



BATEMO CELL MODELS

TERMS AND CONDITIONS

SOFTWARE PURCHASE

§ 1 Subject Matter of the Contract

(1) Batemo GmbH, Benzstraße 15, 76185 Karlsruhe, Germany (hereinafter referred to as the "**Licensor**") shall provide the Licensee with the Batemo Cell Models software (hereinafter referred to as the "**Software**"), the license files required for operation (hereinafter referred to as the "**Licenses**") and the associated application documentation (hereinafter referred to as the "**Application Documentation**") in English (hereinafter referred to collectively as the "**Contractual Objects**") for the Licensee's own use on a permanent basis under these license terms and conditions.

(2) The source code of the Software is not part of the contractual objects.

(3) The product description valid at the time of conclusion of the agreement and available to the Licensee prior to concluding the agreement shall decisively determine the quality of the Software delivered by the Licensor. The Licensor shall not be obliged to provide any software with higher specifications.

(4) The Software requires certain hardware and software environments for proper operation, which are defined in the product description; furthermore, it will require an Internet connection. This must be established once within a period of two weeks in order to verify the license. The existence of the hardware and software prerequisites defined here as well as the existence of an Internet connection is a prerequisite for the Software to be able to run.

(5) If separate Software extensions ("add-ons") are purchased by the Licensee, these add-ons shall also be subject to these terms and conditions.

(6) If employees of the Licensor issue warranties prior to the conclusion of the contract, these shall only be effective if they are confirmed in writing by the management of the Licensor.

§ 2 Delivery

(1) The Software is made available to the Licensee in accordance with the provisions of these terms and conditions either on a storage device or as a password-protected installation file for download via the Internet.

(2) Licenses are required for the operation of the Software in accordance with § 3 of these terms and conditions. The licenses are delivered as USB-Dongle (CmStick) or license file (CmActLi-cense) according to the stipulations of the contract.

(3) Together with the Software, the Licensor shall deliver the application documentation in English electronically to the Licensee.

§ 3 Granting of Rights

(1) With the contractual acquisition of licenses, the Licensor grants the Licensee the simple (non-exclusive) right to run the Software and use it for the period specified in the contract with the specified number of licenses. The following types of licenses can be purchased by the Licensee:

- **Named User:** If the contract stipulates use with named users, only one registered user per license is entitled to use the Software. Only one natural person may be assigned to a named user. The Licensee is not allowed (and this would represent a copyright infringement) to let several natural persons use the Software under one user name. The Licensee may change the registered user of a named user license twice per contract year.
- **Designated Computer:** The license entitles to use the Software on a single registered computer. The Licensee must ensure that the Software only runs on the designated computer and that only one user, to whom only one natural person is assigned, has access to the designated computer at any time. The Licensee is not allowed (and this would represent a copyright infringement) to let several natural persons use the Software on the designated computer. The Licensee may change the registered computer of a designated computer license twice per contract year.
- **Concurrent:** If concurrent licenses are contractually agreed upon, the Software may be used by any natural persons who are employees of the Licensee. However, the number of concurrent users of the Software may not exceed the number of rented concurrent licenses.

(2) During a contractually agreed test phase, if applicable, the Licensor shall grant the Licensee the simple (non-exclusive) right to use the Software free of charge with the agreed number and type of licenses for the duration specified in the contract. After expiration of the test phase, the Licensee's rights under these terms and conditions shall expire even without an express request for return by the Licensor, unless the Licensee purchases the Software in accordance with § 3 (3) of these terms and conditions.

(3) Irrespective of § 3 (2), the Licensor shall grant the Licensee the simple (non-exclusive) right to run and use the Software permanently with the number and type of licenses agreed upon in the contract (**software purchase**).

(4) The Licensee may only use the Software for the purpose of processing its internal business transactions and those of companies affiliated with it within the meaning of Section 15 of the German Stock Corporation Act ("Group Companies"). In particular, computing center operation or the temporary provision of the Software (e.g. as Software-as-a-Service, SaaS) for companies other than group companies or the use of the Software for the training of persons who are not employees of the Licensee or its group companies are only permitted with the prior written consent of the Licensor.

(5) Reproductions of the Software are only permitted to the extent that this is necessary for use in accordance with these terms and conditions. The Licensee may make backup copies of the Batemo Cell Model to the extent necessary in accordance with the rules of technology. Backup copies on movable storage devices shall be marked as such and provided with a copyright notice ("© Batemo GmbH").

(6) The Licensee shall only be entitled to make changes, extensions and other modifications to the Software within the meaning of § 69 c no. 2 of the German Copyright Act (UrhG) to the extent that the law permits such modifications, extensions and other modifications. Before the Licensee eliminates errors by himself or through third parties, he will allow the Licensor three attempts to eliminate the error.

(7) The Licensee shall only be entitled to decompile the Software within the limits of § 69 e UrhG and only if the Licensor, after written request with a reasonable period of notice, has not provided the necessary data and/or information to establish interoperability with other hardware and software.

