

**MSI EUREKA
TERMS AND CONDITIONS**

1. Grant of Licence

- 1.1. Subject to these Terms and Conditions, and in consideration of payment by the Licensee of the Initial Fee, MSI grants to the Licensee a non-exclusive, non-transferable licence to access the MSI Eureka Data Base either via the browser Search Interface or via the client software MSI Eureka Viewer (the “Platform”) and to access, view and make use of the content available in the Licensed Materials from the Licence Commencement Date (or payment of the Fee, if later) until this Agreement is terminated (the “Licence”). The Licences further subject to any guidelines that may from time to time be issued by MSI with respect to the Platform and/or Licensed Materials.
- 1.2. During the License Term, Licensee shall be entitled to receive all applicable releases of the Licensed Material.

2. Scope of Licence

- 2.1. The Licence granted under clause 1 permits the following users to access the Platform and Licensed Materials at the Authorised Sites as set in Section A above:
 - 2.1.1. employees of the Licensee;
 - 2.1.2. students of the Licensee officially registered at the Authorised Sites;
 - 2.1.3. Walk in Users (as defined below); and
 - 2.1.4. persons with legal access to the Licensee’s collections and facilities, via the Licensee’s Secure Network (as defined below).
 - 2.1.5. (“Authorised Users”), provided that such Authorised Users may only access the Platform and Licensed Materials via the Licensee’s Secure Network (as defined below).
- 2.2. For the purpose of this Licence, “Walk-In Users” are persons who are permitted by the Licensee to access its information services from their own computer terminals at the Authorised Sites. For the avoidance of doubt, Walk-In Users may be given means to access the Platform and Licensed Materials by a wireless network provided that such wireless network is secure so as to prevent any unauthorised third party accessing the Licensed Materials (the “Licensee’s Secure Network”).

3. IP Addresses

- 3.1. The Licensee shall provide to MSI the IP addresses from which the Authorised Users shall access the Platform and Licensed Materials. It is the Licensee’s responsibility to ensure that the IP addresses provided to MSI are complete, accurate and up-to-date at all times.
- 3.2. Following verification by MSI of the IP addresses provided, the Licensee and Authorised Users shall be permitted to access the Platform and Licensed Materials by automatic recognition of such IP addresses at any time, subject to these Terms and Conditions.

4. Licensee’s Responsibilities

- 4.1. The Licensee represents and warrants that:
 - 4.1.1 it shall not allow or permit access to the Platform and/or Licensed Materials to any third party, other than the Authorised Users;
 - 4.1.2 it shall have appropriate security measures in place to ensure that the Platform and/or Licensed Materials cannot be accessed by any third party, other than the Authorised Users;

- 4.1.3 it shall ensure that the Authorised Users comply with these Terms and Conditions and shall (a) inform MSI immediately if it becomes aware of any breach by an Authorised User of these Terms and Conditions and (b) immediately restrict access to the Platform and/or Licensed Materials to any Authorised User suspected of breaching these Terms and Conditions; and
- 4.1.4 it shall, and shall ensure that the Authorised Users, comply with all applicable laws and regulations in relation to the access to the Platform and use of the Licensed Materials and that it has obtained all of the necessary and applicable licences and consents to make use of the Licensed Materials.

5. Permitted Use

- 5.1 The Licence permits the Licensee and the Authorised Users to:
 - 5.1.1 read, download, save or print content from the Licensed Materials solely for the non-commercial, educational and research purposes of the Licensee and the Authorised Users at the Authorised Site(s); and
 - 5.1.2 quote brief extracts from the content of the Licensed Materials which may be used for “person to person” and non-commercial, non-systematic scholarly exchanges of information purposes only provided that all such extracts are accompanied with customary acknowledgment of the source “MSI Eureka” data base (MSI Eureka, Effenberg, G./ Watson A. (Eds.) by MSI, Materials Science International Services GmbH, Stuttgart, Germany).
- 5.2 The Licensed Materials or extracts thereof may not be transmitted in original digital form to any other institution, person or user other than an Authorised User.
- 5.3 The Licensee agrees and acknowledges that any use by the Licensee and Authorised Users, other than as agreed in this Agreement, is a violation of the terms of this Agreement incapable of remedy and shall result in termination without notice.

