

TERMS AND CONDITIONS

Subject to the following terms and conditions, Material Science International Services, GmbH ("MSI") grants to the CUSTOMER, a nonexclusive, nontransferable, annual and terminable license to use the computer programs, services and data identified in the Schedule(s), all updates delivered hereunder (the "Updates") and their user documentation. The Programs, Services and Data shall collectively be referred to herein as the "MSI Eureka".

1. CONFIDENTIALITY AND PERMITTED USE

- 1.1. Except as otherwise provided for on the Schedule(s) to this Agreement, CUSTOMER shall install and use MSI Eureka only at the Installation Site(s), on single or multiple central processing unit or units running under the operating system identified in this Agreement as the "MSI Eureka Operating Platform". CUSTOMER shall limit access and use of MSI Eureka to the number of seats/ sites identified in the applicable Schedule(s) to the Agreement. For the purposes of this Agreement, a "seat" shall mean a physical PC/Workstation identifiable by a serial number identification having access to the MSI Eureka, a designated individual or as otherwise agreed to by MSI in writing. Except as provided above, MSI Eureka may be copied only for backup purposes (with proper inclusion where they appear of the trade secret and/or copyright notices placed on them by MSI). In addition, after notification to MSI, subject to Section 12.1 below and payment of any additional fee, CUSTOMER may change the Installation Site or add additional Installation Sites.
- 1.2. CUSTOMER shall use the MSI Eureka only in the conduct of its business and shall not: (i) provide or otherwise make available MSI Eureka or any part or copies thereof to any third party other than its employees and agents identified as a specified user; or (ii) use MSI Eureka to create databases for resale.
- 1.3. CUSTOMER acknowledges that MSI Eureka is (i) MSI's principal products; (ii) valuable trade secrets of MSI; and (iii) made available only in binary form. CUSTOMER shall not transform, or attempt to transform MSI Eureka, into any other form, reverse assemble, reverse compile or use it other than as provided herein. CUSTOMER shall not transform MSI Eureka or any substantial portion, if the effect of such activity would result in CUSTOMER having available for its use two or more different versions of such MSI Eureka. For purposes of this Paragraph, "any substantial portion" shall mean any substantial percentage of the records in the MSI Eureka or any substantial percentage of the data from any field of MSI Eureka.
- 1.4. CUSTOMER shall (i) keep confidential MSI's trade secrets in MSI Eureka and all information related thereto; (ii) disclose such information only to the extent required to use MSI Eureka under

the terms of this Agreement; and (iii) with respect to CUSTOMER's employees, consultants, agents and other third parties, satisfy its obligations under this Agreement with respect to maintaining the confidentiality of MSI's trade secrets in MSI Eureka. This obligation does not however, preclude CUSTOMER from using information lawfully obtained from a source other than MSI.

- 1.5. For "Named Accounts" –if any- CUSTOMER agrees to maintain records detailing the number of seats accessing the MSI Eureka and further limit access to the MSI Eureka to only the number of seats identified in the applicable Schedule(s) to the Agreement. In the event the number of seats accessing the MSI Eureka exceeds the authorized number of seats licensed by CUSTOMER, CUSTOMER agrees to immediately notify and pay to MSI the then current fee for those additional seats accessing MSI Eureka.

2. DELIVERY AND PAYMENT PROVISIONS

- 2.1. MSI shall deliver to CUSTOMER MSI Eureka licensed hereunder on the media specified in the Schedule(s) and one (1) complete set of their user documentation promptly after receipt by MSI of a copy of this Agreement executed by CUSTOMER.
- 2.2. CUSTOMER shall pay to MSI the initial annual payment and/or one time payment, as the case may be, in immediately available funds of the lawful currency of the specified country identified on the applicable Schedule(s). Subsequently, with respect to MSI Eureka licensed on an annual basis as identified in the applicable Schedule(s), CUSTOMER shall pay the then current annual license fee within thirty (30) days prior to each annual anniversary of the Effective Date for each one (1) year renewal term of this Agreement. CUSTOMER may elect to license additional portions of the MSI Eureka from MSI pursuant to Section 12.1 below. CUSTOMER shall pay then to MSI the applicable initial annual payment and/or one-time payment within thirty (30) days after delivery of such additional portions of the MSI Eureka and the then applicable annual payment as provided above.

