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SOFiSTiK's License Terms

1.   General

1.1   SOFiSTiK AG ("**SOFiSTiK**") develops and markets specialist software for use in the construction industry.

1.2   The following terms apply to contracts between the customer and SOFiSTiK concerning the licensing of software.

1.3   Any provisions deviating from, or conflicting with, these terms and conditions, in addition to any standard terms and conditions used by the customer, shall not form part of any contract concluded between the customer and SOFiSTiK, unless SOFiSTiK expressly agrees to such terms.

2.   Subject of the Contract; Obligations of SOFiSTiK

2.1   This contract concerns the software identified in the Software License Agreement, possessing the relevant features in accordance with the user documentation which was valid at the time the contract was concluded.

2.2   In licensing the software, SOFiSTiK's obligations are restricted to the provision of the program for transfer to the computer, the delivery of the user documentation relating to the program in pdf-format or a similar format, and the granting of a non-exclusive right of utilisation pursuant to section 6 of these License Terms.

SOFiSTiK shall be under no obligation to provide further services, including, in particular, tasks relating to installation, consultation, training, maintenance and other duties concerning the configuration, use, and support of the software. However, the relevant services can be separately provided by SOFiSTiK at an extra cost. SOFiSTiK shall be entitled to subcontract the performance of these extra services, in particular the installation of the software, to third parties, including specialist dealers in the customer's locality.

2.3   The source code of the software will not be made available.

2.4   For the purposes of copy protection SOFiSTiK is entitled to provide the customer with copy protection mechanisms together with the software such as hardware keys or adequate software solutions (softlock). SOFiSTiK's software only works together with these copy protection mechanisms. The loss of a hardware key and – in case of a softlock - changes in the hardware of the device the software is running on (e.g. exchange of a hard drive) result in total or partial non-applicability of the software. In case of a Software Rental – regardless the contractual term - a copy protection mechanism is valid until the end of an accounting quarter and for subsequent periods each of it lasting 13 weeks.

3.   Instructions for the Utilisation of the Software

SOFiSTiK advises the customer that the latter may, through incorrect use of the software, cause errors in calculations being conducted by the software. It is not certain that all operating errors will be identified by the software. Therefore, the customer should, in every case, verify the results of calculations undertaken by the software, at least in an approximate manner on a random basis.

4.   Usage Period

4.1   License for sustainable Use (Software Purchase)

Unless otherwise agreed, SOFiSTiK shall license the software to the customer for use on a permanent basis.

4.2   License for temporary Use (Software Rental)

Where the software has been licensed to the customer for use on a temporary basis, the right to use the software shall commence upon the conclusion of the Software License Agreement and shall continue for an indefinite time.

5.   Term and Termination in Software Rental; Contractual Penalty

5.1   In the case of a software rental as per section 4.2 above, either party may terminate the Software License Agreement by giving the relevant notice ("ordinary termination"). For the purposes of this section, the relevant notice period to be provided by the customer shall be sixweeks to the end of a calendar quarter; and the relevant notice period to be provided by SOFiSTiK shall be three months to the end of a calendar quarter.

5.2   In case the Software License Agreement specifies a minimum duration of the contract (Minimum Term), the termination may not take place prior to the expiry of such a period.

5.3   In case the Software License Agreement specifies a limited duration of the contract (Limited Term) the License Agreement shall terminate automatically at the end of the limited contractual period. The right to ordinary termination of the License Agreement is excluded for both parties.

5.4   Each party's right to terminate the Software Supply and License Agreement for cause without notice for a compelling reason remains unaffected. In particular, SOFiSTiK shall be entitled to terminate the agreement for cause without notice for a compelling reason if the customer fails to pay the license fee in accordance with section 9.2 of these License Terms and remains in default of payment following two reminders.

5.5   Any notice of termination must be in writing.

5.6   Following the termination of the Software rental the customer shall no longer be entitled to use the Software and shall return all hardware keys provided to him. Additionally, the customer shall completely and permanently delete all existing copies of the Software. The customer is hereby informed that any use of the Software following the expiration of the agreed usage period will constitute an infringement of SOFiSTiK's copyright.

5.7   If the customer is responsible for failing to return a hardware key pursuant to section 5.6 above, he shall continue to pay the license fee in accordance with section 9.2 of these LicenseTerms until the hardware key is returned, subject to a maximum period of eight weeksfollowing the expiration of the contract.

5.8   If the customer is responsible for failing to return a hardware key within eight weeks following the expiration of the contract, for each hardware he has failed to return, he shall make a payment to SOFiSTiK of an amount equal to the license fee for perpetual use in accordance with section 9.1 of these License Terms.

6.   Usage rights; Customer's Duty of Care

6.1   SOFiSTiK grants the customer the simple, non-exclusive right to use the object code of the software, in accordance with the following provisions of this section 6, for the duration of the period mentioned above in section 4.

