

WAMAS® END USER LICENSE AGREEMENT, DACH

Version 7th of December 2016

1 Application of the General Terms and Conditions for License Agreements

1.1 Scope of Application

Our general terms and conditions for license agreements shall apply to the delivery and license of WAMAS standard software (hereinafter „Standard Software“) to customers (hereinafter „Licensee“). Software of third parties which is used by the Standard Software is partially subject to special terms and conditions (see sec 4.4).

1.2 Exclusivity and Defence

Only the terms and conditions of the agreement entered into by and between us and the Licensee shall apply. Any aberrant, conflicting or supplemental other terms and conditions shall – even to the extent that we have knowledge of them – not apply, unless their application has been explicitly approved in writing.

2 Definitions

2.1 Licensee

Licensee is the contracting party, including his successor in rights, which receives a license for the Standard Software according to the terms and conditions set forth in this agreement.

2.2 Licensor

Licensor is the respective company of the SSI Schäfer-Group which delivers and licenses the Standard Software to the Licensee and therefore is the contracting party of the Licensee.

2.3 Standard Software

The Standard Software is the WAMAS standard software together with the standard documentation. The Standard Software is to be distinguished from the individualising software which is created by adapting and/or configuring the WAMAS Standard Software and which is not subject to these general terms and conditions for license agreements.

3 Subject Matter of the Agreement

Subject matter of the agreement is the delivery of the Standard Software in accordance with the product specification and the documentation.

Illustrations in eg the manual, test programmes, product and project descriptions are not guaranteed characteristics. Guaranteed characteristics require our explicit and written confirmation. Provided that no other agreements were made, the Standard Software is delivered in its current version at the time of de-livery.

Upon request we will provide the technical possibilities of use as well as terms and conditions of the programmes (eg with respect to the data base, operating system, hardware and data carrier).

A separate agreement must be concluded for any service relating to the installation, configuration of and introduction to the Standard Software. Updates and/or upgrades of the Standard Software as well as help desk-services (support) require the conclusion of a separate service agreement. These services are not included in this agreement.

4 Extent of the Licenses

4.1 Copyrights / Licenses

The Standard Software is protected by copyright. We grant the non-exclusive, 30 year, non-assignable right to the customer to use the Standard Software for the purposes of his company, locally restricted to the location set forth in the offer and individually restricted to the amount of licenses acquired. The customer undertakes to purchase a license for the WAMAS Standard Software for every location (WAMAS site license), on demand licenses for additional functionalities (WAMAS add-on modules) and named user licenses for every single user, thus one license per person (WAMAS user license). Every license sold shall only be used for the operation of the current EDP-system at the location of the customer.

The use of WAMAS in the scope of WAMAS non – productive license is solely allowed for the non-productive operation and must not be commercially used.

4.2 Types of Licenses

The following licenses can be acquired: (i) the WAMAS license for a location (WAMAS site license), (ii) WAMAS add-on modules to provide additional functionalities to a customer installation (iii) the WAMAS full-use license and (iv) the WAMAS worker license and (v) the license for the non-productive operation (WAMAS non-productive license).

WAMAS site license: a WAMAS site license is required for each productive site. A site is considered to be a warehouse or several joint buildings, consisting of any number of storage areas or storage locations.

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WAMAS non-productive license: The WAMAS non-productive license includes for each warehouse location a further WAMAS site license and ten WAMAS full use licenses.

WAMAS full-use license: the WAMAS full-use license is a named user license providing full functionality e.g. for administrators and control center users. One license per named user is required to access full WAMAS functionality.

WAMAS worker license: the WAMAS worker license provides limited functionality for various manual warehouse processes (e.g. GI caddy, packing station, picker, mobile terminal, info terminal). One license per named user is required.

WAMAS add-on modules: WAMAS add-on modules provide additional functionalities to a customer installation. The WAMAS add-on modules are not available independently but have to be always combined with a WAMAS site license.

