

# TERMS AND CONDITIONS OF TRANSFER OF SOFTWARE

## 1. Subject Matter of Contract

The customer acquires the software configuration (hereinafter referred to as software), which is described in the Transfer of Software Contract for utilization within the therein described range under the following provisions. Deviating, conflicting or supplementary terms and conditions from the customer are not a part of the contract; the provisions of Staedtler-Logistics, as stated herein, apply exclusively.

## 2. Delivery

### 2.1 Content of delivery

Software shall only be delivered in executable form (object code), in combination with user documentation exclusively in form of an online-help to the delivery location stated in the Transfer of Software Contract.

### 2.2 Type of delivery

Delivery is effected by providing the customer with the type of data carrier that has been described in the Transfer of Software Contract.

### 2.3 Delay in delivery

In the event that Staedtler-Logistics is delayed more than 30 days in delivering the product, the customer is entitled to claim a contractual penalty of 0.1 % of the transfer price for each day after the initial 30 days, to a maximum of 10 % of the transfer price. The contractual penalty shall be credited against the damage caused by delay. If the full contractual penalty is payable, the customer shall be entitled, at his own discretion, to claim damage compensation instead of performance by giving notice in advance. An extension of time must not be granted if a further delay is not acceptable for the customer.

### 2.4 Installation

The installation of software is not object of this contract, but can be agreed on separately.

### 2.5 Customer Participation Liability

Upon request from Staedtler-Logistics, the customer is required to execute appropriate and sufficient testing of the software and, where applicable, of existing developed/delivered additional component from Staedtler-Logistics, as contractually agreed upon, before going live. These tests must be run independently and on the customer's own authority.

## 3. Licence for utilization

### 3.1 Type of license

Staedtler-Logistics grants a non-exclusive, non-transferable and open-ended license to the customer.

### 3.2 Range of utilization

The customer is authorized to use the software within the range of utilization that is described in the Transfer of Software Contract. This includes installation, loading and running of the software as stated therein. The customer's license for utilization is in particular limited to the database licenses and client licenses granted in the Transfer of Software Contract (one client license equates to one login to the database or one of the databases with the delivered software).

### 3.3 Changes in the range of utilization

In the event that a customer extends the contractual utilization of

the software with regard to the criteria stated in the Transfer of Software Contract, the customer is obligated to instantly notify Staedtler-Logistics about the extension. The customer is charged a fee for the additional use of the software in accordance with Staedtler-Logistics' price lists.

### 3.4 Modification and adjustment rights

Insofar as the software displays defects or the customer requires information on the development of interfaces, the customer is obligated to first consult Staedtler-Logistics for the remedy of defects or for the transfer of the required information.

If Staedtler-Logistics is not willing or not in the position to deliver the required performance – not even against an appropriate fee – the customer will be entitled to modify the software for the deletion of errors and development of further interfaces exclusively according to the requirements and to the extent stipulated in §§ 69 d and e of the German Copyright Law. Any other modification or adjustment of Staedtler-Logistics software products is prohibited.

### 3.5 Backup copies and reproduction

The customer is entitled to generate backup copies insofar as they are necessary for contractually agreed upon use. Further copies are prohibited.

### 3.6 Conveyance

The transfer of software licenses in accordance with the Transfer of Software contract is subject to prior written consent from Staedtler-Logistics. The license for utilization may only be transferred under the provisions declared therein or in the Transfer of Software contract and in full. In the event of conveyance or transfer of software programs, the customer is obligated to hand over every copy to the buyer or recipient, and to delete all copies that are not transferred.

### 3.7 Source code

Software shall only be delivered in executable form (object code), unless otherwise agreed upon. In the event that Staedtler-Logistics delivers the source code in compliance with a separate agreement, the customer is granted a license to use the source code exclusively for the development of interfaces from other programs and deletion of program errors.

## 4. Payment and terms of payment

### 4.1 Costs

The customer is charged a one-time payment for the software and the granted range of utilization. The amount of the one-time payment is stated in the Transfer of Software contract. Value-added tax is not included in the price.

### 4.2 Settlement date

Payment is due upon receipt of invoice, unless otherwise agreed upon.

### 4.3 Late payments

Staedtler-Logistics invoices interest rates of eight percentage points above the base rate for the period of delay. The claim of further damage caused by delay remains unaffected.

### 4.4 Payment for excessive utilization

If a customer exceeds the contractual range of utilization as defined in subsection 3.2 without instantly notifying Staedtler-Logistics, Staedtler-Logistics shall be entitled to claim twice

the amount which would have been payable in accordance with the price list of Staedtler-Logistics.

Amounts already paid for the utilization of software are credited against the payment for excessive use. The statute of limitation begins with the day on which Staedtler-Logistics notices the excessive utilization.

## 5. Legal reservation

Staedtler-Logistics reserves itself the right on the objects of the contract until full payment is received. Staedtler-Logistics maintains the right to suspend the licence for the utilization of the software until full payment has been received. Staedtler-Logistics is furthermore entitled to reclaim every single copy from the customer or – if impossible – the deletion of any copy in the event that the customer is late in payment and Staedtler-Logistics withdrew from the contract. The customer is obligated to instantly inform Staedtler-Logistics in writing of third party access and to inform the third party of Staedtler-Logistics' rights.

## 6. Warranty

### 6.1 Material defects or defects of title

Staedtler-Logistics delivers the respective, outstanding software free of material defects or defects of title. A material defect is given if software does not exhibit the contractual and customary characteristics or is not suitable for normal use.

