

EULA Pre-Analytic Suite

STIWA PA Suite

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end user-licence contract
(Version October 2023)
between
STIWA AMS GmbH 4800 Attnang-Puchheim, Salzburger Straße 52 ("licensor")
and
the respective customer named in the offer ("Licensee")

for

all standard products and individually created **Add-Ons** of the product lines

1. **STIWA Core Infrastructure**
2. **LabFlow**
3. **LabScan**
4. **LabReport**

("STIWA Preanalytic Suite")

Preamble

The Licensor is the owner of the rights to the Software. The Software is distributed directly by the Licensor or by its distribution partner. The Licensee wishes to be granted a simple license for non-exclusive use of the Software under the terms of this Agreement. It is made clear in the offer whether the licensing is based on the one-time payment model or the rental model. The following terms and conditions apply - unless otherwise described - to both distribution variants.

1. Scope of application and subject matter of the contract

1.1 **This document is a binding contract between the Licensor and the Licensee.** It applies to **all products of STIWA Preanalytics Software** that are provided to the customer (according to the respective offer) in the form of software copies ("**Software**").

1.2 The installation of the Software is not subject matter of the contract and is the sole responsibility of the Licensee or of a separate agreement to be concluded regarding connection.

2 Granting of Licences and Restrictions

2.1 Subject to payment of the license fees when due, the Licensor hereby grants to the Licensee the non-exclusive and non-transferable right, limited to the number of workstations and order quantities specified in the offer and territorially restricted to the regions specified in the offer, to use the Software in its company for its own business purposes (permission to use the Software for work).

2.2 The Licensee may install, use and access the Software only within the scope of the intended purpose according to the respective user manuals of the Software and only within the scope of internal business processes.

2.3 The Licensee shall in particular not be entitled to,

- sublicense the Software or otherwise make the Software available to third parties
- transfer, assign or sublicense any rights or licenses granted under this Agreement to any third party (in whole or in part) without the prior express written consent of Licensor
- translate, reverse engineer, adapt, decompile, decipher or otherwise determine the source code, structure, algorithms or ideas upon which the Software is based or attempt to generate the source code from the target code for the Software
- alter and/or modify the Software, or merge all or any part of the Software with any other program or software-related product, or attempt to disable any security features or code built into the Software
- make illegal use of the Software, such as modifying it to behave like a virus, worm, or other program that, when executed, loaded into memory, viewed, or otherwise instantiated on the recipient's computer, causes operations that are not part of the original Software
- remove or modify any third party or Licensor software markings or proprietary notices.

2.4 The Licensee shall notify the Licensor in the event of outsourcing of its IT infrastructure to a third party and obtain the Licensor's approval for the installation, operation and use of the Software by such third party. The Licensor shall not refuse such approval without good cause. If the Licensor does not respond to a notice demonstrably received by it within 14 days, this shall be deemed to be consent within the meaning of this provision.

2.5 To the extent this Agreement relates to an evaluation license, Licensee may only use the Software internally for evaluation purposes and solely during the applicable evaluation period. Any use of the Software for other purposes or after the applicable evaluation period is excluded.

2.6 Third-party software (including open source software) that is necessary or useful for use of the Software is specified in the Software's program description. Third party software is licensed under the terms of the third party's user agreements. Licensee expressly confirms that it has read and understood the terms and conditions set forth in [h¹https://www.stiwa.com/software/preanalytik](https://www.stiwa.com/software/preanalytik) ("Third Party License Terms") with respect to individual parts of the third party software contained in or used and/or addressed by the Software and Licensee agrees to comply with such terms.

2.7 It is expressly understood that at all times all rights and title in and to the Software and Documentation shall remain with Licensor, including updates, upgrades, modifications, adaptations and alterations thereto and all derivative works thereof, including all copyrights, patent rights, trademark rights and other intellectual property rights, whether registered or not.