6. Restrictions

- 6.1. Other than as permitted in clause 5, the Licensee and the Authorised Users shall not:
 - 6.1.1. copy, amend, modify or alter in any way the content or the software items of the Platform and/or Licensed Materials, including removing or altering the authors’ names, copyright notices or any other information that appears on the Platform and/or in the Licensed Materials;
 - 6.1.2. systematically make printed or electronic copies of multiple extracts or make multiple copies of any part of the Platform and/or Licensed Materials for any purpose;
 - 6.1.3. systematically or programmatically download (e.g., through the use of automated ‘robots’ or otherwise) or attempt to download under any circumstances large amounts of content from the Platform, such as full text articles from extensive search results;
 - 6.1.4. prepare derivative works, recompile, reproduce, develop, publicly display, mount and/or distribute any part of the Platform and/or Licensed Materials whether in hard copy or on any electronic system or network, including the Internet, other than the Licensee’s Secure Network, except as expressly provided in this Agreement;
 - 6.1.5. reverse engineer, translate, decompile, disassemble, alter, abridge or otherwise modify or attempt to do so the content of the Platform, in the Licensed Materials or any part of either for any purpose whatsoever, except as expressly provided in this Agreement or to the extent permitted by the Copyright law of Germany (Urheberrecht der Bundesrepublik Deutschland).

- 6.1.6. Licensee shall neither use the Licensed Content for third party purposes (e.g., in online services provided to third parties) nor electronically re-transmit (e.g., via e-mail) nor post the Content on its personal or public websites or on networks, allowing public access or public communication except as may be permitted in the applicable License Agreement. Licensee shall neither distribute nor reproduce the content of Licensed Materials or portions thereof for the purpose of distribution (irrespective of whether for commercial or non-profit use, for a fee, or free of charge), except as may be permitted in accordance with clause 5 or in the applicable License Agreement.
- 6.1.7. use the Platform and/or Licensed Materials in connection with any material which contains computer viruses or spyware or malware of any description or with any material which is designed to adversely affect the operation of any computer hardware or software or any communications network.
- 6.1.8. Licensee shall not use the Licensed Materials for any Commercial Purposes under any circumstances without the prior written approval of MSI. In the event that Licensee would like to use the Licensed Materials for Commercial Purposes, Licensee shall notify MSI and MSI will decide on such use for Commercial Purposes upon its own discretion.
- 6.1.9. Licensee shall not use any part of the Licensed Materials in any manner that could infringe the copyright or any other proprietary rights therein.

7. Fees and Payment

- 7.1. MSI will invoice the Licensee for, and the Licensee shall pay, the Initial Fee as set out in Section A in advance of the Licence Commencement Date.
- 7.2. The Fees payable under this Agreement are net of all Taxes, howsoever arising. The Licensee shall pay any Taxes incurred in connection with the Licensee's use of the Licensed Materials and/or the rights granted under this Agreement, whether arising in Germany or in the country of the Licensee. For the purpose of this clause, "Taxes" means any sales tax, value added tax, service tax, import tax, withholding tax and any such similar taxes, levies or duties.

8. Intellectual Property Rights

- 8.1 MSI retains all intellectual property rights in the Platform, and in the Licensed Materials. The Licensee acknowledges that it has no rights in respect of such intellectual property rights other than the rights to use them in accordance with the terms of this Agreement.
- 8.2 The Licensee acknowledges and agrees that the content provided on the Platform and in the Licensed Materials is protected by the applicable laws on copyright and the Licensee shall not, and shall ensure that the Authorised Users do not, copy or redistribute any of the Licensed Materials content, except as expressly permitted in this Agreement. Any unauthorised copying of or distribution of the Licensed Materials content shall be a violation of applicable copyright law and shall be deemed a material breach of this Licence, incapable of remedy and resulting in termination pursuant to clause 11 (Duration and Termination).

