

General Terms of Delivery of SOFiSTiK AG



1. General

- 1.1 SOFiSTiK AG (hereinafter: SOFiSTiK) is engaged in the development and distribution of specialised software for construction engineers. The following provisions shall apply to all contracts/agreements concluded with SOFiSTiK on the use of software.
- 1.2 Pre-drafted deviating, contrary or supplementary provisions of the customer shall not become part of this agreement except if SOFiSTiK expressly agrees that they are applicable.

2. SOFiSTiK's duties

- 2.1 Subject-matter of this licensing agreement shall be the software herein identified pursuant to the user instructions applicable at the time of conclusion of this agreement.
- 2.2 In permitting the use of the software, SOFiSTiK's performance obligations shall be limited, in case of doubt, to permitting use of the programme on one or more data carriers suitable for transmission to the computer, to permitting the use of hardware dongles, to delivering the user instructions forming part of the programme in pdf format and to granting a non-exclusive right of use. SOFiSTiK shall not be obligated to render any other services, in particular no installation, consulting, training, maintenance and other services facilitating the commissioning, use and maintenance of the software. Services of the latter nature may be ordered from SOFiSTiK for a separate consideration. SOFiSTiK may arrange for such services, in particular software installation, to be rendered by third parties such as local dealers specialising therein.
- 2.3 Permission to use the software does not extend to the underlying source code.
- 2.4 SOFiSTiK draws attention to the fact that software programmes cannot be engineered error-free.

- 2.5 SOFiSTiK draws attention to the fact that computational errors produced by the software may have been caused by the user. There is no way of guaranteeing that all of the customer's operating errors can be forestalled by the software. In any event, the customer shall at least roughly and at random check the computational results produced by the software.
- 2.6 SOFiSTiK also draws attention to the fact that its software is being developed for certain operating systems (Windows; AutoCAD) and that in doing so SOFiSTiK pays attention to adapting it to the operating system in use for the time being. Despite the fact that according to SOFiSTiK's experience the software is compatible also with more recent or earlier versions of the current operating systems, problems may arise in running the software which are not recognisable in advance and cannot be traced back to their origin. The customer is advised to consult the software product description and/or user instructions or SOFiSTiK proper as to the operating systems with which the software is compatible in any case.

3. Duration of use, purchasing option, termination, return

3.1 Permanent right of use (software purchase)

Unless otherwise agreed, SOFiSTiK shall grant the customer a permanent right of use to the software.

3.2 Right of use for an indefinite period (software hire)

Where SOFiSTiK grants the customer a right of use to the software for an indefinite period, the term of use is not limited in time. The customer may terminate the agreement permitting use of the software upon expiry of a minimum term of three months from the date of its conclusion at six weeks' notice to the end of each quarter. Notice must be given in writing.

3.3 Purchasing option

In case use of the software is permitted pursuant to the above sub-para. 3.2, SOFiSTiK authorises the customer to acquire the software on a permanent basis. The customer shall indicate its intention to do so to SOFiSTiK in writing during the term of such use. In that case, the customer shall acquire the software with effect from the month following receipt of such indication by SOFiSTiK.

3.4 Trial version

SOFISTiK shall permit the customer on request to use the software for a trial period of three months.

3.5 Return, deletion

Where permission of use for an unlimited period has been agreed pursuant to sub-para. 3.2 or for a trial period pursuant to sub-para. 3.4, the customer may not continue to use the software upon expiry of the term of use. The customer shall be obligated to return the hardware dongles. Such obligation of return shall also include the complete and final deletion of all existing software copies. The customer should be aware that any continued use of the software upon expiry of the term of use is an infringement of SOFiSTiK's copyright.

3.6 Contractual penalty

Where the customer is culpably more than 8 weeks late in returning the hardware dongles pursuant to sub-para. 3.5, the customer shall, in addition to the monthly user fee (sub-para. 7.2), pay a contractual penalty at the level of the fee for permanent use pursuant to sub-para. 7.1.

4. Terms of license, customer's rights and obligations

4.1 SOFiSTiK grants the customer the non-exclusive right to use the software in object code pursuant to the following provisions of this agreement for the term agreed pursuant to the above para. 3 of the General Terms of Delivery. Such permission of use does not imply any rights going beyond these provisions. In particular, SOFiSTiK reserves all rights to disseminating, exhibiting, demonstrating, displaying and publishing the software.