¹ <https://www.stiwa.com/software/preanalytik>

3 Term, Termination

3.1 If the rental model is agreed, this agreement is concluded for an indefinite period and comes into force upon mutual signature. This agreement can be terminated in writing with three months' notice to the last day of the respective month (23:59).

3.2 If the one-time payment model is agreed, the Licensee shall receive, upon full payment of the license fee, in principle an unlimited right to use the Software in accordance with the provisions of this Agreement.

3.3 Notwithstanding the foregoing, the contracting parties may terminate this Agreement without notice for good cause as set forth below and expressly agreed. Important grounds for termination for the Licensor shall exist in particular if

- the Licensee defaults on payment obligations in connection with this Agreement despite a reminder and a grace period of at least 30 days
- the Licensee uses the Software contrary to the license conditions regulated in this Agreement, in particular contrary to the provisions of Section 2.1. or 2.3.

3.4 In the event of termination of this license agreement for any reason whatsoever, the Licensee shall irretrievably and demonstrably delete the Software together with all copies thereof and return manuals, descriptions and other documents handed over to the Licensor within 4 weeks or irretrievably delete them.

4 Licence fee

4.1 The license fees for the license under this Agreement are part of the Offer or - if they are not included in the Offer - are set forth in the currently valid price list of the Licensor or its sales partner.

4.2 In the case of the one-time payment model, the payment details are stipulated in the offer. The Licensee shall pay the applicable license fees to the Licensor or its Distributor within 30 (thirty) days after receipt of an invoice.

4.3 In case of the rental model, the monthly license fee is specified in the offer. The License Fee [monthly] shall be paid by the Licensee in advance to the Licensor or its Distributor within 10 (ten) days after receipt of an invoice.

4.4 The payment of these license fees has to be made in Euro and free of charge for the recipient to a bank account to be announced by the licensor or his distribution partner. License fees already paid are non-refundable, even in the event of (premature) termination of the contract.

4.5 The Licensee's obligation to pay royalties shall not be subject to any discounts, unless otherwise agreed in the offer. Offsetting against counterclaims is not permitted. License fees are exclusive of sales tax, use tax and other taxes, fees, levies and similar charges, and Licensee shall be responsible for the payment of all such taxes (other than those on the income or profits of Licensor or its distributors), fees, levies and charges. Any unpaid portion of the royalties due shall bear interest at the rate of 12% per annum or at the maximum rate permitted by law, whichever is greater, from the due date until the date payment is received.

4.6 It is expressly agreed that the royalties shall remain stable in value. The measure for calculating the stability of value shall be the consumer price index 2015 (base year 2015) published monthly by Statistics Austria or an index replacing it. All rates of change shall be calculated to one decimal place. The adjustment shall be made once a year with effect from the first of January by the percentage by which the index figure announced for the month of October of the preceding year has changed compared to the index figure for October of the second preceding year (in the case of the first adjustment: compared to the index figure for the month in which the contract was concluded).

5 Audit

5.1 The Licensor shall be entitled to audit compliance with the Licence Conditions at its own expense at the Licensee's premises and systems. For this purpose, the Licensor shall give the Licensee at least 30 days' notice of the intended audit and propose to the Licensee three dates for the conduct of the audit. Licensee shall grant Licensor access to Licensee's premises and computer systems where the Software will be used on one of the three proposed dates. The Licensor may only conduct the audit during the Licensee's normal business hours and may not unduly interfere with the Licensee's business. The licensor may enter the licensee's premises and access the licensee's computer systems only to the extent strictly necessary to determine compliance with the terms of the licence. If no breaches of the licence conditions are found during the inspection, a new inspection may take place at the earliest after the expiry of one year. If the inspection reveals a deviation in the licence status of more than 5%, the licensee shall immediately reimburse the licensor for the costs of the inspection and the outstanding licence fees. 5.2.