### 6.2 Exclusion of defects liability

The execution of defects liability requires that the customer has not modified the result nor used it in an environment other than that in which use was intended. In the event that the customer has used or uses the product in combination with products not authorized by Staedtler-Logistics or has modified the product himself or had it modified by third parties, Staedtler-Logistics' defects liability is no longer applicable, except if the customer is able to prove that any errors that have occurred were not caused by such conduct and that Staedtler-Logistics' defect analysis and remedy is not thereby affected.

### 6.3 Statute of Limitation of guarantee claims

The statutory limitations of guarantee claims begins with the delivery of software by Staedtler-Logistics. Claims expire regularly after a period of twelve months. In case of fraudulent intent or acceptance of a guarantee, the statutory provisions apply.

### 6.4 Notification of defects

Defects detected by the customer shall be clearly documented and reported immediately after their discovery to Staedtler-Logistics in written form.

### 6.5 Remedy

6.5.1 In case defects are reported to Staedtler-Logistics within the warranty period, Staedtler-Logistics shall remedy the defects either by correction or by reproduction. The remedy of defects may also be effected by providing the customer with instructions via telephone or written instructions via electronic data transfer or via data carriers containing the required correction software. In such cases, the customer is obligated to implement the instructions provided insofar as it can be considered reasonable that the customer enables electronic data transfer and imports the correction software immediately upon receipt.

Software-related bypassing is also regarded as a remedy of the defect, as long as the result remains suitable for normal use as defined by contract.

6.5.2 Staedtler-Logistics is entitled to commission third parties for rendering a service. Staedtler-Logistics' responsibility for the protection of data and system security remains unaffected.

6.5.3 The customer bears additional costs and expenses arising from a performance delivered at a location other than the location stipulated in the Transfer of Software contract.

6.5.4 In the event that a defect reported by the customer cannot be traced back to a defect in the contractual product, Staedtler-Logistics shall be entitled to invoice any costs and expenses that incur for error analysis and remedy due to intent or gross negligence on the customer's part.

### 6.6 Other warranty claims

If Staedtler-Logistics fails to remedy the defect within the time limit set by the customer, the customer shall be entitled to

- a) remedy the defect himself and claim the costs and expenses that incur
- b) terminate the contract
- c) lower the purchase price

and to

damage compensation instead of service or reimbursement of expenses incurred in vain. The statutory provisions apply.

### 6.7 Reimbursement for received benefits during rescission

In case of rescission, Staedtler-Logistics is entitled to claim a reasonable compensation for any benefit from the service on the customer's part until the rescission.

The amount of compensation is calculated based on a four-year total usage period by deducting a discount according to the extent the defect limited the use.

## 7. Liability

Staedtler-Logistics' liability - no matter for what legal cause outside of warranty - applies exclusively under the following provisions:

### 7.1 Unlimited Liability

Staedtler-Logistics is fully liable:

7.1.1 in case of intent, gross negligence and gross organizational negligence.

7.1.2 in cases of damage from injury to life, body and health, regardless of gravity of fault.

7.1.3 in cases where Staedtler-Logistics has assumed a guarantee

### 7.2 Contract-typical, foreseeable damage

Staedtler-Logistics' liability for damage arising from infringement of essential contractual obligations is limited to contract-typical, foreseeable damage if no case covered by subsection 7.1 exists.

### 7.3 Other cases

In any other case, Staedtler-Logistics' liability is limited to the contractual compensation per claim. Liability without fault by Staedtler-Logistics is excluded.

### 7.4 Contributory negligence and data backup

In case damage is attributable to negligence displayed by Staedtler-Logistics as well as by the, the customer must deduct his contributory negligence.

The customer is particularly responsible for regular, at least daily, data backups. In case of a loss of data for which Staedtler-Logistics is responsible, Staedtler-Logistics can thus only be held liable for covering the costs of the reproduction of data from the backup copies, provided by the customer, as well as the reconstruction of data that would have been lost even despite the creation of regular backup copies.

7.5 Product Liability Law

Liability according to the Product Liability Law remains unaffected.

7.6 Third-party property rights

In case a service rendered by Staedtler-Logistics violates the copyrights or any other property rights of third parties, Staedtler-Logistics indemnifies the customer against any claim or demand arising from property right infringements, provided that the customer immediately informs Staedtler-Logistics about any claims or demands arising from property right infringements and actively includes Staedtler-Logistics in the negotiations with the third party, entrusts Staedtler-Logistics with the negotiations as far as possible and supports Staedtler-Logistics to a reasonable extent.

**8. Other Provisions**

8.1 Offsetting

The customer is only entitled to offset undisputed or legally determined claims.

8.2 Applicable law

This contract is subject to German law. UN Sales Law does not apply.

8.3 Place of performance / Place of jurisdiction

Place of performance is the domicile of Staedtler-Logistics  
Place of jurisdiction is Nuremberg.

8.4 Ineffective provisions and loopholes

If a provision or part thereof in this contract is or becomes fully or partially ineffective or invalid, the validity and effectiveness of any other term and condition stipulated therein remains unaffected. The same is also valid for loopholes. The ineffective or invalid provision shall be replaced with a new provision that comes as close as possible to the legal and economic content of what the contracting parties would have intended at the conclusion of the contract. Loopholes shall be treated in a similar manner.