(8) The publication and revision of the application documentation is not permitted. Reproduction (e.g. in the form of photocopies, printouts or making it available to own employees) is only permitted for internal company purposes.

(9) Copyright or other property right notices within the Software may neither be removed nor changed.

§ 4 Transfer of the Contractual Objects

(1) The Licensee may only transfer the contractual objects to a third party as a whole and with complete and final abandonment of his own use of the contractual objects. The temporary transfer of use to third parties against payment (renting) is prohibited.

(2) The transfer of the contractual objects requires the written consent of the Licensor. The Licensor grants consent if

- a) the Licensee assures the Licensor in writing that he has passed on all original copies of the contractual objects to the third party and has deleted all copies he has made himself,
- b) and the third party confirms his agreement with these terms and conditions in writing to the Licensor.

§ 5 Purchase Price, Terms of Payment

(1) The Licensee shall pay the contractually agreed price plus statutory VAT/sales tax for the transfer of the contractual objects and the granting of the rights of use to the Software. During the test phase, in accordance with § 3 (2) of these license conditions, the contractual objects are provided free of charge and the rights to use the Software are granted free of charge.

(2) The purchase price is due and payable upon invoicing, but not before the contractual objects are made available.

(3) In the event of late payment, the Licensor shall charge the statutory interest on arrears after prior written notice of the delay to the Licensee.

§ 6 Installation, Training, Maintenance, Parameterization

(1) For the installation of the Software, the Licensor refers to the notes on installation described in the installation instructions within the application documentation. At the request of the Licensee, the Licensor shall undertake the installation of the Software based on a separate agreement.

(2) These terms and conditions do not regulate the adaptation and further development of the Software, software maintenance, the creation of a Batemo Cell Model for the Licensee

with the underlying performance of parameterization and validation measurements or the provision of training courses by the Licensor.

§ 7 The Licensee's Obligations to Cooperate and Provide Information

(1) The Licensee will carefully store the provided contractual objects in order to exclude misuse.

(2) The Licensee has familiarized himself with the essential functional features of the Software and bears the risk as to whether the Software meets his wishes and needs; in case of doubt, he has obtained advice from employees of the Licensor or from competent third parties prior to concluding the contract.

(3) The Licensee is solely responsible for setting up a functional hardware and software environment for the contractual objects that is sufficiently dimensioned - also taking into account the additional space required by the contractual objects. The hardware and software environment required and necessary for the operation of the Software is defined in the application documentation.

(4) Before using the Software, Licensee shall thoroughly test the Software for freedom from defects and for usability in the existing hardware and software configuration.

(5) The Licensee shall observe the instructions given by the Licensor for the installation and operation of the Software.

(6) Insofar as the Licensor has further obligations beyond the delivery of the contractual objects, the Licensee shall cooperate to the required extent free of charge, e.g. by providing employees, work rooms, hardware and software, data and telecommunication facilities.

(7) The Licensee grants the Licensor access to the contractual objects for the purpose of troubleshooting and error correction, either directly and/or by means of remote data transmission. The Licensor is entitled to check whether the contractual objects are used in accordance with the provisions of these terms and conditions. For this purpose, he may demand information from the Licensee, in particular about the period and scope of use of the contractual objects.

(8) The Licensee shall take reasonable precautions if the Software does not function properly in whole or in part (e.g. through daily data backups, fault diagnosis, regular checking of data processing results).

(9) Unless this is expressly stated by the Licensee beforehand, the Licensor may assume that all of the Licensee's data with which the Licensor may come into contact has been backed up.

(10) The Licensee shall bear any disadvantages and additional costs resulting from a violation of these obligations.

§ 8 Defects of Quality and Title for Software Purchase

(1) Except during the free test phase according to § 3 (2), the Licensor guarantees the agreed quality of the contractual objects according to § 1 (3) of these terms and conditions and that the use of the contractual objects within the contractual scope by the Licensee does not conflict with the rights of third parties.

(2) The Licensee assumes a duty of inspection and notification of defects in accordance with § 377 HGB (German Commercial Code) with regard to all deliveries and services of the Licensor in execution of these terms and conditions.

(3) The Licensee shall document any defects that may occur in a manner that is as comprehensible as possible for the Licensor and shall notify the Licensor immediately upon their discovery.

(4) In the event of defects, the Licensor shall initially provide warranty by means of subsequent fulfillment. For this purpose, the Licensor shall, at his discretion, either provide the Licensee with a new, defect-free version of the Software or remedy the defect; the defect shall also be deemed to be remedied if the Licensor shows the Licensee reasonable possibilities to avoid the effects of the defect. In the case of defects of title, the Licensor shall initially provide warranty by means of subsequent fulfillment. For this purpose, the Licensor shall, at his discretion, provide the Licensee with a legally unobjectionable possibility of use of the delivered contractual objects or of exchanged or modified equivalent contractual objects. The Licensor is entitled to make subsequent fulfillment dependent on the Licensee having paid at least an appropriate part of the remuneration.

(5) The Licensee is obliged to adopt a new version of the Software if the contractual scope of functions is maintained. The rights of the Licensee according to § 439 BGB remain unaffected.