5.2 The Licensor is obligated to keep confidential all information that comes to its knowledge in the course of the audit and that is not related to compliance with the terms and conditions of the license. The Licensor may not disclose such information to third parties or use it in any other way, including for its own purposes. Except he is obliged to do so (e.g. towards third party component manufacturers).

5.3 The Licensor may also have the test performed by a third party. In this case, the obligations of the Licensor provided for in the previous point shall apply to the third party engaged by the Licensor.

6 Assurances of the licensee

6.1 Licensee agrees to comply with all applicable laws and regulations when using the Software.

6.2 The Licensee shall be solely responsible for the security of the data collected, processed or accessible via the Software, in particular against unauthorized access or unauthorized disclosure, in particular by complying with high and state-of-the-art security standards. In any case, Licensee shall ensure that Licensor has no access to personal data and that no personal data is transmitted to Licensor.

6.3 The Licensee agrees that the Licensor or its sales partners may regularly collect and process technical and other related information on an anonymous basis, in particular technical information about the computer systems, application software and peripheral devices used by the Licensee, in order to enable the provision of software updates, product support and other services in connection with the Software, if necessary.

6.4 The Licensee shall also be responsible to the Licensor, without regard to its own fault, for the use of the Software by its employees, freelancers, assistants, agents and (outsourcing) contractors and for ensuring that they comply with the terms of this Agreement.

7 Acceptance, Warranty

7.1 The Software shall be deemed to have been taken over by the Licensee if the Licensee does not demonstrably report any defects in the Software that are not merely minor to the Licensor or its responsible sales partner within two weeks of the first installation of the Software at the Licensee's premises.

7.2 For a period of 12 months from the date of delivery of the Software, the Licensor warrants exclusively that the Software will function in all material respects as described in the user manuals or in the relevant program documentation and in the offer at the time of delivery. Descriptions and information in advertising material are expressly excluded from this warranty. Furthermore, the Licensor warrants that any program updates are free of malware and/or computer viruses upon delivery. Further properties can neither be assumed nor are they promised. In particular, the Licensor does not warrant that the Software will meet the Licensee's requirements and purposes and will work together with other software and hardware combinations selected by the Licensee.

7.3 This warranty assumes that the system environment of the Licensee complies with and is maintained in accordance with the performance description and the program and function description as well as any specifications in the offer. The software is designed only with regard to the specified system environment. Any warranty for the Software shall be expressly excluded if the Licensee changes the system environment and/or interferes with the Software in any way or has it interfered with by third parties.

7.4 A warranty with respect to insignificant defects that do not impair the function is excluded.

7.5 The warranty is limited to defects that can be proven and reproduced by the Licensee. The occurrence of defects within the warranty period shall be reported by the Licensee in writing without delay in a comprehensible and detailed form, stating all information useful for the defect analysis. In particular, the work steps that led to the occurrence of the defect, the manifestations as well as its effects shall be indicated.

7.6 In the event of a warranty case, Licensee's sole claim and Licensor's sole obligation shall be to remedy the program defect that is the cause of the warranty case by repair or subsequent delivery of a defect-free program version. If repeated attempts by the Licensor to remedy the defect are unsuccessful or if the Licensor does not offer an error-free new program version or a workaround, the Licensee shall only be entitled to return the Software in the event of a gross defect. Except to the extent prohibited by law, this warranty is exclusive and conclusive; therefore, there is no warranty or representation, express or implied, including warranties of merchantable quality or commonly assumed characteristics and/or fitness for particular purposes. Licensee shall not derive or assert any warranty claims from short-term and/or temporary functional errors or interruptions that do not or only insignificantly impair or interrupt the function of the Software.

7.7 The burden of proof for a defect subject to warranty lies with the licensee.

8 Updates

8.1 The scope of the license does not include bug fixes, error corrections, patches, new versions, updates, releases or other components not specified in this Agreement. Notwithstanding the foregoing, Licensor may from time to time add additional features and functionality to the existing Software.

