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SOFiSTiK's Update 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 all Software Service Agreements concerning the supply of programme updates for the software created by SOFiSTiK and supplied to the customer (the "**Software**"). SOFiSTiK's License Terms (current as of: 01-07-2015) shall apply where mentioned in these terms and conditions for update services.

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. Programme Updates

2.1   Throughout the duration of the contract, SOFiSTiK shall make available current versions of the Software, which it has developed and released (the "**Programme Updates**"), to the customer together with updated user documentation in pdf format. SOFiSTiK shall be entitled to make the Programme Updates available via download. Programme Updates may address the further development of the content or qualitative aspects of the Software.

2.2   The time intervals between the development of Programme Updates shall be decided by SOFiSTiK. Whether functions and modules of the Software are retained, altered, modified, reduced or extended shall also be decided by SOFiSTiK.

2.3   SOFiSTiK hereby informs the customer that the creation of a back up copy of data, particularly data which has been created by the Software, is recommended prior to the installation of a Programme Update in order to avoid a loss of data.

3. Service Fee; Adjustment of the Service Fee

3.1   The customer shall pay the monthly service fee agreed in the Software Service Agreement for the update services specified in section 2 of these Update Terms.

3.2   Expenses incurred by SOFiSTiK in connection with the installation of the Software on another computer or operating system, in the provision of additional documentation, in examining the accuracy of calculations conducted by the customer using the Software, as well as any travel costs and other expenses which may arise in association with such actions, are not included in the service fee. These expenses are to be borne by the customer and shall be paid for separately.

3.3   If SOFiSTiK raises or reduces the usual license fees charged for the Software in general, SOFiSTiK shall be entitled to raise or reduce 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 Service Agreement after receiving notice of the adjustment of fees by giving the necessary notice of termination in accordance with section 7.2 of these Update Terms.

3.4   Unless agreed otherwise, all prices relating to Programme Updates supplied by SOFiSTiK are exclusive of value added tax (VAT).

4. Rights of Use for Programme Updates; Transfer

4.1 SOFiSTiK grants the customer the simple, non-exclusive right to use the object code of the Programme Updates, supplied in fulfilment of this agreement, in accordance with the provisions of SOFiSTiK AG's License Terms, for the duration of the period mentioned in this section 4.

4.2 The customer's right to use the Programme Updates 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.

4.3 The acquisition of a single user license entitles the customer to use the Programme Updates 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 Programme Updates on a single local workstation (remote control). The acquisition of a network license shall entitle the customer to use the Programme Updates 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.

4.4 The customer shall only be entitled to use old and new versions of the Software within the same network or any other multi-user computer system if such usage does not create the possibility of simultaneous, multiple uses of the old and new versions of the Software which exceed the agreed extent of the usage rights granted in the original version of the Software.

4.5 No further granting of rights is associated with the provision of the Programme Updates, 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).

4.6 The customer shall be permitted to transfer the Programme Updates in accordance with the provisions of SOFiSTiK's License Terms which apply to the supply of the Software. In this regard, section 8 of the SOFiSTiK's License Terms shall apply accordingly.

5. Warranty

5.1 SOFiSTiK warrants that the support services provided will not be affected by defects which impair their suitability.

5.2 In the event that the customer receives Programme Updates for Software which has been supplied to him on a permanent basis in accordance with section 4.1 of SOFiSTiK's License Terms (software purchase), the provisions of section 12.1 of SOFiSTiK's License Terms shall apply to the warranty accordingly.

5.3 In the event that the customer receives Programme Updates for Software which has been supplied to the customer on a temporary basis in accordance with section 4.2 of SOFiSTiK's License Terms (software rental), the provisions of section 12.2 of SOFiSTiK's License Terms shall apply to the warranty accordingly.

5.4 In the event that Programme Updates no longer include specific functions or features which were included in the Software, which SOFiSTiK had supplied to the customer (pursuant to section 4 of SOFiSTiK's License Terms following the conclusion of the relevant Software Supply and License Agreement), the Programme Update shall not be considered to be defective as long as the absence of these functions or features does not impair the customer's use of the Software.

6. **Liability**

With regard to the liability of SOFiSTiK, the terms set forth under section 13 of SOFiSTiK's License Terms shall apply accordingly.

7. **Duration of the Contract; Termination**

7.1 Unless otherwise agreed between the parties the obligation to provide update services shall commence with the conclusion of the relevant Software Service Agreement and shall continue for an indefinite time. In case the parties agreed on a limited contractual term (Limited Term), the Update Services shall terminate automatically at the end of the limited contractual period. The right to ordinary termination of the Update Services is excluded for both parties.

In case the contract is concluded for an indefinite time either party may terminate the Software Service Agreement by giving the relevant notice. For the purposes of this section, the relevant notice period to be provided by the customer shall be six weeks 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. In case the Software Service Agreement specifies a minimum duration of the contract (Minimum Term), the termination may not take place prior to the expiry of such a period.

7.2 Each party's right to terminate the Software Service 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 service fee in accordance with section 3 of these Update Terms and remains in default of payment following two reminders.

7.3 In case the customer makes use of the update services for Software which is licensed to him on a temporary basis (software rental) in accordance with section 4.2 of SOFiSTiK's License Terms, the Software Service Agreement shall only be terminated together with the License Agreement concerning the relevant Software. The provisions of section 5 of SOFiSTiK's License Terms apply to the termination of the Software License Agreement.

7.4 In the event that several software products form the subject matter of the Software Service Agreement, either party may terminate the Software Service Agreement to the extent that it relates to an individual software product (partial termination).

7.5 Any notice of termination must be in writing.

8. **Miscellaneous**

8.1 If the customer is dealing as a business, the legal venue for all disputes arising from or in connection with these terms and conditions is Munich/Germany.

8.2 If the customer is dealing as a business, the place of performance for all duties and obligations arising from contracts between SOFiSTiK and the customer shall be the registered office of SOFiSTiK.

8.3 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.

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