



# **BATEMO CELL MODELS**

**TERMS AND CONDITIONS**

**SOFTWARE MAINTENANCE**

## **§ 1 Subject Matter of the Contract**

Batemo GmbH, Benzstraße 15, 76185 Karlsruhe, Germany (hereinafter referred to as the "**Li-censor**") shall provide the contractually agreed maintenance services listed in these terms and conditions for the duration specified in §12 for the Batemo Cell Models software purchased by the Licensee, including any separate software extensions (hereinafter referred to as "**Add-Ons**", and jointly as the "**Software**").

## **§ 2 Maintenance Services**

(1) Unless otherwise agreed, the Licensor shall provide the following maintenance services within the scope of these terms and conditions: Adjustments to new versions of the software environment and further development of the Software according to § 3, support services according to § 4 and correction of defects in the Software according to § 5.

(2) These software maintenance terms and conditions do not apply to the creation of a Batemo Cell Model for the Licensee with its underlying performance of parameterization and validation measurements or to the provision of training courses by Licensor.

## **§ 3 Adaptations to New Versions and Further Development of the Software**

(1) If the Licensee wishes to use the Software in a newer version of the software environment (in particular newer versions of MathWorks® MATLAB® Simulink®), the Licensor will adapt the Software to the new version of the software environment upon request. For this purpose, the Licensor shall provide the Licensee with a new version of the Software as an installation file.

(2) The Licensor will continue to develop the Software; any new functions or improvements to the Software will only be made available by the Licensor for the latest version of the Software, which may require the latest version of the software environment. The Licensee is not entitled to the introduction of new functions or improvements of the Software for older versions of the Software. For technical reasons, the Licensor cannot guarantee that new functions and improvements introduced in new versions can also be made available for Batemo Cell Models created for older versions of the Software.

(3) Insofar as individual adaptations to the Software have been made as specified by the Licensee, the Licensor shall make such adaptations in newer versions of the Software for a separate fee.

(4) The delivery of newer versions of the Software shall be carried out by providing a new installation file. The transfer of the source code is not owed. The Licensor grants the Licensee the right to use newer versions of the Software or changes to the Software in accordance with the Batemo Cell Models terms and conditions on which the transfer of the Software is based.

(5) The Licensee shall be responsible for installing newer versions of the Software properly and in accordance with the regulations. At the Licensee's request, the Licensor will support the Licensee in this process for a separate fee.

(6) Separate add-ons to the Software offered by the Licensor do not constitute newer versions of the Software within the meaning of § 3 (1) of these terms and conditions. Add-ons must therefore be purchased or rented separately by the Licensee and independently of these terms and conditions.

#### **§ 4 Support Services**

(1) The Licensor will regularly inform the Licensee about general user instructions as well as other special instructions and information about important questions and problems in connection with the Software.

(2) The Licensor shall provide brief advice in the event of defects, application problems, malfunctions or other difficulties arising in connection with the Software from Monday to Friday between 9.00 a.m. and 4.00 p.m., except on public holidays, at the Licensor's registered office. The Licensor accepts inquiries by e-mail at [support@batemo.de](mailto:support@batemo.de).

#### **§ 5 Remedy of Defects**

(1) A defect of the Software to be remedied within the scope of these terms and conditions shall be deemed to exist if the Software, while used in accordance with the contract between the parties for using the Software (including Batemo Cell Models terms and conditions and product description), does not provide the functionalities specified therein and this has a more than insignificant effect on the suitability for the contractually agreed use.

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

(3) Licensor shall remedy any defects in the Software as reported by the Licensee within a reasonable period of time.

(4) The Licensor will remove defects at his discretion by sending patches or bug fixes or newer versions of the Software, for the Licensee to install in his premises. The removal of defects shall also be deemed to have been carried out if the Licensor shows the Licensee reasonable possibilities to avoid the effects of the defect. The Licensee must follow such instructions. The manner of remedying the defect shall be at the Licensor's reasonable discretion.

(5) The Licensor shall remedy the defect by providing a new version of the Software. The Licensee may charge a separate remuneration for on-site removal of defects.

(6) The Licensee is obliged to accept 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.

(7) If the Licensor performs services in the search for or removal of errors without being obliged to do so, he may charge for this in accordance with his usual rates. This specifically applies if a defect cannot be proven or is not attributable to the Licensor.

