

## **SOFISTIK AG's Terms and Conditions for Update Services**

### **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 General Terms and Conditions of Delivery 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 terms and conditions.
- 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 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 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 terms and conditions.

- 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 right to use the Programme Updates, supplied in fulfilment of this agreement, in accordance with the provisions of SOFiSTiK AG's General Terms and Conditions of Delivery which apply to the supply of the Software. In this regard, sections 6, 7 and 10 of the General Terms and Conditions of Delivery shall apply accordingly.

- 4.2 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.

- 4.3 The customer shall be permitted to transfer the Programme Updates in accordance with the provisions of SOFiSTiK's General Terms and Conditions of Delivery which apply to the supply of the Software. In this regard, section 8 of the General Terms and Conditions of Delivery 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 the customer on a permanent basis in accordance with section 4.1 of SOFiSTiK's General Terms and Conditions of Delivery (software purchase), the provisions of section 13.1 of SOFiSTiK's General Terms and Conditions of Delivery 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 General Terms and Conditions of Delivery (software rental), the provisions of section 13.2 of SOFiSTiK's General Terms and Conditions of Delivery 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 General Terms and Conditions of Delivery 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 14 of SOFiSTiK's General Terms and Conditions of Delivery shall apply accordingly.

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

- 7.1 The obligation to provide update services shall commence with the conclusion of the relevant Software Service Agreement and shall continue for an undetermined time.
- 7.2 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. If the Software Service Agreement specifies a minimum duration of the contract, the termination may not take place prior to the expiry of that period.
- 7.3 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 terms and conditions and remains in default of payment following two reminders.
- 7.4 If the customer makes use of the update services for Software which is supplied to him on a temporary basis (software rental) in accordance with section 4.2 of SOFiSTiK's General Terms and Conditions of Delivery, the Software Service Agreement shall only be terminated together with the Software Supply and License Agreement concerning the relevant Software. The provisions of section 5 of SOFiSTiK's General Terms and Conditions of Delivery apply to the termination of the Software Supply and License Agreement.
- 7.5 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).
- 7.6 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 terms and conditions for support services is, or later becomes, invalid, the validity of the remaining provisions shall remain unaffected.