9. Confidentiality

- 9.1 Except as expressly provided in this Agreement, the Licensee shall not with respect to any Confidential Information, at any time, without the express prior written consent of the MSI, disclose or otherwise make known or available to any person other than MSI or such of its employees as is or becomes necessary, any of the MSI's Confidential Information. The Licensee shall use all reasonable procedures and take all reasonable steps to safeguard the

MSI's Confidential Information and shall ensure that its officers and employees comply with this clause

- 9.2 The above obligations of confidentiality shall not apply to any Confidential Information which the Licensee can prove by written records:
- 9.2.1 was on or after the date of this Agreement lawfully disclosed to it without restriction by a third party who did not obtain the same (whether directly or indirectly) from MSI;
 - 9.2.2 was lawfully known to the Licensee before the Confidential Information was imparted by MSI;
 - 9.2.3 is or becomes public knowledge (through no fault on the MSI's part); or
 - 9.2.4 is required to be disclosed by legislation or regulation or by a court order of a court of competent jurisdiction but only to the extent so required and subject to the Licensee giving MSI reasonable notice and details of any such requirement.
- 9.3 The provisions of this clause 9 shall survive the expiry or termination of this Agreement, howsoever arising.
- 9.4 For the purposes of this clause 9, "Confidential Information" means any information in whatever form disclosed by MSI to the Licensee, directly or indirectly, which is marked as confidential or which, by its very nature or in the circumstances surrounding disclosure, ought to be treated as confidential including any such information disclosed in connection with the negotiation of this Agreement. Nothing in this clause 9 shall prevent the Authorised Users from accessing the Licensed Materials in accordance with the terms of this Agreement.

10. The MSI's Responsibilities and Disclaimer

- 10.1 MSI reserves the right to:
- 10.1.1 carry out maintenance on the Platform as and when it deems necessary and the Licensee acknowledges and accepts that the Licensed Materials may not be accessible during such time; and
 - 10.1.2 withdraw from the Licensed Materials any item or part item for which it no longer retains the right to publish or which it has reasonable grounds to believe infringes copyright or is defamatory, obscene, unlawful or erroneous.
- 10.2 MSI shall use reasonable efforts to correct any material malfunction in the Platform and/or Licensed Materials which the Licensee has promptly brought to its attention provided that such malfunction has not been caused due to any act or omission, in whole or in part, by the Licensee or any Authorised User.
- 10.3. MSI agrees to update MSI Eureka continuously and upload data at least four times per year.
- 10.4 The Licensee acknowledges and agrees that MSI is reliant on the internet in order to enable access to the Platform and/or Licensed Materials and as such cannot guarantee that the Licensed Materials will always be available, uninterrupted or error free. As such, MSI shall not be responsible or liable for any delay, downtime, transmission error, software or equipment incompatibilities, force majeure or other failure of performance or any associated losses arising as a result of the Licensee or the Authorised Users being unable to access the Licensed Materials.

- 10.5 MSI reserves the right to analyse the logfiles to detect misuse of the Licensed Content by Licensee, and/or Authorized Users. MSI will inform Licensee in any case of misuse.
- 10.6 Where feasible, MSI shall collect data on usage of the Licensed Content and process these e.g. according to the COUNTER Code of Practice (“the Usage Data”). MSI will provide the Usage Data to Licensee, consistent with applicable privacy and data protection laws.
- 10.7 All other warranties, conditions, terms and undertakings of any kind (including without limitation as to quality, performance or fitness for purpose) in relation to the Platform and/or Licensed Materials, express or implied, whether by statute, common law, custom, trade usage, course of dealings or otherwise are hereby excluded to the fullest extent permitted by law.

11. Duration and Termination

- 11.1. This Agreement shall commence on the Effective Date and shall be renewable at the end of the current term for a successive 12 months term, provided Licensee pays the then current annual license fee **on or before each <month, day>** (usually two months before the current license term expires).
- 11.2. Either party shall have the right to terminate this Agreement with immediate effect upon notice to the other upon the other committing an act of bankruptcy or having a receiver or liquidator appointed over its assets except for the purposes of solvent amalgamation or reconstruction.
- 11.3. Access to Licensed Content upon Expiry or Termination:
Upon termination of this Agreement, the Licensee shall immediately discontinue all use of MSI Eureka, erase all Licensed Data or archives from the applicable processing units at the Installation Sites or destroy external storage devices holding content and make unsuitable for the uses licensed under this Agreement.
- 11.4. Without affecting any other right or remedy available to MSI, MSI shall be entitled to terminate this Agreement with immediate effect by serving written notice on the Licensee if the Licensee is in breach of any of this Agreement and in the case of a breach which it is possible to remedy, the Licensee has not remedied the breach within thirty (30) days of receiving notice from MSI specifying the breach. For the purposes of this clause 11.4., a material breach shall not be capable of remedy; or
- 11.5. Any termination of this Agreement shall be without prejudice to any other rights or remedies either party may be entitled to under this Agreement or at law.