(6) If the subsequent fulfillment fails, the Licensee shall be entitled to set a reasonable period of grace to remedy the defect. If the rectification also fails within the grace period, the Licensee may withdraw from the contract or reduce the remuneration, unless the defect is insignificant. The Licensor shall pay damages or compensation for futile expenditure due to a defect within the limits set out in § 9 of these terms and conditions.

(7) If the Licensor performs services in the search for defects or their removal without being obliged to do so, he may charge for this service in accordance with his usual rates. This specifically applies if a defect cannot be proven or is not attributable to the Licensor. Furthermore, the additional expenditure on the part of the Licensor that arises because the Licensee has not properly fulfilled his obligations in accordance with § 7 of these terms and conditions shall be remunerated.

(8) If third parties assert claims that prevent the Licensee from exercising the rights of use granted to him under these terms and conditions, the Licensee shall notify the Licensor immediately and comprehensively in writing and hand over the defense against such claims to the Licensor as far as possible. The Licensor is obliged to defend the claims at his own expense and to indemnify the Licensee from all costs and damages associated with the defense of claims, unless they are based on the Licensee's breach of duty.

(9) The limitation period for all warranty claims is one year and begins with the delivery of the contractual objects; the same period applies to other claims of any kind against the Licensor. In the event of intent or gross negligence on the part of the Licensor, fraudulent concealment of the defect, personal injury or defects of title within the meaning of § 438 (1) No. 1a BGB, as well as in the case of warranties (§ 444 BGB), the statutory limitation periods shall apply, as shall claims under the Product Liability Act.

§ 9 Liability for Software Purchase

(1) In all cases of contractual and non-contractual liability which do not occur during the free test phase in accordance with § 3 (2) of these terms and conditions (see § 10), the Licensor shall pay damages exclusively in accordance with the following limits:

- a) in the case of intent and gross negligence in the full amount, as well as in the absence of a quality for which the Licensor has assumed a warranty;

b) For damages other than those mentioned in a), which are based on a slightly negligent violation of essential contractual obligations (cardinal obligations), the Licensor is liable under limitation to compensation for the foreseeable damage typical for the contract. Essential contractual obligations within the meaning of the first sentence are obligations whose violation endangers the achievement of the purpose of the contract, whose fulfilment makes the proper execution of the contract possible in the first place and on whose compliance the Licensee regularly relies.

c) Any further liability for damages other than those mentioned in a), which are based on a slightly negligent breach of duties other than those mentioned in b), is excluded.

(2) The limitations of liability according to § 9 (1) do not apply to the liability for personal injury and to the liability according to the Product Liability Law.

(3) For the period of limitation, § 8 (9) of these terms and conditions shall apply accordingly, with the proviso that the statutory period of limitation shall apply to claims under § 9 (1) a) and § 9 (2).

(4) The Licensee is responsible for a regular backup of his data. In the event of a loss of data for which the Licensor is responsible, the Licensor shall therefore only be liable to the extent of the restoration costs for the data that would have been lost even if the data had been backed up properly.

§ 10 Warranty and Liability in the Free Test Phase

During the free test phase in accordance with § 3 (2) of these terms and conditions, the statutory warranty and liability regulations of loans (§§ 599, 600 BGB) shall apply departing from § 8 and § 9.

§ 11 Confidentiality and Data Protection

(1) The contracting parties undertake to treat all knowledge of confidential information and company secrets of the other contracting party obtained in the course of the initiation and execution of the contract as confidential for an unlimited period of time and to use it only for the purposes of implementing the contract. The Licensor's trade secrets also include the subject matter of the contract and the services rendered under these terms and conditions.

(2) The Licensee shall only make the subject matters of the contract accessible to employees and other third parties to the extent that this is necessary for the exercise of the rights of use granted to him. He shall instruct all persons to whom he grants access to contractual objects about the rights of the Licensor to the subject matters of the contract and the obligation to maintain the confidentiality.

(3) The obligation of confidentiality does not cover information and documents that are generally known and accessible at the time of disclosure or that were already known to the receiving contractual party at the time of disclosure or that have been legitimately made accessible to it by third parties.

(4) The Licensor shall comply with the regulations on data protection, especially if he is granted access to the Licensee's operation or hardware and software. The Licensor shall ensure that his vicarious agents also comply with these provisions; in particular the Licensor shall oblige them to maintain confidentiality before commencing their work.

§ 12 Final Provisions

(1) Exclusive place of jurisdiction for all disputes arising from and in connection with these terms and conditions is the business location of the Licensor.

(2) German law applies exclusively, excluding the UN Convention on Contracts for the International Sale of Goods (CISG).

(3) The conclusion of the contract as well as subsequent amendments and additions to the contract shall require the written form in order to be effective. This also applies to any amendment of this clause. No verbal variations on this agreement have been made.

(4) Should individual provisions of these terms and conditions be or become invalid or unenforceable in whole or in part, the validity of the remaining provisions of these terms and conditions shall not be affected thereby. The same applies in the event that these terms and conditions contain a regulation gap.