3. TAXES AND SHIPPING

- 3.1. CUSTOMER shall pay any sales, use, value added/ad valorem, surtax and personal property taxes, customs duties, registration fees and the like arising out of this Agreement and the transactions contemplated herein, excluding taxes based on MSI's net income.
- 3.2. CUSTOMER shall pay any shipping, freight, mailing expenses and the like arising out of this Agreement and the transactions contemplated herein.

4. INSTALLATION AND TRAINING

- 4.1. MSI will install and/or assist in the installation of MSI Eureka and provide training in accordance with the Services package, if any, purchased by CUSTOMER. Fees for Services packages are payable within thirty (30) days after receipt of MSI's invoice. MSI is not responsible for installation of the computer or other equipment at the Installation Site. If MSI Eureka is not installed by MSI, CUSTOMER agrees to install such MSI Eureka within a reasonable time after delivery by MSI.

5. TERM AND UPDATES

- 5.1. With respect to MSI Eureka licensed on an annual term as identified in the Schedule(s) to this Agreement, the term of this Agreement shall be for a period of one (1) year beginning with the Effective Date. The term shall continue thereafter for successive one (1) year renewal terms until either party gives the other party written notice at least ninety (90) days prior to the end of the current annual term that it elects to terminate the Agreement with respect to MSI Eureka or until MSI terminates this Agreement as provided in Section 9.1 below. During the term, CUSTOMER shall be entitled to receive all applicable releases to such MSI Eureka, which are made generally available.

6. TITLE

- 6.1. No title to or ownership of MSI Eureka or rights in patents, copyrights and trade secrets in MSI Eureka is transferred to CUSTOMER by virtue of this Agreement.

7. WARRANTIES AND DISCLAIMERS

- 7.1. MSI warrants that it has the right to license and/or sublicense MSI Eureka.
- 7.2. MSI warrants that to the best of its knowledge MSI Eureka does not infringe upon or violate any patent, copyright or trade secret of any third party. In the event any legal proceedings are brought against CUSTOMER claiming that the MSI Eureka, or any part thereof, constitutes an infringement of a third party's patent, copyright or trade secret, MSI shall defend at its own expense such legal proceedings relating to such claim or claims and pay any costs, damages and attorneys' fees finally awarded as a result of settlement or

judgment against CUSTOMER; provided CUSTOMER gives MSI prompt written notice within thirty (30) days of such claim against it and further cooperates completely with MSI in providing all necessary authority, information and reasonable assistance to enable MSI at its option, to settle or defend such claim. CUSTOMER's modification of MSI Eureka or failure to implement any MSI Eureka improvements or corrections without the prior written consent of MSI shall void this warranty. MSI shall have no liability for any claim of infringement based on use of MSI Eureka if such infringement would have been avoided by the implementation of such improvements or corrections. In the event of a legal proceedings claiming that MSI Eureka, or any part thereof, constitutes an infringement of a third party's patent, copyright or trade secret, MSI shall have the option to either (i) modify MSI Eureka to render it non-infringing; or (ii) procure a license which permits the CUSTOMER to continue to use the MSI Eureka or (iii) terminate the license and refund to CUSTOMER a portion of the license fee prorated over 12 month. The foregoing sentence states the entire liability and obligation of MSI and the exclusive remedy of CUSTOMER with respect to the matters set forth in this Section 7.2.

- 7.3. CUSTOMER agrees to promptly notify MSI of any use of MSI Eureka by any third party, which CUSTOMER considers might be an infringement or violation of a patent, copyright, trade secret or any other proprietary right of MSI. MSI shall have the sole right to decide whether or not proceedings shall be brought against such third parties. CUSTOMER agrees to cooperate with MSI to prosecute any action brought by MSI, all expenses being borne by MSI and all damages which may be recovered being solely for the account of MSI.

- 7.4. MSI DISCLAIMS ANY WARRANTY, EXPRESS OR IMPLIED, THAT MSI EUREKA IS MERCHANTABLE OR FIT FOR A PARTICULAR PURPOSE. THERE ARE NO WARRANTIES EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT. MSI MAKES NO WARRANTY THAT MSI EUREKA DOES NOT CONTAIN ERRORS. THERE ARE NO WARRANTIES EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT.

