

SOFiSTiK AG's General Conditions for Delivery



1. General

- 1.1 The SOFiSTiK AG (hereinafter: SOFiSTiK) develops and markets special software for the construction industry.
- 1.2 The following provisions are applicable to all contracts concluded with SOFiSTiK on making software from SOFiSTiK available to the Customer.
- 1.3 Deviating, conflicting and/or supplementary conditions which have been preformulated by the Customer are not contractual unless SOFiSTiK has expressly agreed that they are valid.

2. Subject of Contract; Performance by SOFiSTiK

- 2.1 The Subject of Contract is the software which is designated in the Software License Agreement and works as described in the user documentation applicable when this Agreement was concluded.
- 2.2 When the Software is made available, SOFiSTiK's obligations to perform are restricted to making the Software available for transfer to the computer, to delivering in pdf format the user documentation for the Software and to granting a non-exclusive usage right pursuant to point 6.

SOFiSTiK is not obliged to render any further performance; in particular it has no further obligations regarding installation, consultation, training, maintenance or any other activity which contributes to launching, using and maintaining the Software. Such services can, however, be contracted from SOFiSTiK against separate compensation. SOFiSTiK is entitled to subcontract such services, especially for installation of the Software, to third parties such as, for example, specialist dealers located near the Customer site.
- 2.3 The source code underlying the software is not made available.
- 2.4 SOFiSTiK may also make hardlocks available to the Customer for the purpose of protecting the Software from being copied.

3. Caution on Using the Software

SOFiSTiK points out that mistakes made by the Customer while using the Software need not but can cause errors in the calculations which the Software carries out, for it is not certain that all operating errors can be caught by the Software. For this reason, computed results produced by the Software should, in

every case, at least be checked for approximate correctness on a random basis.

4. Period of Usage; Purchase Option

4.1 Permanent Usage (Software Purchase)

Insofar as nothing else is agreed, SOFiSTiK makes the Software available on a permanent basis.

4.2 Temporary Usage (Software Rental) / Cancellation

Insofar as SOFiSTiK makes the Software available for temporary usage, the Customer's right to use it starts when the Software License Agreement is concluded and then continues for a period of time that is not limited in advance.

4.3 Purchase Option (Software Hire Purchase)

The customer is entitled to acquire the software on a permanent basis at any time while the Software is being rented pursuant to point 4.2 (software hire purchase). To do so, the Customer has to declare to SOFiSTiK in writing of its intention to acquire the Software. The Customer then acquires it as of the first day of the month in which SOFiSTiK receives this declaration.

5. Termination of Usage under Software Rental; Cancellation; Penalty

5.1 The Customer can cancel the rental relationship effective at the end of the next calendar quarter with notice of 6 weeks provided only that the minimum duration of rental stipulated in the Software License Agreement is observed. Cancellation must be made in writing to take effect.

5.2 The Customer is only entitled to use the Software after completion of the software rental relationship if the Customer has then acquired the Software pursuant to point 4.3. Otherwise, the Customer is no longer entitled to use the Software. Then the Customer is also obliged to return all the hardlocks made available to the Customer. This obligation to return hardlocks also includes the obligation to delete all existent copies of the software completely and in a way that does not allow any of the software to be reconstructed by any means. The Customer is hereby advised that if the Software is ever used after completion of the period of usage the Customer will have violated SOFiSTiK's originators' rights.

- 5.3 If the Customer is culpably in default in regard to returning a hardlock pursuant to point 5.2, the Customer is obliged to continue to pay the monthly usage fee pursuant to point 9.2 until the hardlock has been returned or 8 weeks have elapsed since termination of the Contract.
- 5.4 If the Customer is culpably in default for more than 8 weeks in regard to returning a hardlock, the Customer shall pay for each retained hardlock a contract penalty in the amount of the fee for permanent usage of the given hardlock pursuant to point 9.1.