6.2   The customer's right to use the software shall be spatially restricted to the license area. The license area is (a) the territory designated in the License Agreement or a separate written agreement between the parties, or, in cases where the License Agreement or a separate written agreement lack such provision, (b) the country in which the customer has its registered office at the time the license is granted. If the customer is established in a member state of the European Union or in one of the contracting states to the Agreement on the European Economic Area, the license area shall cover all member states of the European Union and all contracting states to the Agreement on the European Economic Area.

6.3   The acquisition of a single user license entitles the customer to use the software on no more than one item of hardware (client). Any use beyond this agreement is strictly prohibited. Likewise, the customer shall not allow multiple users to use the software on a single local workstation (remote control). The acquisition of a network license shall entitle the customer to use the software within the agreed network on the network server and the workstations (clients) within the network. If a maximum number of network computers has been agreed on, any use beyond this agreement is strictly prohibited.

6.4   The customer shall be entitled to make copies of the software, to the extent that each copy is necessary for the use of the software. Necessary copying includes the installation of the software from the original data storage system on to the mass storage devices being used, as well as the loading of the program into the computer's primary storage.

6.5   No further granting of rights is associated with the provision of the software, nor is any further granting of rights permitted without the prior express written consent of SOFiSTiK. It is explicitly pointed out that rights are solely granted in favor of the customer. No granting of rights does apply towards any with the customer affiliated companies (group license)pursuant to section 15 of the German Stock Corporation Law (Aktiengesetz).

6.6   The customer shall adopt appropriate measures to prevent unauthorised access to the hardware keys provided to the customer. The hardware keys shall be kept in a location secure from unauthorised access by third parties. The customer's employees are to be expressly and clearly informed of the necessity of complying with the license terms set out above as well as the importance of the hardware key. In the event of the theft or loss of a hardware key, the customer is not entitled to demand a replacement unless SOFiSTiK is responsible for the loss.

7.   Decompilation and Changes to the Program; Copyright Notices

7.1   The customer shall not translate the program code into other forms of code (decompilation) or employ other methods aimed at revealing the software's code in the various stages of its development (reverse engineering).

7.2   The customer is not entitled to remove or make alterations to copyright notices, serial numbers, or other features which serve to identify the software.

8.   Transfer of the Software

8.1   In the case of the software being purchased in accordance with section 4.1 of these License Terms, the customer shall be permitted to make the software available to a third party on a permanent or temporary basis if:

- the customer notifies SOFiSTiK of the name and full address of the third party to whom the software is to be transferred;

- the third party declares in writing to SOFiSTiK its agreement that sections 6, 7, 8 and 10 of these License Terms shall remain valid and shall apply to the third party;

- the customer hands over all copies of the program, including any back-up copies and hardware keys, to the third party; and

- any copies of the program that are not handed over are deleted.

The customer's right to use the program shall expire when the software is transferred to a third party.

8.2   By way of derogation from the provisions of section 8.1 above, if the customer has purchased the software, it shall not lease the software or rent the software for commercial purposes.

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8.3 In the case of software rental, in accordance with section 4.2 of these License Terms, the customer shall not sell the software or the user documentation, nor shall it supply the software to a third party for a limited period, in particular by renting or leasing the software. However, the customer's employees shall be entitled to use the Software.

9. License Fee; Usage Fee

9.1 In the case of a software purchase, pursuant to section 4.1 of these License Terms, the customer shall pay SOFiSTiK a one-time license fee as agreed under the Software License Agreement.

9.2 In the case of a software rental, pursuant to section 4.2 of these License Terms, the customer shall pay SOFiSTiK a monthly license fee as agreed under the Software License Agreement. The monthly license fee shall be billed on a quarterly basis.

9.3 If SOFiSTiK increases or decreases the usual license fees charged for the software in general, SOFiSTiK shall be entitled to increase or decrease the monthly license fee payable by the customer following a notice period of three months to the end of a calendar quarter.The customer shall remain entitled to terminate the Software License Agreement after receiving notice of the adjustment of fees by giving the necessary notice of termination in accordance with section 5.1 of these License Terms.

9.4 Unless agreed otherwise, all prices shall be exclusive of statutory value added tax (VAT).

9.5 Unless no longer term of payment is specified by SOFiSTiK all invoices sent by SOFiSTiK shall be become payable, without deduction, ten days after their receipt.

10. Validity of the Rights of Use Granted

10.1 If the customer is to pay a one-time license fee in consideration of being granted the right to use the software in accordance with the provisions of sections 4.1 and 6 of these License Terms, such a right shall only become valid once the customer has paid the agreed amount in full.

10.2 If the software is supplied to the customer by SOFiSTiK before the due date for payment of the invoice, according to section 9.5 of these License Terms, a provisional right of use shall be granted until the end of the due date.

11. Right of Set-Off and Retention

11.1 The customer shall only be entitled to set-off claims against amounts due to SOFiSTiK if such claims are not contested by SOFiSTiK or have been declared to be legally binding.