## **§ 6 Obligations to Cooperate**

(1) The Licensee will support the Licensor to a reasonable extent in the performance of the services at his own expense. The Licensee's obligations to cooperate are genuine obligations of the Licensee.

(2) The Licensee shall support the Licensor in the search for the cause of the defect and encourage his employees to cooperate with the Licensor.

(3) The Licensee shall grant the Licensor access to the Software for the purpose of troubleshooting and error correction, either directly and/or via remote data transmission.

(4) The Licensee shall install the Software or software parts (patches, bug fixes, etc.) received from the Licensor within the scope of troubleshooting immediately after receiving detailed instructions from the Licensor and shall comply with the suggestions and instructions for troubleshooting provided by the Licensor.

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

(6) 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.

(7) If the Licensor is of the opinion that the Licensee does not fulfil his obligation to cooperate in accordance with the contract, the Licensor shall inform the Licensee of this fact without delay.

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

### **§ 7 Remuneration**

(1) The Licensee shall pay the contractually agreed price plus statutory value added or sales tax for the agreed maintenance services for the Software listed in these terms and conditions. The remuneration is always due in advance for a period of 12 months. In the event of termination, the remuneration shall be refunded on a pro rata basis on a monthly basis, taking into account the period of notice.

(2) The Licensor is entitled to adjust the lump-sum remuneration pursuant to § 7 (1) in the event of changed market conditions or significant changes in procurement or personnel costs with a written notice of three months at the beginning of a contractual year (for the first time at the beginning of the third contractual year). In making this adjustment, the Licensor will also take into account and credit any cost reductions in an appropriate manner. In the event of an increase of more than 10%, the Licensee is entitled to terminate the Agreement with two months' notice before the increase comes into effect.

(3) Travel costs and expenses shall be paid separately to an appropriate extent if the Licensee has requested the Licensor to appear on site.

(4) The Licensee is only entitled to assert a right of retention or right of offset to the extent that the underlying counterclaim has been legally established or is not disputed.

(5) If an expired maintenance contract is resumed, in addition to the remuneration for the following period of 12 months, the payment of the maintenance fees for the non-maintained period is due retroactively as well as a resumption fee in the amount of 50% of the remuneration for the following period of 12 months.

## **§ 8 Defects of Quality and Defects of Title**

(1) In the event of material 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; remedy of the defect shall also be deemed to be fulfilled 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.

(2) 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.

(3) 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 terminate it 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 § 10 of these terms and conditions. The right to terminate for good cause remains unaffected.

(4) If the Licensor performs services in the search for defects or elimination of errors 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.

(5) 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.

(6) The limitation period for all warranty claims is one year. 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. 1 a 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**

(1) In all cases of contractual and non-contractual liability, 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, also 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 shall be liable under limitation to compensation for foreseeable damages typical for this type of 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 limitation period, § 8 (6) of these terms and conditions shall apply accordingly, with the proviso that the statutory limitation period shall apply to claims under § 9 (1) a) and § 9 (2).

(4) The Licensee shall be responsible for regularly backing up 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 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 these terms and conditions. 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 contractual objects accessible to employees and other third parties to the extent that this is necessary to exercise the rights of use granted to him. He shall instruct all persons to whom he grants access to the contractual objects about the rights of the Licensor to the subject matters of the contract and the obligation to maintain 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.

## **§ 11 Term of Contract, Termination**

(1) The contract comes into force upon signature by both parties and runs for an indefinite period of time, but at least 12 months. It can be terminated with a notice period of 3 months by the end of the month. Termination by the Licensor is permitted for the first time with effect from the end of the third contractual year.

(2) The right of extraordinary termination for good cause remains unaffected. Prior to such a termination, the terminating party must first set a remedial period in writing within a period of one month after it has become aware of the important reason, or send a written warning to the other party. An important reason for the Licensor shall be deemed to exist in particular if the Licensee repeatedly fails to pay due remuneration.



## **§ 12 Final Provisions**

(1) Exclusive place of jurisdiction for all disputes arising from and in connection with these software maintenance terms and conditions is the registered office 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 software maintenance terms and conditions be or become invalid or unenforceable in whole or in part, the validity of the remaining provisions of these software maintenance terms and conditions shall not be affected thereby. The same applies in the event that the software maintenance terms and conditions contain a regulation gap.