MESYS AG - Software License Terms

1. Applicability of the License Terms

These license terms (the "**License Terms**") apply to any software license granted by MESYS AG, Technoparkstrasse 1, 8005 Zürich (hereinafter the "**Licensor**") as licensor to a licensee (hereinafter the "**Licensee**"). These License Terms shall be applicable if included in a contract concluded between the parties by reference to these License Terms. Such contract may be concluded in any way legally possible, including by acceptance of the Licensor's offer (an "**Offer**") by the Licensee, or by entering into a written contract.

2. Definitions

In these License Terms, the following terms shall have the meanings associated to such terms in this clause 2:

"**Agreement**" means the contract between the Licensor and the Licensee (possibly consisting of the Offer and the Licensee's acceptance) including these License Terms.

"**Documentation**" means the documentation of the Software delivered by the Licensor to the Licensee together with the Software.

"**Error**" means any verifiable defect of the Software or non-conforming of the Software to the Documentation. Notwithstanding the foregoing, the term "Error" shall not include any such defect or failure that is caused by (i) the use or operation of the Software (a) with any other software or programming languages or (b) in an environment other than that intended or recommended by the Licensor in the Documentation and other materials delivered by the Licensor in connection with the Software, or (ii) modifications to the Software not made or approved by the Licensor.

"**License**" means the license granted by the Licensor to the Licensee in accordance with these License Terms.

"**Software**" means the software which is licensed to the Licensee by the Licensor, such term excluding any third party software included in the Licensor's software that is licensed to the Licensee under a separate license in accordance with clause 9 of these License Terms.

3. License grant and retention of intellectual property rights

Apart from licenses limited as to function or time (demo or test versions of the Software), and subject to other agreements between the Licensor and the Licensee, the Licensor grants to the Licensee a non-exclusive and non-transferable right, unlimited as to function and time, to use the Software for its own purposes in the agreed-upon scope of functions. Depending on the specific agreement between the Licensor and the Licensee, the Licensor grants one of the following Licenses to the Licensee:

- A *single-workstation License* entitles the Licensee to use the Software only on one computer; simultaneous use of the Software by more than one person is prohibited.

- A *floating License* entitles the Licensee to use the Software on several computers, but only for as many simultaneous users as parallel access rights are granted in the relevant License agreement.

- A *team License* entitles the Licensee to use the software on several workstation computers at a time by several members of a team. A team is a group of persons who are employees of the Licensee, who know each other and work in the same office building at the same postal address.

Where the Agreement does not provide otherwise, any License granted by the Licensor shall be deemed to be a *single-workstation License*.

The Licensee is permitted to make the number of copies required by the current technology for backup purposes. Any further copying is prohibited.

Irrespective of the type of License granted to the Licensee (including demo and test versions), the Licensee may not transfer the Software to any third parties or otherwise allow third parties to access the software except by prior written consent of the Licensor. The Licensee may not edit, restructure, rework, or otherwise alter the Software. It may not decompile the Software unless (and within the limits) such right is provided by applicable law. The Licensee is not entitled to be provided with the Software's source code.

The Software is licensed to the Licensee for use only; it is not sold. The Licensor retains all rights of title and copyrights to and any further intellectual property rights in the Software exclusively; the granting of a license does not constitute the assignment of any copyrights or other rights of title to the Licensee. Only the electronic media on which the Software is stored and delivered shall be the property of the Licensee.

4. Documentation

The Licensor provides the Licensee with the standard Software Documentation in English in an electronic format.

5. License Fee

The license fee agreed between the parties is invoiced after the License agreement has been concluded. The Licensee shall pay the license fee agreed between the parties in the timeframe set out in the invoice. The compensation does not include the costs of any installation or training; services of this nature are subject to separate agreements and are to be compensated separately.

6. Product Warranty

The Licensor confirms that the Software was extensively tested prior to delivery to the Licensee.

During the warranty period, the Licensor will replace any defective media and correct any demonstrable Errors that are the responsibility of the Licensor by way of a patch, a Release, or a workaround. The warranty period is three months beginning at the time of shipment of the Software to the Licensee. Any and all further remedies of the Licensee shall be excluded. The recognition or repair of a defect shall not interrupt or re-start the warranty period.

The Licensor does not warrant that the Software can be used by the Licensee without interruption under all conditions of use.

The Licensee is solely responsible for obtaining and maintaining a work environment that is suitable for the use of the Software as well as for the selection, installation, usage, and operation of the Software and for the results obtained by its use. The Licensor cannot warrant the suitability or usability of the Software for the purpose intended by the Licensee; use of the Software by the Licensee is made at Licensee's own risk. The Licensor recommends that the Software not be used as the sole tool for the planning and design of components. Additional tests are to be performed on critical components.

In addition, the Licensor does not warrant that a component which can be calculated can actually be manufactured.

7. Legal Warranty

The Licensor warrants to the Licensee that the Software is free of any rights of third parties and/or that the rights required for provision of the Software to the Licensee as specified in these License Terms have been obtained. The sole remedy of the Licensee for any breach of this legal warranty (and only if such breach results in the Licensee not being able (or allowed) to use the Software) shall be a reimbursement of the license fee, reduced by an amount resulting from a calculated straight depreciation of the license fee over 5 years. Any further warranty rights or remedies shall be excluded.

No representation whatsoever is made and no warranty whatsoever is given that components manufactured on the basis of Software output or their use do not infringe any third party intellectual property rights, such as patents.

8. Liability

The Licensor shall not be liable for any damages incurred by the Licensee in connection with the use of or inability to use the Software unless such damages are attributable to the Licensor's gross negligence or intent.

Under no circumstance shall the Licensor be liable for lost profit, unrealized savings, loss of goodwill, and any indirect, consequential or subsequent damages of any kind.

The Licensor shall not be liable for any damages whatsoever resulting from any third party rights infringement arising in connection with the manufacture or use of a component whose manufacture was based on Software output.

Finally, any and all liability of the Licensor shall be limited to the amount of the license fee.

9. Third party licenses

The Software includes a number of open source software modules which are subject to separate license terms. The relevant license terms will be delivered to the Licensee in a separate document.

10. License revocation

The License is granted for an indefinite amount of time. Notwithstanding the foregoing, the Licensor shall have the right to revoke the License if the Licensee substantially breaches these License Terms and/or any agreement referring to these License Terms and such breach – if capable of remedy – is not remedied upon first request of the Licensee. If the License is revoked, then the Licensee shall immediately cease any use of the Software and promptly delete any copies of the Software and confirm to the Licensor in writing that the Licensee has deleted all copies of the Software. In such case, the license fee shall not be reimbursed.

11. Other Provisions

If any individual provisions or portions of this Agreement prove to be invalid or unenforceable, this will have no effect on the validity of the other provisions of these License Terms. The parties agree that, instead of such invalid provision, a provision shall be deemed to have been agreed between the parties which reflects the commercial sense of the invalid provision as closely as possible without itself being invalid.

The Licensee acknowledges that the Licensor may list the Licensee as a reference in its business documents. The Licensee will notify the Licensor in writing if it does not wish to be listed as a reference.

This License Agreement shall be solely governed by Swiss law under the exclusion of its conflicts of laws provisions; the United Nations Convention on Contracts for the International Sale of Goods of April 11, 1980 shall also be excluded.

The sole place of jurisdiction for any disputes arising from these License Terms shall be the City of Zurich, Switzerland.