For certainty, any costs for third-party hardware and software which may be necessary for the operation of Standard Software are not included in the WAMAS license fee(s).

4.3 Termination of Right of Use

We are entitled to terminate Licensee's license(s) relating to the Standard Software in the event of a severe violation of the terms and conditions of this agreement by Licensee. In such a case, Licensee shall be obliged to delete all copies of the Standard Software, to return all data carriers and documents and to declare in writing the end of the license.

The WAMAS non-productive license can be revoked at any time and without giving reason with immediate effect by the licensor.

4.4 Third-Party Licenses / Third-Party Software

It is noted that the WAMAS Standard Software includes third-party licenses for which special provisions apply. The third-party licenses used by WAMAS as well as the link to licensing provisions to be applied are published at <http://www.ssi-schaefer.com/wamas-eula.html>.

The respective supplier holds all rights relating to product parts/software produced by a third-party as supplier. For this software we, in general, only procure the rights or grant such rights which are necessary for the use of programmes together with the Standard Software. In principle, there is no right to adapt or transfer included.

4.5 Restrictions of License and Title

The Licensee may use and duplicate the Standard Software including the documentation only for the purposes set forth in these terms and conditions and may not make it available to unauthorised third parties.

The WAMAS non-productive license, which use is exclusive for training and testing, can be made available by the licensor free of charge for a term which must be agreed separately. The use of WAMAS in the scope of these licenses is allowed only for the non-productive operation and must not be commercially used. Decompiling and / or processing from WAMAS are not permitted. All intellectual property rights and other industrial property rights, which the licensor owns regarding WAMAS, remain his property.

The license relates only to the use of the Standard Software by the Licensee himself for his own data processing.

The Licensee is not entitled to

- (a) Use the Standard Software for data processing by third parties or the training of third parties,
- (b) Lease the Standard Software or undertake any other form of transfer of the Standard Software,
- (c) Translate the Standard Software from the object code to the source code (eg by reverse engineering, disassembling or de-compilation), provided that stringent statutory provisions do not provide otherwise.

Except as expressly provided otherwise in these terms and conditions, the Licensee does not acquire any further entitlements to the Standard Software.

4.6 Back-Up Copies

The Licensee may operate the data back-up according to the engineering rules and may for this purpose establish the necessary back-up copies of the Standard Software. A back-up copy on a mobile data carrier must be identified as such and be provided by with a notice of copyright of the original data carrier. The user documentation may be copied onto paper for internal purposes only. The Licensee is not entitled to change or remove our notice of copyright.

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4.7 No further Use

Even if he has technical access to other software products, Licensee may only use the software products set forth in the agreement. It is not permitted to produce unauthorised copies, to transfer the software or to develop similar software by using the Standard Software as master.

4.8 Adding of Functions

The Licensee has the right to add new functions to the programme by using our defined development tools only. This also applies to the introduction of external functions which are supported by the programme. Please note that already minor changes may lead to considerable, unforeseeable disturbances in the functioning of the Standard Software and other programmes. Therefore, the Licensee is strongly warned not to undertake unauthorised changes to the Standard Software; he shall solely bear the risk.

4.9 Co-Copyright

In the event that results are achieved following the instructions or under the cooperation of the customer, then only we shall be entitled to all rights relating to such results. Unless mandatory laws provide otherwise customer shall transfer all his intellectual property rights to us.

4.10 Beginning of the License

If the customer's Standard Software is delivered following an order of Licensee then Licensee's license shall begin with the full payment of the received invoice by the Licensee.

4.11 Reference to Rights

The Licensee is furthermore not entitled to change or delete any reference relating to the rights, trademarks or similar rights which are set forth in the Standard Software or on the medium which carries the Standard Software.