4.2 The customer may use the software on more than one hardware so long as it adheres to the agreed maximum number of work stations.

By delivering the number of hardware dongles required for the agreed number of work stations SOFiSTiK ensures on its part that the customer will use the software only within the scope covered by the license.

4.3 The customer may reproduce the software to the extent required for the use thereof. Such necessary reproductions shall include

installation of the software from the original data carriers to the memory of the hardware used and loading of the programme onto the working memory.

- 4.4 The customer may also produce a back-up copy of the software to the extent that this is required for the future contractual use thereof. Beyond that the customer may not reproduce the software. This shall also apply to the reproduction of parts of the software and to the complete or partial reproduction of the user instructions except where such reproduction is absolutely required by any third-party for checking computational results obtained by use of the subject software.
- 4.5 The customer shall be obligated to prevent any unauthorised access to the software by taking appropriate precautions. The original data carriers supplied and any back-up copies shall be stored in a place that is inaccessible to any unauthorised third-party. The customer's staff members shall be expressly cautioned against infringing the present contractual provisions and the applicable provisions of copyright law.
- 4.6 Any software delivered by SOFiSTiK but developed by a third party shall in addition be subject to the licensing terms of the given developer except to the extent otherwise agreed between the Parties.

5. Decompilation and programme changes; hardware dongles

- 5.1 Any re-translation of the programme code into other code forms (de-compilation) and any other form of reverse engineering of the various stages of software generation is impermissible.
- 5.2 In case of damage to or theft of the hardware dongle or any other loss thereof, the customer may not require SOFiSTiK to make any substitute delivery. This shall not apply in those cases where SOFiSTiK is answerable for such damage to or loss of the hardware dongles. If the hardware dongle supplied by SOFiSTiK is defective, the customer's warranty claims pursuant to para. 11 of these provisions shall remain unaffected.
- 5.3 The customer shall not be authorised to remove or change copyright lettering, serial numbers or other software features serving identification.

6. Passing on of the software

- 6.1 If the customer acquires the software pursuant to sub-para. 3.1 or 3.3, it is permitted to pass it on to third parties provided that the latter agree in writing to SOFiSTiK that the licensing terms of this agreement shall continue to apply and the customer either delivers all programme copies to such third party or deletes them. Upon passing on the software to such third party, the customer is no longer entitled to use the programme. The customer undertakes to provide SOFiSTiK with the name and full address of such third party.
- 6.2 If the customer uses the software for an indefinite period pursuant to sub-para. 3.2, the customer shall not be permitted to pass the software and the user documentation on to third parties for gain, i.e. to grant any rights of use thereto, be it through hire-out, lease or sale.

7. License fee

- 7.1 If SOFiSTiK permits the customer to use the software permanently (sub-para. 3.1), the customer shall pay to SOFiSTiK a non-recurrent license fee at the level of thirty times the monthly user fee for the software pursuant to SOFiSTiK's price list applicable at the point in time when the order is placed. The license fee shall be due for payment upon the conclusion of this agreement.
- 7.2 If SOFiSTiK permits the customer to use the software for an indefinite period (sub-para. 3.2), the customer shall pay to SOFiSTiK a monthly user fee for the software pursuant to SOFiSTiK's price list applicable at the point in time when the order is placed. The monthly user fee shall be billed on a quarterly basis.
- 7.3 If the customer, pursuant to sub-para. 3.3 of these provisions, exercises a purchasing option on the software, any user fees accrued for the software up to the date of exercise of the purchasing option shall be set off against the fee payable pursuant to the above sub-para. 7.1 in accordance with SOFiSTiK's price list applicable for the time being and in particular on the basis of the computation formula therein provided.

7.4 Unless otherwise agreed, the prices agreed with SOFiSTiK are net of statutory VAT. VAT shall be additionally charged to the customer at the given statutory level.

7.5 All of SOFiSTiK's invoices shall be due for payment within 10 days of receipt.

8. Copyrighted rights of use

8.1 To the extent that copyrighted rights of use to software are granted to the customer pursuant to the above sub-paras. 3.1 and 4 for a non-recurrent consideration, such rights shall not take effect until after the customer has paid the owed consideration.