12. Limitation of Liability

- 12.1 Nothing in this Agreement shall limit or exclude the liability of either party to the other for death or personal injury caused by its negligence or that of its employees, servants or agents.
- 12.2 Subject to clause 12.1, the MSI’s maximum liability whether arising in contract, tort, negligence, breach of statutory duty or otherwise in respect of any one claim or series of linked claims shall not exceed, in the aggregate, the total Fee paid by the Licensee.
- 12.3 Subject to clause 12.1, MSI shall not be liable to the Licensee in contract, tort, negligence, breach of statutory duty or otherwise for any loss, damage, costs or expenses of any nature whatsoever incurred or suffered by the Licensee (whether direct, indirect, consequential, incidental or special) arising out of or in connection with this Agreement relating to or resulting from:

- 12.3.1 any economic loss or other loss of turnover, profits, business, contracts, use, reputation or goodwill or any deletion, corruption, destruction, loss or removal of data, or any loss or damage suffered by the Licensee;
- 12.3.2 the accuracy, reliability, completeness, suitability, merchantability or fitness for purpose of the Platform and/or Licensed Materials;
- 12.3.3 any reliance upon or use of or actions taken or not taken or decisions made on the basis of anything contained in the Licensed Materials;
- 12.3.4 inability at any time to obtain access to any part of the Platform and/or Licensed Materials; and/or
- 12.3.5 any computer viruses or spyware or malware of any description or any material which might adversely affect the Licensee's operation of any computer hardware or software or any communications network as a result of accessing the Licensed Materials.
- 12.4 The Licensee assumes sole responsibility for all use of the Platform and/or Licensed Materials by the Licensee and Authorised Users. In the event of a breach of this Agreement by the Licensee or Authorised Users, the Licensee agrees to indemnify MSI from and against any claims, liabilities, damages, expenses, and losses arising from, or in connection with that breach.

13. General

- 13.1 The Licensee shall not use any of the MSI's trade marks, trade names or logos (save to the extent reasonably required for acknowledgement in accordance with clauses 5.1.2 and 5.2) without obtaining the prior written consent of MSI.
- 13.2 This Agreement constitutes the entire agreement between the parties and supersedes any prior communication and all prior arrangements and understandings, whether written or oral, between the parties with respect to the subject matter hereof. The Licensee acknowledges that no representations or promises not expressly contained in this Agreement have been made to it by MSI or any of its servants, agents, employees, members or representatives.
- 13.3 The headings used in this Agreement are for convenience only and are not to be considered in construing the terms of this Agreement. In this Agreement "includes" and "including" and words of similar effect shall be construed as if they were immediately followed by the words "without limitation".
- 13.4 MSI has the right in its entire discretion to change and/or modify these Terms and Conditions from time to time and shall notify the Licensee of such changes. The Licensee's and any Authorised Users' continued use of the Platform and/or Licensed Materials following such notification will signify the Licensee's acceptance of such changes and modifications.
- 13.5 If any provision of this Agreement shall be prohibited by or adjudged by a court to be unlawful, void or unenforceable such provision shall to the extent required be severed from this Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this Agreement and shall not in any way affect any other circumstances or the validity or enforcement of this Agreement.
- 13.6 Subject to clause 13.4, no variation of this Agreement shall be valid unless it is in writing and signed by or on behalf of each of the parties.
- 13.7 The Licensee shall not be entitled to assign this Agreement nor any of its rights or obligations hereunder without the prior written consent of MSI.

- 13.8 The License Agreement and the rights and obligations of the parties thereto shall be construed, interpreted and determined in accordance with the laws of Germany without reference to the stipulations of the CISG (United Nations Convention on Contracts for the International Sale of Goods) or to Germany's choice-of-law principles.
- 13.9 The court of Federal Republic Germany shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its formation, existence, construction, performance, validity or termination.
- 13.10 Legal actions are the sole responsibility of the court at the registered office of MSI.