4.12 Extension of License and Consequences following the Violation of the License

Any use of the Standard Software which exceeds the provisions in these terms and conditions requires our written approval. The Licensee shall notify us in writing prior to making any change of his license or fees and obtain our written approval. We are entitled to withdraw the Licensee's license at any time, in the event that the use occurs without this approval. Furthermore and irrespective of the withdrawal of the license, we are entitled to charge liquidated damages to the extent of the double amount according to the current price and conditions' list (for Switzerland: contract penalty according to Art. 160 ff. OR); we reserve the right to claim any damages exceeding such amount.

4.13 Obligation of Confidentiality

Licensee shall not without the prior written approval of Licensor disclose any provisions of this agreement, unless such disclosure is necessary for effecting and enforcing the provisions of this agreement, or due to legal proceedings or statutory provisions. Without our prior written approval the Licensee shall not be entitled to disclose the results of comparing benchmark-tests or other evaluations of the Standard Software to third parties. Other information which is exchanged between the parties shall only be treated as confidential if such information has been identified as confidential. We are obliged to treat all confidential information received from the Licensee in a confidential manner and will use such information only to the extent necessary to fulfil this agreement. We will comply with data protection laws and are entitled to process Licensee's data automatically. The Licensee shall be obliged to keep confidential from third parties all confidential information relating to the subject matter of this agreement, in particular information relating to the source code and development documentation as well as the contents of the agreement entered into with the Licensee. Any employees, etc with access to the subject matter of this agreement shall be informed in writing of this copyright and obligation of confidentiality and be obliged to comply therewith.

The Licensee shall store the subject matter of this agreement, in particular the source code received, carefully in order to prevent any abuse.

4.14 Copyrights

The Standard Software is protected by copyright. The Licensee shall be obliged to keep all copyright notices on the Standard Software and the relating documentation.

5 Involvement of the Licensee

5.1 Working Environment

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The Licensee shall provide a working environment for the software (eg hardware and operating system) according to our guidelines. He shall observe the guidelines set forth in the user documentation.

5.2 Obligation to Co-operate and Data Remote Transmission

The Licensee shall support us free of charge when fulfilling this agreement by providing employees, work space, hard- and software, data and telecommunication facilities. He shall grant us or one of our associated companies direct access or remote access to the hard- and software. In this context we will respect the interests of Licensee, in particular data protection. Licensee shall be responsible for any negative consequences (e.g. our increased costs resulting therefrom) in the event that easy access by means of telecommunication facilities is not possible or not permitted.

5.3 Contact Person with Power of Decision

The Licensee shall name a contact person who is entitled to take the necessary decisions or effect such decisions without delay. The contact person shall care for a good co-operation between the Licensee and Licensor.

5.4 Obligation to Test prior to Operational Use

Prior to commencing with the operational use of the Standard Software, the Licensee shall test the Standard Software thoroughly that it is free of defects and or with respect to its use in the concrete situation.

5.5 Licensee's Precautionary Obligation

The Licensee shall take all precautionary steps for the event that the Standard Software does not operate properly (in whole or in part), eg by data back-ups, analysis of disruption, periodic reviews of the results, etc.

5.6 Licensee's Obligation to issue a Confirmation of Use and to enable Audits and System Measurements

Following our written request Licensee shall, not more often than once a year, submit a written confirmation relating to the use of the Standard Software according to these licensing terms and conditions. We are entitled to subject the use of the Standard Software by the Licensee to an audit or a system measurement. An audit shall take place during normal business hours at the premises of Licensee and may not disturb Licensee's business activities. In the event an audit or a system measurement proves that the Licensee underpaid license fees, then such missing license fees will be charged immediately. The Licensee is obliged to pay these invoiced underpaid license fees within a period of 14 days of the date on the invoice to us. Audits or system measurements shall not be undertaken more than once a year.

6 Delivery, Time of Delivery and Performance

6.1 Delivery

Following the conclusion of this agreement the delivery of the Standard Software shall be effected in such a manner that the Licensee is given either an invoice containing the specification of the acquired types of software the number of licenses or a special license certificate. Upon request Licensee shall receive the Standard Software and documentation stored on a data carrier.