6. Rights of Usage; Customer's Duties to Take Care

- 6.1 SOFiSTiK grants the Customer a simple, non-exclusive right to use the object code of the Software in accordance with the following provisions for the period of time agreed pursuant to section 4. No further rights are granted in connection with making the Software available to the Customer.
- 6.2 The Customer is entitled to use the Software on more than one unit of hardware insofar as the maximum number of workstations agreed in the Software License Agreement is observed.
- 6.3 The Customer may copy the Software insofar as copies are needed in order to use the Software. These include copies needed to install the Software from the original data medium into the mass storage of the hardware being used and to load the Software into working storage.
- 6.4 Insofar as is required to secure future usage of the Software in accordance with the Contract the Customer may also make a backup copy of the Software. Beyond that the Customer is not entitled to make copies. This also applies to copies of parts of the Software and to complete or partial reproduction of the user documentation unless reproductions are absolutely necessary so third parties can check results the software has computed.
- 6.5 If the Customer's computer system ever breaks down completely and making rotational backups of all the system's datasets including those of subject Software is indispensable for reasons of data security and ensuring rapid reactivation of the system, the customer may make the number of backup copies of the Software required for this purpose. The pertinent data media shall be labelled accordingly.
- 6.6 The Customer is obliged to take appropriate measures to prevent unauthorised access to the Software. The original data media delivered and all backup copies shall be kept in a place which is protected against unauthorised access by third parties.

The Customer's employees shall be informed emphatically that the foregoing contractual conditions are to be observed and advised of the provisions of the law on originators' rights.

6.7 The obligation pursuant to point 6.6 also applies to the hardlocks made available to the Customer. If a hardlock is stolen or lost for any other reason, the Customer cannot demand a replacement delivery by SOFiSTiK except if SOFiSTiK were to be responsible for the said loss.

7. Decompilation and Program Changes; Copyright Notices

7.1 Decompilation (reverse translation of software object code into other, precedent forms of code) and reverse engineering (any other type of derivation of any of the precedent forms produced in the software production process) are not allowed.

7.2 The Customer is also not entitled to remove or change any copyright notices, serial numbers or any other attributes which identify the Software.

8. Transfer of the Software

8.1 If the Customer acquires the Software by purchasing it pursuant to point 4.1 and 4.3, the Customer is only allowed to make the Software available to a third party on a permanent or temporary basis if:

- the Customer notifies SOFiSTiK of the name and complete address of the said third party and
- the said third party declares vis-à-vis SOFiSTiK in writing that the said third party agrees that these licensing conditions continue to apply vis-à-vis the said third party and
- the Customer hands over to the said third party all copies of the Software including all backup copies and hardlocks and
- the Customer deletes all copies of the Software which were not handed over to the said third party.

The Customer's right to use the Software expires when the Software is transferred to the said third party.

8.2 Deviating from preceding point 8.1, the Customer is, provided he has purchased the Software, not permitted to temporarily let the software commercially or by way of leasing.

8.3 If the Customer rents the Software pursuant to point 4.2, the Customer is not allowed to alienate the Software or its user documentation or to make these available to any third party on any other basis for a specific time, in particular by way of letting or leasing. On the other hand, use of the Software for the customer by persons working for the Customer is permitted.

9. License Fee

9.1 If the Software is purchased pursuant to point 4.1, the Customer pays to SOFiSTiK the one time license fee agreed in the Software License Agreement.

9.2 If the Software is rented pursuant to point 4.2, the Customer pays to SOFiSTiK monthly license fees as agreed in the Software License Agreement. Monthly license fees are invoiced four times a year.

9.3 If the Customer acquires the Software pursuant to point 4.3, the monthly license fees paid pursuant to the Software License Agreement before the purchase option took effect are credited to the one time license fee for purchase in accordance with the formula printed in the SOFiSTiK price list; however, the Customer is not entitled to a reimbursement if the amount to be credited exceeds the one time license fee for purchase.

9.4 Insofar as nothing else is agreed, all prices are quoted exclusive of the applicable statutory value added tax.

9.5 All invoices from SOFiSTiK are due for payment without deduction within 10 days of receipt.

10. Effectiveness of Usage Rights Granted

10.1 Insofar as the Customer is granted usage rights against a one time license fee when the Software is delivered pursuant to point 4.1, point 4.3 and section 6, the right of usage does not come into effect until the customer has paid the said one time license fee in full.

10.2 If the Software is made available to the Customer before the end of the day by which payment of the relevant invoice is due pursuant to point 9.5, a provisional usage right is granted until the end of the said day.

11. Retention of Title

- 11.1 Insofar as the Customer acquires software delivered by SOFiSTiK pursuant to point 4.1 or 4.3, SOFiSTiK retains ownership of the Software delivered until complete payment of the contractually owed license fee pursuant to point 9.
- 11.2 In the case of payment default or other significant breach of contract by the Customer SOFiSTiK is entitled to demand surrender of software for which ownership has been retained even if SOFiSTiK has not withdrawn from the pertinent contract.

