1. - Scope

(1) Comsol Multiphysics GmbH ("Comsol") with its registered office in Göttingen provides all software (referred to as "Programs") and services (referred to as "Maintenance and Support") exclusively on the basis of these Terms and Conditions ("T&Cs"), and the English language COMSOL Software License Agreement (referred to as "SLA") which can be downloaded at www.comsol.com/sla from the license section of Comsol's website) and that is displayed upon installation of the Programs, as such SLA is modified herein by these T&Cs. These T&Cs and the SLA also apply to future transactions between the parties. Capitalized terms in this document shall have the meaning given to them in the SLA, unless stated otherwise herein.

(2) Comsol exclusively enters into agreements with legal persons, partnerships with legal capacity or with natural persons acting in their commercial or self-employed professional capacities when entering into the agreement.

(3) Terms and conditions of the customer do not apply. These T&Cs also apply exclusively where Comsol delivers the Programs and provides Maintenance and Support without reservation despite being aware of opposing terms and conditions of the customer.

(4) Comsol has the right to change these T&Cs (including the SLA) in connection with updates to, upgrades of, and/or new versions of the Programs. The customer will be informed about any changes to the T&Cs.

2. - Purpose and functional qualities of Comsol software

(1) Comsol will deliver the respective Comsol Programs in accordance with the product description in the Documentation. The product description in the Documentation conclusively defines the functional qualities of the respective Comsol Programs. Comsol does not owe any duty with regard to any further quality. In particular, customer can imply no such duty from any other published Comsol description or advertisement for Comsol Programs except to the extent Comsol has expressly confirmed that other quality in writing. Guarantees are effective only if expressly confirmed in writing by Comsol.

(2) Customer acknowledges and agrees hereby that the respective Comsol Programs are not fault-tolerant and are not designed, manufactured, or intended for use or resale as control equipment in hazardous environments requiring fail-safe performance in which the failure of the programs could lead directly to death, personal injury, or severe physical or environmental damage.

(3) Customer acknowledges and agrees hereby that simulation software (like the respective Comsol Programs) is not a substitute for safety and efficacy testing for any product or process being simulated. Customer assumes sole responsibility for such safety and efficacy testing.

3. - Comsol software license conditions

In addition to these T&Cs the SLA applies to the respective Comsol Programs with the provision that the term "Warranty" does not have the legal meaning of a warranty promise (Garantieversprechen), section 14 "Termination" and section 15 "Effect of Termination" do not apply to licenses granted for an unlimited term and section 14 "Termination" sentence 3 does not apply at all. The SLA can be requested from Comsol at any time and downloaded from the internet at the following address: www.comsol.de/sla

4. - COMSOL Maintenance and Support

Included with the purchase of a license for the Comsol Programs are Maintenance and Support as defined in Section 1 of the SLA, as further described in section 7 of the SLA, and for the time period set forth in Section 7 of the SLA. Comsol is entitled to make the provision of New Versions dependent on the customer's agreement to changed T&Cs (see Section 1 "Scope" (4) T&Cs). If the customer does not give such consent, Comsol remains by way of derogation from section 7 (d) "Scope" of the SLA only obliged to provide Maintenance and Support for the last version of the respective Comsol software made available to the customer.

By way of derogation from section 7 (c) "Renewal" of the SLA the following applies: Maintenance and Support for licenses which are not limited in time can be extended by a further year in each case before the end of the support period for the prices of Maintenance and Support for such perpetual licenses valid on the renewal date as long as Comsol offers such services. If the customer's subscription for Maintenance and Support lapses at any time, the fees for recommencing Maintenance and Support will be increased by the amount which would have been due for the period during which the subscription for Maintenance and Support had lapsed plus a recommencement fee.

5. - Customer's duties of cooperation

The customer will assist Comsol with the provision of its services. These duties of cooperation belong to the contractual duties of the customer which are essential for the contractual purpose. These include, but are not limited to:
  a) Notification of changed hardware data, where appropriate for the purpose of adjusting the license code.
  b) Immediate notification of changes of user or information about further users of the licensed COMSOL Programs (name, address, telephone, email) for the purpose of authorization to log support queries.
  c) Notification of abuse without undue delay.
  d) Selection and testing of hardware and determination of system configurations for use with the programs.
  e) Verification and validation of Program Output.

6. - Conclusion of the agreement and remuneration

(1) All offers and prices are non-binding and an agreement with the customer is not concluded until the order has been confirmed in text form (e.g. email) by Comsol. The prices are net prices and the applicable VAT is payable on top.