6.2 Force Majeure

We are not responsible for disturbances which result from strikes, lock-outs, governmental interventions, fire and other circumstances not caused through our fault. In the event that the performance of this agreement is impeded or made impossible by cases of force majeure we are entitled by written notice to postpone the date of delivery and, following a postponement of more than 3 months, we are entitled to rescind this agreement entirely by written notice. Cases of force majeure shall be all unexpected events or such events - even if the were foreseeable - outside our or Licensee's influence and the effects of which on the fulfilment of the agreement cannot be prevented by reasonable efforts. These cases include, inter alia, war, natural disasters, labour disputes, et al.

6.3 Extension of Time in the Event of Disturbances

In the event that we are awaiting the involvement of or information from the Licensee, or we are otherwise constrained from fulfilling the agreement through no fault of our own, then the delivery and performance periods shall be extended by the duration of disturbance together with a reasonable start-up time following the end of the disturbance. We will inform the Licensee of any disturbance.

7 Liability and Warranty

7.1 Limitation of Liability

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We shall only be liable for damages in the event of wilful misconduct and gross negligence, except in cases of personal injuries. Liability for slight negligence shall be excluded. Any liability for consequential damages and financial losses, lost profit and for damages resulting from third party claims against the Licensee as well as any liability for loss of data shall be in any case excluded.

7.2 Liability Cap and Statute of Limitations

Our liability under this agreement shall in all cases be limited to an amount of EURO 125,000.00; in the event that claims for damages arise resulting from the use of the Standard Software by the Licensee, then the liability shall be limited to the amount of fees paid for the licenses. Any claims for damages against us, irrespective of their legal reason, shall become statute barred one year after Licensee has gained knowledge of the damages and the person causing these damages.

7.3 Warranty

We make Licensee aware that according to the best available technology it is not possible to produce software – the Standard Software – in such a manner that it operates free of fault in all applications and combinations. Subject matter of this agreement is therefore only software which is generally viable in accordance with the specification of services and the documentation. We assume no warranty that the Standard Software conforms to Licensee's requirements.

All warranty claims shall be excluded in the event of unauthorised changes or adaptations of the Standard Software, unless the Licensee is able to prove that the unauthorised changes and adaptations have no influence on the functionality of the Standard Software.

7.4 Exclusion of warranty and liability for WAMAS non-productive Licenses

The right of warranty, support and software updating (new WAMAS releases and bug-fixes) or compensation as well as any other liability (to the extent permitted by law) is expressly excluded for these licenses.

7.5 Defect Location

We will assist the Licensee in the search for defects and the cause of defects. We will charge the Licensee for these services in the event that the defect is not demonstrably our fault (the burden of proof lies with the Licensee; for Austria: the assumption of defectiveness according to sec 924 of the Austrian Civil Code is expressly excluded).

7.6 Right of Correction / Replacement

Primarily we will warrant by way of correction / replacement. Correction will be effected by fault clearance, by providing a new programme version or by us demonstrating reasonable possibilities of avoiding the effects of defects. The Licensee shall assist us. The Licensee shall accept a new programme version, unless this leads to unreasonable difficulties in adapting and resetting for the Licensee. The Licensee shall only be entitled to rescission of the agreement or price reduction insofar as and to the extent that the correction of the defect, despite a grace period granted in writing with 3 attempts to clear the faults, has not been successful. The Licensee shall not be entitled to any reimbursement of costs incurred in connection with the clearance of defects by Licensee or a third party (substitute performance).

8 Obligation to Examine and Notify Non-Conformity

8.1 Immediate Examination and Notice

The Licensee shall examine all our deliveries and services for any non-conformity within a reasonable period and give notice of any defects within a period of one week following the receipt.

8.2 Written Form

The notice shall be rendered in writing with a precise description of the problem. Only the contact person (according to the provisions of this agreement) and the management shall be entitled to give notice of non-conformity.