8. LIMITATION OF LIABILITY

- 8.1. In no event shall MSI be liable in any way for any indirect, special or consequential damages of any nature, including, without limitation, lost business, lost profits, or liability to any persons, whether foreseeable or not, regardless of whether MSI has been advised of the possibility of such damages.
- 8.2. The sole and exclusive remedies for breach of this Agreement by MSI, whether based in contract, tort or otherwise, shall be repair or replacement of all or part of MSI Eureka or, termination of the license granted herein and refund to CUSTOMER of license fee in accordance with Section 7.2 above.

9. TERMINATION

- 9.1. This Agreement may be terminated by either party at any time upon thirty (30) days prior written notice in the event that the other party commits a material breach of any of the terms or conditions of this Agreement and such breach, if curable, is not remedied to the other party's reasonable satisfaction within such thirty (30) day period. However, a breach of Section 1 is cause for immediate termination.
- 9.2. Upon termination of this Agreement, CUSTOMER shall immediately discontinue all use of MSI Eureka, remove MSI Eureka from the applicable central processing units at the Installation Site and deliver to MSI all portions and copies of MSI Eureka and any proprietary materials of MSI that may be in its possession.

10. NOTICE AND BILLING ADDRESS

- 10.1. Any notice, invoice, purchase order or other correspondence required or permitted to be given pursuant to the provisions of this Agreement shall be in writing and shall be deemed to have been given if served personally, or if sent by express courier or first class mail, postage prepaid, or by facsimile, addressed to the addresses set forth above or such other addresses as either party hereto may designate by notice to the other.

11. ASSIGNMENT

- 11.1. This Agreement and the rights, interests, benefits, duties and obligations hereunder shall not be assigned, transferred or hypothecated in any way by CUSTOMER without the prior written consent of MSI. Any attempt to assign, transfer or hypothecate or otherwise dispose of the rights, interests, benefits, duties or obligations hereunder contrary to the foregoing shall be null and void and without effect.

12. MISCELLANEOUS

- 12.1. This Agreement, including the Terms and Conditions, is a complete and exclusive statement of all of the terms and representations of the agreement between CUSTOMER and MSI with respect to the subject matter hereof. This Agreement shall not be varied, supplemented, qualified or interpreted by any prior course of dealing between the parties hereto or by any usage of trade. This Agreement may be amended or modified only by a written agreement executed by CUSTOMER and MSI. The terms of this Agreement shall not be modified by any purchase order or acknowledgment, even though MSI may

have signed such a document. Notwithstanding the foregoing, at CUSTOMER's option, CUSTOMER may license additional portions of the MSI Eureka from MSI by delivering to MSI a duly-authorized purchase order for such portions of the MSI Eureka, provided that such purchase order incorporates by reference the terms and conditions of this Agreement. In such circumstance, the use of the additional portions of the MSI Eureka shall be deemed to be subject to the terms and conditions of this Agreement, and shall not be subject to any conflicting provisions of the purchase order.

- 12.2. If any term or provision of this Agreement shall be found to be illegal or unenforceable, then, notwithstanding, this Agreement shall remain in full force and effect and such term or provision shall be deemed stricken.
- 12.3. Wherever in this Agreement either party's consent or satisfaction is required, such consent or satisfaction shall not be unreasonably or arbitrarily withheld or delayed.
- 12.4. Headings in this Agreement are for convenience only and are not to be used to interpret the agreement between the parties hereto.
- 12.5. No consent by either party to, or waiver of, a breach of this Agreement by the other party, whether express or implied, shall constitute a consent to, waiver of, or excuse for any other different or subsequent breach by the other party.
- 12.6. The provisions of Sections 1, 7, 8 and 9 shall survive termination or expiration of this Agreement.
- 12.7. This Agreement shall be governed by and construed in accordance with the laws of Germany.
- 12.8. This Agreement shall be binding on, and shall inure to the benefit of, the parties to it and their respective successors and permitted assigns.
- 12.9. In the event of any litigation between the parties hereto with respect to the subject matter hereof, the unsuccessful party to such litigation shall pay to the successful party all costs and expenses, including reasonable attorneys' fees, incurred therein by the successful party, all of which shall be included in and as a part of the judgment rendered in such litigation.
- 12.10. The terms of this Agreement shall only be disclosed by CUSTOMER to those of its employees and agents who need to know them in order to carry out their responsibilities to CUSTOMER