12. Offset and Retention Rights

- 12.1 The Customer is only entitled to offset open claims from SOFiSTiK with counterclaims of its own when SOFiSTiK has not disputed the given counterclaims or these counterclaims have become enforceable by law.
- 12.2 The Customer can only exercise a right of retention if its counterclaim is based on the same contractual relationship.

13. Guarantee

- 13.1 Guarantees for software purchase (point 4.1)
- 13.1.1 All guarantee claims expire 12 months after transfer of the Software.
- 13.1.2 When the Software is delivered the Customer shall examine it without delay and report any defects without delay. Obvious defects are only warranted by SOFiSTiK when they are reported to SOFiSTiK within 14 days. This does not apply to defects which SOFiSTiK has concealed with intent to deceive.
- 13.1.3 If the Software delivered by SOFiSTiK turns out to have a defect, SOFiSTiK shall first be given the opportunity - if necessary, repeated opportunities - to remedy the defect either by supplementary performance through direct rectification, or possibly through presentation to the Customer of reasonable circumventions of the effects of the defect, and/or a replacement delivery, depending on the type of software, type of defect and the other circumstances. It is SOFiSTiK which decides whether to remedy by supplementary performance or replacement delivery. In the case of replacement delivery SOFiSTiK makes a new, defect free software version available to the Customer.
- 13.1.4 If SOFiSTiK decides not to render supplementary performance or supplementary performance is attempted but not successful or supplementary performance would be unreasonable for the customer, the Customer has the choice of demanding a reduc-

tion of the license fee or of withdrawing from the Software License Agreement and in these cases the Customer's claims for damages are not affected by the provisions of section 14.

13.1.5 The Customer is obliged to install each new software version insofar as the contractually agreed functional scope of the current version pursuant to point 2.1 is retained and migrating to the new version would not lead to significant disadvantages.

13.1.6 SOFiSTiK does not issue declarations of guarantee.

13.2 Guarantees for Software Rental (Point 4.2)

13.2.1 Defects in the Software made available are remedied within a reasonable time upon notification of the defect by the Customer. SOFiSTiK can remedy a defect by replacing the defective software with a defect-free version,

13.2.2 A right of the Customer's to cancel the Contract because it has been deprived of the use of the Software is excluded unless supplementary performance and replacement delivery have been unsuccessful.

14. Compensation for Damages

14.1 In all cases of slight negligence on the part of SOFiSTiK, SOFiSTiK is only liable if it is in breach of contractually significant duties including such duties as are required for proper implementation of the Contract and on the observation of which contracting parties are normally able to depend or if damages have resulted from injury to life, limb or health. Otherwise SOFiSTiK's precontractual, contractual and extra-contractual liability is limited to cases of intention and gross negligence, whereby the limitation on liability also applies to the case of culpability on the part of an assistant of SOFiSTiK's.

14.2 In cases of slight negligence, the amount for which SOFiSTiK can be held liable is limited to direct, average damages which are typical of contracts of the type concluded and can be foreseen in dependence on the type of performance.

14.3 Liability for loss of data is restricted to the typical data reconstruction costs which arise even when backup copies of all computer data are taken on a regular basis and in keeping with the risks associated with the types of data in question.

14.4 Liability of SOFiSTiK under the German Product Liability Law is not affected by these Conditions.

- 14.5 Claims by the Customer for compensation for damages because of defects in software transferred to the Customer are statute barred upon passage of 12 months. This does not apply to defects which SOFiSTiK has concealed with intent to deceive.

15. Concluding Provisions

- 15.1 If the Customer operates a commercial trade the place of legal jurisdiction is Munich, Germany, for all disputes arising from or in connection with this contractual relationship.
- 15.2 If the Customer operates a commercial trade, the place of fulfilment of the obligations derived from contracts between the Customer and SOFiSTiK is the business seat of SOFiSTiK.
- 15.3 All contracts between SOFiSTiK and the Customer are governed by the laws of Germany only under exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- 15.4 If individual provisions of these Conditions for Delivery are ineffective or lose their effectiveness in future because of circumstances which intervene later, the effectiveness of the remainder of these Conditions for Delivery is not affected.