8.2 Licensor shall be entitled to request an update of a version of the Software used by Licensee as soon as Licensor releases a new version of the Software or if Licensor makes new features available. If the Licensee does not comply with the request, it shall lose all warranty claims and claims for damages in this respect. It is expressly stated that the Licensor is not obliged to provide updates.

8.3 Any update provided by Licensor must be treated as the Software itself for all purposes under this Agreement.

8.4 Updates to the operating system and application software not specifically covered by this Agreement are the responsibility of Licensee and are not provided by Licensor under this Agreement.

9 Defects of title

9.1 The Licensee undertakes to notify the Licensor without undue delay if a third party claims that its rights have been or will be infringed by the use of the Software.

9.2 In the event that the use of the Software infringes the rights of third parties in accordance with the provisions of this Agreement, the Licensor shall, at the Licensor's option and expense, either

- procure for Licensee the right to use the Software or
- design the Software in such a way that its use does not infringe the rights of third parties, in which case Licensor reserves the right to provide a workaround or an alternative solution that is adequate for Licensor, or
- take back the Software with reimbursement of the remuneration paid for it by Licensee (less reasonable compensation for use) if Licensor cannot achieve any other remedy with reasonable effort.

9.3 Any further claims of the Licensee shall not exist except in case of intent or gross negligence of the Licensor.

9.4 The Licensee is not entitled to make any promises to third parties that interfere with the rights of the Licensor, to settle or recognize disputed rights.

9.5 The Licensee shall support the Licensor in the defense of third party claims at its own expense to a reasonable extent, at the Licensor's option also by joining any court proceedings.

10 Liability

10.1 The Licensee's claims for damages against the Licensor, irrespective of the legal grounds, shall be limited to the license fee actually paid in the calendar year in which the damage occurs, unless the Licensor caused the damage intentionally or any liability under the Austrian Product Liability Act (PHG) is mandatory.

10.2 The liability for slight negligence as well as the provision of § 1298 sentence 2 ABGB is excluded, so that the reversal of the burden of proof at the expense of the Licensor only covers slight negligence.

10.3 The Licensor shall not be liable for loss of profit, indirect damage, consequential damage and damage caused by defects. Furthermore, the Licensor shall not be liable for damages that can be attributed to changes in the configuration of the Software that were not made by the Licensor.

10.4 Furthermore, the Licensor shall not be liable for defects and for damage to the plant/machine or system on which the Software is installed or to the products if the plant/machine or system concerned is not intrinsically safe. "**Intrinsically safe**" in this context means that a plant- or machine-specific system prevents or protects the plant/machine or system from performing intrinsically damaging functions/actions in the event of faulty parameters and/or commands. The Licensee shall be exclusively responsible for this system specific to the plant/machine and the burden of proof shall lie with the Licensee.

10.5 The alleged degree of fault must always be proven by the Licensee. Liability exists only for reproducible errors.

10.6 In any case, claims arising from errors and/or damage caused by malware, computer viruses and/or breach of law by third parties and/or other circumstances not within the sphere of the Licensor are excluded. Also excluded are claims arising from errors and/or damage caused by improper use or disregard by the Licensee of the care required with regard to the Software and which is reasonable and appropriate in view of the technological possibilities. This applies in particular, for example, to the use of unsuitable data carriers, hardware configurations and/or system components, uncoordinated changes to the agreed operating environment, a lack of suitable virus protection or security measures that do not correspond to the state of the art, and the use of unsuitable personnel.

10.7 Furthermore, any liability, regardless of the legal reason, is excluded if (i) the Licensee makes any changes of any kind to the Software, and/or if errors or damages result from information that is not provided in a timely, incomplete, incorrect and in an inappropriate manner, and/or (ii) the error or damage is caused by the system environment or the components of the Licensee with which the Software communicates. The burden of proof that neither of these circumstances exists shall always lie with Licensee.

10.8 In the event of loss of data caused by errors in the software, the Licensor shall only be liable if, on the one hand, the Licensee has carried out system checks and data backups at regular intervals and, on the other hand, only for the reasonable effort required to restore the data.