9 Copyrights of Third Parties

9.1 License and Right of Rescission

We represent and warrant that the transfer of rights according to no. 5 does not violate any third party rights. Otherwise, Licensee shall, following a grace period granted in writing under threat of termination, be entitled to rescind this agreement, unless we are able to provide Licensee with a legally proper license for the Standard Software according to contract.

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9.2 Defense against Third Party Claims

We will at our own expense avert claims which third parties enforce against the Licensee due to breach of copyrights resulting from our deliveries and services to the extent that such claims are not based on Licensee's actions. The Licensee has no right to recognize such claims. He authorizes us to assume the conflict (at court or out of court) with the third party on our own. The Licensee undertakes to immediately inform us in writing and in full of any third party's asserted claims.

9.3 Violation of Property Rights

In the event that a court rules that the Standard Software violates property rights of third parties, we are entitled to make changes at our own expense in order to rectify the violation of property rights or to acquire the respective rights. If these measures do not lead to the intended solution and the violation of property rights are established by a court decision, we will reimburse the Licensee for the fees paid (subject to a deduction for the commercial appreciation) for the loss of License. We are free from this obligation if the property claim demands that the licensed Standard Software be changed by the Licensee, or that its use is carried out under other conditions than the specified terms of use. The Licensee shall have no claims exceeding these terms against us.

10 Transfer of Rights

We are entitled to use the services of a third party, in particular of our associated companies, in order to fulfil our duties under this agreement. We may transfer all and individual rights under this agreement as well as the entire agreement to associated companies; the Licensee herewith approves of this. Without our explicit prior written approval Licensee may not transfer this agreement, assign claims or grant sub-licenses, and the like.

11 Customs Duties, Fees and Other Encumbrances

All fees, dues and taxes as well as customs duties relating to the conclusion of a software license or service agreement subject to these terms shall be exclusively borne by the Licensee.

12 Price, Payment, Reservations

12.1 Price

The price for a license of the Standard Software is negotiated and agreed upon on an individual basis in the respective agreement. In addition to the agreed price the statutory value added tax, if any, shall be borne by Licensee. The prices for the WAMAS licenses include transport and packaging.

12.2 Payment Date

Licenses: 100 percent upon conclusion of the agreement. Our invoices including VAT must be settled no later than 30 days following the invoicing without any deductions and free of charges, unless individual payment conditions have been agreed upon. Trade dis-counts are not granted.

12.3 Interest

The respective statutory default interest rates shall apply.

12.4 Offset and Retention

The Licensee may only offset with undisputed claims or with claims recognised by final court decision. He may not – to the extent permitted by law – assign claims to third parties. The Licensee may not retain payments due to an incomplete full delivery, warranty claims and claim defects.

13 Final Provisions

13.1 Applicable Law / Place of Jurisdiction

The laws of the Republic of Austria shall apply to this agreement and all relating matters. Place of jurisdiction shall be the respective competent court in Graz. The parties agree that the provisions of the UN Convention of Contracts for the International Sale of Goods shall not apply.

13.2 Invalidity of Oral Side Agreements

All agreement between the Parties must be made in writing, oral agreements are invalid. Any amendments and supplements to the agreements must also be made in writing.

13.3 Partial Invalidity - Contradictions

Should individual provisions of this Agreement become invalid, then the validity of the other provisions shall not be affected.

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Contradicting parts shall be interpreted according to the understanding of the entire agreement.

13.4 Waiver

Any waiver of a party relating to claims based on a failure or violation of contract shall not be deemed a waiver for further claims resulting from other failures or violations of contract or consequential damages.

13.5 Imposition

Licensee undertakes to subject all his employees and auxiliary persons to all obligations under this agreement and to ensure that all rights of the licensor relating to the software (eg copyrights including the right to copyright notice) shall be respected by the employees and auxiliary persons.