8.2 To the extent that the customer is granted copyrighted rights of use for a monthly consideration pursuant to the above paras. 3.2 and 4, such rights shall remain effective only for so long as the customer fully pays the consideration owed on a monthly basis.

9. Reservation of title

9.1 If the customer acquires the software supplied by SOFiSTiK pursuant to the above sub-paras. 3.1 and 3.3, title thereto shall pass to the customer upon full payment of the license fee contractually owed therefore pursuant to para. 7 of these terms.

9.2 In case of delay in payment or other material breaches of contract by the customer, SOFiSTiK shall be entitled to require the customer to surrender any software that is subject to a reservation of title even if SOFiSTiK does not withdraw from the agreement.

10. Right of set-off and retention

10.1 The customer shall not be entitled to set off claims of its own against accounts receivable of SOFiSTiK except if the latter does not dispute the customer's given counter claims or if existing counter claims have been non-appealably established.

10.2 The customer may not exercise any right of retention except if its counter claim is based on the same contractual relationship.

11. Warranties

11.1 Warranties in case of permanent use (sub-para. 3.1).

11.1.1 The warranty period in respect of software delivered shall be 12 months from the date of delivery. This shall not apply to defects fraudulently concealed by SOFiSTiK.

11.1.2 The customer shall check the software directly after its delivery and give immediate notice of any defects. SOFiSTiK shall give a warranty for visible defects only if it is advised thereof within 14 days. This shall not apply to defects fraudulently concealed by SOFiSTiK.

11.1.3 If any software delivered by SOFiSTiK proves defective, the latter shall first be given an opportunity to remedy the defect, even several times, depending on the nature of the software or of the defect and on the other circumstances, by way of subsequent performance in the form of subsequent improvement or substitute delivery. SOFiSTiK shall have the option to either make subsequent improvement or substitute delivery.

11.1.4 If SOFiSTiK refuses subsequent performance or if such subsequent performance fails or if the customer cannot be reasonably expected to accept subsequent performance, the customer shall have the option of either requiring a reduction in the license fee (reduction in price) or withdrawing from the licensing agreement. Any claims for damages on the customer's part shall remain unaffected subject to the following paragraph 12.

11.1.5 SOFiSTiK shall not issue any written guarantee.

11.2 Warranty in case permission of use for an indefinite period (sub-para. 3.2).

11.2.1 Defects of the software delivered shall be remedied by SOFiSTiK at its choice either by way of substitute delivery or subsequent improvement within a reasonable time limit following notification thereof by the customer.

11.2.2 The customer's right of termination for non-usability is excluded except if subsequent improvement or substitute delivery fails.

12. Damages

- 12.1 In case of slight negligence SOFiSTiK shall be liable only in case of infringement of material contractual duties (cardinal duties) and only for the given direct average damage foreseeable in view of the subject kind of performance and typical of the given contract, and for injury to life, body or health. Otherwise, SOFiSTiK's pre-contractual, contractual and extra-contractual liability shall be restricted to intent and gross negligence with such restriction of liability being applicable also in case of fault by a vicarious agent of SOFiSTiK. Such restriction of liability shall not apply to SOFiSTiK's liability under the product liability law.
- 12.2 Claims for damages by the customer on account of defects of software delivered shall become statute-barred within 12 months. This shall not apply to defects fraudulently concealed by SOFiSTiK.

13. Final provisions

- 13.1 If the customer is a businessman, venue for all disputes arising from or in the context of this agreement shall be Munich. If the customer is a businessman, the place of performance concerning obligations arising from agreements between the customer and SOFiSTiK shall be the latter's business seat.
- 13.2 Agreements between SOFiSTiK and the customer are exclusively governed by German law to the exclusion of the UN Sales Convention.
- 13.3 Should individual provisions of these terms of delivery be ineffective or cease to be effective as a result of a later occurrence, their effectiveness shall otherwise remain unaffected. Any such ineffective provision shall be replaced by such arrangement as comes closest to what the Parties would have wanted if they had contemplated the issue in question. The same shall apply to any lacunae in these terms of delivery.