10.9 Any claims for damages shall be asserted within one year after the occurrence of the damage, otherwise the rights shall become time-barred.

11 Confidentiality

11.1 Unless a valid NDA exists between Licensee and Licensor for this subject matter of this Agreement, the following shall apply: All information disclosed by either party in connection with the preparation or performance of this Agreement, or which becomes available to either party, is confidential ("**Confidential Information**"). This is regardless of whether the Confidential Information is disclosed in writing (for example, in emails or documents), orally (for example, in a meeting or on the telephone), visually (for example, in a presentation or video), or in any other form (for example, electronic data).

11.2 The respective receiving contractual partner must keep Confidential Information secret. It may only be used for the performance of this Agreement. This means, in particular, that it may only disclose the Confidential Information to those persons who require it for their activities in connection with this Agreement.

11.3 Unless otherwise agreed by the contracting parties, a contracting party may only disclose Confidential Information to another party (for example, a subcontractor) if it has received the prior written consent of the disclosing contracting party. An affiliated company of a contracting party shall not be deemed to be an Other if it has been obligated by the affiliated contracting party to maintain the same level of confidentiality.

11.4 Exempt from the provisions of this Section 11. is information that...

(i) Was already known to the receiving contractor even before it first received the information from the disclosing contractor;

(ii) at the time of disclosure

(a) have been expressly designated or marked as non-confidential or are already by their nature obviously non-confidential;

(b) were already in the public domain or became in the public domain as a result of disclosure without this being due to a breach of a confidentiality obligation by the receiving contractor or another;

(iii) received in good faith by a contractor from another who does not itself have a corresponding confidentiality obligation to the disclosing contractor; or

(iv) required to be disclosed by applicable law or order of a court or governmental authority.

12 Final Provisions

12.1 All notices and other communications concerning rights and obligations under the Agreement to the other party shall, except as otherwise expressly provided in this Agreement, be in writing and sent by registered mail to the business address set forth above or to such other address or addresses as may hereafter be provided by either party to the other party in accordance with the terms of this Agreement.

12.2 Amendments or supplements to this Agreement - as well as legally relevant declarations based on this Agreement - must be made in writing, whereby at least a simple electronic signature also fulfills this requirement. This shall also apply to any waiver of the written form requirement.

12.3 This document, including the specific offer, contains all agreements between the parties regarding the subject matter of the contract. There are no additional agreements.

12.4 The ineffectiveness of individual provisions does not affect the validity of the remaining provisions. Instead of the ineffective and unenforceable provisions, effective and enforceable provisions apply that achieve the intended economic purpose as far as possible.

12.5. All legal disputes arising from or in connection with a contractual relationship between the licensor and the licensee, including the question of the valid conclusion of the contract, its fulfillment and termination as well as its pre- and post-contractual effects, will be handled by the Licensor's registered office (4800 Attnang-Puchheim). by a court with subject-matter and local jurisdiction or, at the Licensor's discretion, by another court with subject-matter and local jurisdiction over the Licensee, provided that the Licensee has its place of business within the EU, Switzerland or Liechtenstein.

12.6 If the Licensee has its place of business outside the EU, Switzerland or Liechtenstein, all disputes arising out of or in connection with a contractual relationship between the Licensor and the Licensee, including the question of the valid formation of the contract, its performance and termination as well as its pre- and post-contractual effects, shall be finally settled under the Rules of Arbitration of the International Arbitral Centre of the Austrian Federal Economic Chamber (Vienna Rules) by an arbitrator appointed in accordance with these Rules. The language to be used in the arbitration proceedings shall be German and the place of arbitration shall be Linz.

12.7 Austrian substantive law shall apply in all cases, with the exception of the non-mandatory rules of reference and the provisions of the United Nations Convention on Contracts for the International Sale of Goods of 11 March 1980 (UN Sales Convention).