(2) Comsol has a right to invoice the customer when the agreement is concluded. Invoices from Comsol will be due for payment 10 days after receipt of the invoice by the customer except as specified by paragraph 3.

(3) The customer only has a right of set-off if its claim is undisputed or has been finally established by a court of law. The customer only has a right to assert a right of retention if its counterclaim is based on the same order and the claim is undisputed or has been finally established by a court of law.

(4) § 312i Abs. 1 Nr. 1, 2 and 3 BGB as well as § 312i Abs. 1 sentence 2 BGB do not apply.

7. - Passing on the Comsol Programs to third parties

If Comsol provides the customer with the Comsol software for an unlimited term, the customer will have a right to permanently transfer such Programs and the related Documentation to a third party. In this case the customer will completely cease its use of the Programs, delete all installed copies of the Programs from its computers and delete all copies on other data carriers or hand them over to Comsol unless there is a longer statutory retention duty. On request by Comsol, the customer will confirm to Comsol in writing that it has completely implemented said measures or explain to it the reasons why there is a longer retention period. The customer will also ensure that the third-party will comply with the terms and conditions set forth in the respective SLA applicable to the Comsol Programs.

8. - Rights in the case of defects

(1) Customer acknowledges it is aware that software can never be free from "bugs" or programming errors. Comsol warrants that the Comsol Programs shall conform in all material respects to their functional specifications in the Documentation. The warranty is restricted to 1 year from provision of the Comsol software and does not apply to defects which result from the Comsol software being used in a hardware or software environment which does not meet the technical requirements of Comsol Programs or to amendments or modifications which the customer has made to the Comsol Programs.

(2) Slight deviations from the functions described in the Documentation do not give rise to a warranty claim. Other documents and statements – unless expressly agreed between the parties in writing – are irrelevant for the purpose of determining the condition of the Comsol Programs.

(3) Customers must review the Comsol Programs without undue delay on receipt to ensure that its condition is contractual and notify any obvious defects in writing without undue delay; otherwise the warranty for these defects will be excluded. The same applies if such a defect arises later. Section 377 German Commercial Code (HGB) applies.

(4) Comsol will initially have a right to provide subsequent performance, i.e. to either remedy the defect ("Nachbesserung") or to make a replacement delivery at its discretion. In the framework of the replacement delivery the customer will, where appropriate, accept a newer version of the Comsol software unless this leads to impairments which the customer cannot be reasonably expected to accept. No warranty will be provided for test licenses.

9. - Liability

(1) Comsol will be liable for intent and gross negligence as well as for injuries to life, limb or health, on the basis of guarantees of condition or quality and manufacturer's guarantees and under the German Product Liability Act (ProdHaftG).

(2) Comsol will only be liable for slight negligence to the extent that an obligation, which is of particular significance for achieving the objective of the agreement (cardinal obligation), is breached and such damage was typically foreseeable. All other liability is excluded.

(3) In the case of trial licenses, liability is also excluded for damage caused by slight negligence.

(4) Liability for loss of data is restricted to the typical costs of data recovery which would be incurred if back-up copies were made at regular intervals and in a manner commensurate with the risk.

(5) The above limitation of liability also applies to the personal liability of the employees, representatives and bodies of Comsol.

10. - Final provisions

(1) In the event of discrepancies between these T&Cs and the respective provisions of the SLA, these T&Cs will prevail. This especially applies to the provisions on passing on the Comsol Programs to third parties, the rights in the case of defects (warranty), the liability and the choice of law and place of jurisdiction under German law.

(2) Amendments or additions to the T&Cs or the agreement must be in writing. This also applies to any amendments to or the lifting of this clause.

(3) The agreements concluded by Comsol on the basis of these T&Cs will be governed exclusively by the law of the Federal Republic of Germany excluding international private law (Introductory Act to the German Civil Code (EGBGB)) and the United Nations Convention on Contracts for the International Sale of Goods of 11.04.1980 (UNCISG).

(4) Exclusive place of jurisdiction for all disputes under this agreement is Göttingen if the customer is a businessman, a legal person under public law, a special fund under public law or does not have a place of jurisdiction in Germany.

(5) If one of the provisions in this agreement should be entirely or partially invalid, this will not affect the validity of the remaining provisions. The invalid provision will be deemed replaced by the valid provision which most closely reflects the economic purpose of the invalid provision. The same applies to any lacunae.

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