11.2 The customer shall only exercise a right of retention if the claim relates to the same contractual relationship.

12. Warranty

12.1 **Warranty relating to software purchase** (section 4.1)

12.1.1. The limitation period for all warranty claims shall be 12 months commencing with the supply of the software.

12.1.2. The customer shall examine the software immediately upon delivery and shall report any defect without delay. In the event of patent defects, the warranty shall only apply if SOFiSTiKis notified of such defects within a period of 14 days following delivery. This does not apply to defects which have been intentionally concealed by SOFiSTiK:

12.1.3. If the software is revealed to be defective, SOFiSTiK shall be provided with the opportunity − on repeated occasions if required by the circumstances − to remedy the defect either through the rectification of the fault (repair) or replacement of the software. SOFiSTiK shall decide at its sole discretion whether to repair or replace the software. In the event that the software is replaced, SOFiSTiK shall supply a new, current version of the software. If SOFiSTiK provides the customer with a reasonable method of avoiding or circumventing the effects of the defect (a workaround), this shall be considered as a rectification of the defect:

12.1.4. The current version of the software is the version of the software which is available to download from SOFiSTiK's update server on the day on which the replacement is sent.

12.1.5. If SOFiSTiK refuses to remedy the defect, or in the event that the attempt to remedy the defect is unsuccessful, or if the remedy is unreasonable for the customer, the customer can decide either to demand a reduction in the license fee or to withdraw from the Software Supply and Licence Agreement. Any claims for damages by the customer shall remain unaffected, in accordance with section 14 below.

12.1.6. In particular, a remedy through the replacement of the software shall be unreasonable where there are significant differences between the scope of features possessed by the current version of the software and those identified in accordance with section 2.1 of these License Terms, and the adoption of the current version would lead to significant disadvantages for the customer. A difference in the scope of the software's functions shall not be consideredsignificant if the intended use of the software is not impaired as a consequence of thedifference.

12.1.7. Other than those expressly mentioned in these License Terms, SOFiSTiK gives no warranties or guarantees, either express or implied.

12.2 **Warranty relating to software rental** (section 4.2)

12.2.1. Defects in the supplied software shall be remedied within a reasonable time following the notification of such defects being given to SOFiSTiK by the customer.

12.2.2. For the purposes of remedying defects, SOFiSTiK may choose to replace the defective software with a version of the software which is free from defects. The provisions of sections 13.1.3 and 13.1.4 shall apply to this section accordingly.

12.2.3. The customer shall only be entitled to terminate the contract, on the basis of an inability to use the software pursuant to the contract, after SOFiSTiK has been given sufficient opportunity to remedy any defect and SOFiSTiK refuses to remedy the defect, or the attemptto remedy the defect is unsuccessful, or if the remedy is unreasonable for the customer. The provisions of section 13.1.6 shall apply to this section accordingly.

13. Liability

13.1 The pre-contractual, contractual and non-contractual liability of SOFiSTiK is limited to cases of intent and gross negligence.

13.2 In cases of ordinary negligence SOFiSTiK's liability shall be limited to the breach of contractual obligations which are material to the contract (cardinal obligations). Furthermore, the amount of damages shall be limited to those losses which are generally foreseeable in connection with the supply of software. Cardinal obligations are those obligations for which thefulfillment is essential to the proper implementation of the contract as a whole, and the contractual partner may depend upon their fulfillment.

13.3 The liability for loss of data shall be restricted to typical recovery expenses which would have arisen if regular back-up copies had been made commensurate with the risks associated with the loss of such data.

13.4 The above limitations of liability shall also apply where SOFiSTiK is vicariously responsible for its employees and agents.

13.5 The limitations of liability in sections 14.1 to 14.4 above shall not apply to liability resulting from injury to the life, body or health of a person. For such damage SOFiSTiK shall also be liable in cases of ordinary negligence, and the amount of damages shall not be limited.

13.6 The liability of SOFiSTiK under the German Product Liability Law (Produkthaftungsgesetz) remains unaffected by these License Terms.

13.7 Any claims for damages by the customer relating to defects in the supplied software shall be subject to a limitation period of 12 months. This does not apply to defects which have been intentionally concealed by SOFiSTiK.

14. Miscellaneous

14.1 If the customer operates a commercial business within the meaning of Sec. 1 (1) of the German Commercial Code (*Kaufmann im Sinne des Handelsgesetzbuchs*) or a statutory corporation or foundation under public law, the legal venue for all disputes arising from or in connection with these License Terms is Munich/Germany.

14.2 If the customer operates a commercial business within the meaning of Sec. 1 (1) of the German Commercial Code (*Kaufmann im Sinne des Handelsgesetzbuchs*) or a statutory corporation or foundation under public law, the place of performance for all duties and obligations arising from contracts between SOFiSTiK and the customer shall be the registered office of SOFiSTiK.

14.3 Agreements between SOFiSTiK and the customer shall be exclusively governed by German law. The UN Convention on Contracts for the International Sale of Goods (CISG) shall not apply.

14.4 If any provision of these License Terms is, or later becomes, invalid, the validity of the remaining provisions shall remain unaffected.