounts reveal that manipulations were carried out, the licensee will bear the costs of this inspection.
- j. Multiple print editions must, insofar as these are not a replacement for waste/corrections, be reported in the context of the Smily model. Multiple print editions are all print processes, even if they are not actually carried out immediately, which are used to produce several products on the basis of the same job. The built-in mechanisms for calculating a bill serve merely as an aid for such calculations; on no account do they confirm that the calculation is correct. In case of doubt the licensor is entitled to carry out a check in accordance with 1i.

2. Transfer of consumption and configuration data to the licensor

- a. The licensee will set up at its own expense, for the licensor and in accordance with the guidelines of the licensor, an Internet connection on the hardware and software used by the licensee in the context of the subject matter of the contract. This Internet connection will be exclusively for the purpose of calculating and checking consumption, in particular regarding the level of the “Smily credit balance” and for checking that the condition of the object of the licence has remained unchanged. The licensee consents to the transfer of the corresponding data to the licensor. The parties undertake to observe any data protection guidelines and requirements that may have to be observed and must demonstrate to the other party that they are doing so if this is requested by the other party. Without such an Internet connection it is not possible to use the object of the licence.
- b. For as long as the licensor has not been placed in a position to establish for itself the status and level of consumption of the “Smily credit balance”, the licensee is obliged to be accountable to the licensor to this extent. He must give the licensor, on request, a solemn affirmation of the information he has provided. The relevant affirmation and information must be transferred to the licensor free of charge no later than 5 days after the end of the calendar month.
- c. The licensor reserves the right, in the event of a failure by the licensee to observe his above-mentioned duty to cooperate, to block temporarily the functions of the software using a time-dependent access key or other means technically suited to this purpose and, following a fruitless warning and/or if this should happen again, to terminate this agreement extraordinarily. Accordingly, the licensee tolerates corresponding protection functions of the software and of the dongle(s).
- d. 2c of this appendix is also valid in the event that the licensee falls into arrears with its hire charge payments. The licensor's right to an extraordinary termination of the contract without notice because of a failure by the licensee to pay on time remains unaffected by the above.

3. Prices / charge system

- a. For Smilys there is a price system that depends on quantities. Orders of Smilys can only be made in the set quantities listed below at the corresponding prices. Quantities between those listed below are not possible or have to be achieved by the purchase of various set quantities at their corresponding prices.

<u>Smily quantity</u>	<u>Price</u>
1000	£ 68

5000	£ 310
10000	£ 545
20000	£ 960
50000	£ 2060
100000	£ 3499

If different prices for the quantities were agreed, then these prices have priority over the prices above.

Price reductions for the quantities above are possible at any time. Price increases are not possible. The current prices per quantity can be viewed at any time on “www.directsmile.de/smily-pricing”

Furthermore, so-called “commitment models” with improved conditions can be agreed. These models are agreed on a supply basis on the basis of the annual consumption which the licensee would like to have. For further information please refer to sales@transeomedia.com.

b. Charge system

Insofar as a different agreement hasn't been concluded in a separate written contract, the following charge systems and licence fees apply and are recognised by the licensee:

A Smily credit balance is a requirement for all services to be acquired under licence using the Print Credit Model. This means that the requisite number of Smilys must be purchased at the prices listed above. Additional set quantities of Smilys can be purchased at any time. Prior to carrying out any task for which Smilys are required you will be informed by the software about the number of Smilys you need for that particular job, unless you have deactivated this function.

The number of Smilys required can differ for the same product depending on the basic licence that was chosen. Should you have doubts or have any problems understanding the billing dialogue on display, you can refer to sales@transeomedia.com at any time for clarification.

All prices are net prices and do not include the statutory Value Added Tax.

Appendix 2 – Flat Fee Model

1. Fixed hire charge

With the “Flat Fee Model” the licensee pays to the licensor – alongside the increased basic licence fee – a fixed sum once a year so that it will be able to use the available services of the programme, irrespective of how much they are used and without any restrictions on quantity, for as many print-outs as are required. The annual licence fees to be charged for this, insofar as nothing different is stated in the order confirmation or invoice, amount to 18% of the system price (the sum total of the cost of all of the software components installed by the licensee). If additional components (e.g. modules) should be purchased in the course of the year, the following licence fees will be charged depending on the remaining time which the flat fee has to run:

- less than 3 months to run: no additional licence costs
- less than 6 months to run: 10% of the additional value of the goods
- more than 6 months to run: 18% of the additional value of the goods

2. Duration

Insofar as nothing different was agreed in writing, the flat fee model begins at the point in time when delivery is made and the invoice is presented. The duration of the agreement is for at least one year and it is automatically extended by a further year unless the licensee serves written notice to terminate 3 months before the end of the term of the agreement. Whether the notice to terminate was served in time or not will be determined by the point in time at which the licensor received this notice.

3. Transfer of consumption and configuration data to the licensor

The licensee consents to the storage of use-related data for statistical purposes. The licensor assures that this data will be used solely and exclusively within the scope that is necessary for the contract to be carried out and that, in particular, it will not be passed on to third parties.

4. Termination of the fixed hire charge

Insofar as the flat fee model has been terminated effectively, the licensee gives its consent to being treated as a customer in the Print Credit Model after the flat fee contract term has ended. For print-outs, Smilys (print credits) must then be purchased in accordance with the conditions set out in Appendix 1. A return to the flat fee model after notice has been served to terminate is only possible before the end of the flat fee model by means of a unilateral declaration to this effect made by the licensee.

All prices are net prices and do not include the statutory Value Added Tax.

The Licensor (DirectSmile):

For the US:

DirectSmile LLC, 300 Broadacres Drive, Bloomfield, NJ 07003

For the UK & EIRE

Transeo Media Limited, Abacus House, Meadowfield, Ponteland, Newcastle Upon Tyne, NE20 9SD, UK

For all other Regions:

DirectSmile GmbH, Torstrasse 164, 10115 Berlin, Germany

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