

# Software License and Service Conditions

(Sept 1st, 2010)



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## 1. Definitions

- 1.1 "Software" means the products and documentation thereto, as listed in the Software License Agreement (SLA) and includes all changes, additions, releases, updates, revisions and enhancements to the products and documentations.
- 1.2 "Use" means loading any portion of the Software into a computer or transmitting the Software to a computer for processing of the instructions or statements contained in the Software by the computers CPU(s), solely for the customer`s internal use on a specific Designated Equipment.
- 1.3 "Designated Equipment" means the equipment and operating system identified in the SLA.

## 2. License Grant and Use

SEAL Systems grants to Licensee, and Licensee hereby accepts, subject to the terms and conditions provided herein, a perpetual, non-exclusive and non-transferable License to use the Software solely for its own internal operation only in the location designated and only on the Designated Equipment. However, the Software may be temporarily used with back-up equipment if the Designated Equipment is temporarily inoperable. Differing conditions needs to be agreed in the SLA by both parties.

The Licensee may not copy the Software except for archival or back-up purposes, or as otherwise provided herein. Each authorized copy, including partial copies in any form, shall be made in machine readable form, used exclusively for Licensee`s internal use, as permitted hereunder, and shall be marked by Licensee with every proprietary notice and copyright notice appearing on the original thereof.

## 3. Fees, Terms of Payment and Prices

- 3.1 Licensee agrees to pay SEAL Systems the License Fee listed in the SLA for the rights to use the Software. Payment is due upon acceptance of the Software according to the payment conditions of the SLA.
- 3.2 The Software is accepted, if one of the following is true:
- a) Licensee does not report program errors or defects within a period of 10 days after receipt of the Software,
  - b) the Software is installed by SEAL Systems and Licensee does not report defects immediately in written form
- If the Software is not accepted within said period, SEAL Systems may decide at his own discretion to terminate the SLA, to extend the acceptance period, or to adjust the License fees for the Software.
- 3.3 Licensee shall pay an annual maintenance fee as listed in the SLA, if maintenance for the Software is agreed upon in the SLA. Payment for the first year`s maintenance is due upon execution of the maintenance agreement. Thereafter the maintenance fee is due annually in advance within 30 days after the receipt of the invoice from SEAL Systems.

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- 3.4 SEAL Systems reserves the right to adjust the maintenance fee with an announcement period of 3 months.

## **4. Title and Ownership**

Licensee acknowledges that all title and ownership rights to the Software remain the exclusive property of SEAL Systems or its Licensors whether or not developed by Licensee with or without any advice, assistance, or support by SEAL Systems, or by SEAL Systems for Licensee; and whether or not reimbursed by Licensee. SEAL Systems does not claim title or ownership rights to the source form of application specific software of Licensee which makes calls to the Software but which does not contain any of the Software.

## **5. Confidentiality**

Licensee acknowledges and SEAL Systems represents that the Software is SEAL Systems proprietary information and is a trade secret of SEAL Systems. Licensee agrees that it shall maintain the Software in confidence and will take reasonable steps to protect disclosure of the Software using at least the same degree of care Licensee uses to protect its own proprietary information of like importance. Licensee further agrees not to disclose or show the Software or any part thereof to anyone for any purpose other than for permitted usage hereunder. Licensee expressly agrees not to decompile or disassemble the Software.

Licensee`s confidentiality and non-disclosure obligations hereunder with respect to the Software do not extend to information which: becomes publicly available without fault of Licensee; is rightfully obtained by Licensee from a third party without restriction as to disclosure; or is shown by written record to have been developed by Licensee, independently of SEAL Systems and not in breach of these conditions.

Licensee will take appropriate action by instruction, agreement or otherwise with any persons permitted access to the Software so as to enable Licensee to satisfy its obligations under these conditions. The obligations of confidentiality and non-disclosure shall survive the termination of the SLA.

## **6. Warranty**

- 6.1 SEAL Systems warrants that it has the right to grant this license for the Software.
- 6.2 SEAL Systems warrants that the Software performs according to the published Reference or User`s manual and that it has been sufficiently described in those.  
SEAL Systems will remedy any deficiencies reported by the Customer according to Paragraphs 8 and 9.
- 6.3 Services according to Paragraphs 8.2 (Support), 8.6 (Updates), 8.7 (New Releases of the Software), 8.9 (Device Connections) and 8.10 (Adaption to System Environment) are not included in this warranty. For such services, a service contract in effect (according to Paragraph 7) is precondition.  
Without a valid service contract, different reaction and handling times apply in a case of warranty according to Paragraph 8.5. In this case SEAL Systems will perceive all cases of warranty as error/support category 3.  
Reporting of failures in a case of warranty has to be submitted via email.
- 6.4 The period of warranty is 24 months. It starts with the shipment of the Software. In case of an on-site installation of the Software by SEAL Systems it starts 14 days from the establishment of operational readiness of the Software. The Licensee is bound to verify the operational readiness of the Software immediately after shipment or installation and report any failures in written form to SEAL Systems.
- 6.5 In case of installation of the Software and briefing of his personnell by SEAL Systems, the Licensee is bound to provide the assistance specified in the following:

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- a) To provide a running computer system (including all required access rights and support by IT-operation staff) with appropriate connected devices.
- b) To guarantee timely access by a contact person with sufficient knowledge appointed by the Licensee to the information and documents provided by SEAL Systems, which are needed for proper installation and operation of the Software.
- c) To support SEAL Systems actively through the appointed contact person. If costs accrue additionally to the standard times and fees specified in the SEAL Systems service contract caused by lacking support or knowledge of the Licensee, SEAL Systems will charge these costs according to the SEAL Systems service price list.

6.6 SEAL Systems is not warranting:

- a) Deficiencies caused by incorrect installation if the Software was not installed by SEAL Systems;
- b) Software that has been modified by the Licensee in any form without approval by SEAL Systems, unless the Licensee is able to prove, that the modification is not causal to the deficiency;
- c) Deficiencies that are only causing a negligible reduction in the operability and suitability of the Software;
- d) Software that has been created through duplication by the Licensee.

6.7 Except for the foregoing express warranty, SEAL Systems disclaims all warranties, either expressed or implied, with respect to the Software including but not limited to all implied warranties of merchantability and fitness for a particular use.

6.8 SEAL Systems shall not be liable for any special, indirect, punitive, or consequential damages resulting from the use of the Software by the Licensee under any circumstances whatsoever. SEAL Systems does not warrant that the functions contained in the software will operate in the combination which the Licensee selects for use, or that the operation of the software will be uninterrupted or errorfree.

## **7. Maintenance Agreement**

Licensee may enter into a Maintenance Agreement by signature in the SLA.

The Maintenance Agreement begins with the date listed in the SLA and will continue in force for a minimum duration of 1 year. Upon expiration of the minimum term the Maintenance Agreement will be automatically prolonged annually. Either party may cancel the Maintenance Agreement by prior written notice 3 months before the next annual expiration date. Cancellation of the Maintenance Agreement will not cancel the Software License Agreement between the parties. The right of cancellation without notice for cause remains in force.

## **8. Responsibilities of SEAL Systems**

SEAL Systems will maintain the version of the software, which is listed in the SLA. SEAL Systems may require the Licensee to update his software version to solve the reported errors.

SEAL Systems will perform the following services, subject to the customer fulfilling his responsibilities as described in section 9 below:

### **8.1 Service hours**

Service hours are from Monday to Friday 8.30 am – 5 pm (CET). Excluded from service hours are german public holidays, Reporting of errors and requests for support can be submitted via:

- a) Telephone: +49(9195) 926 222
- b) E-mail: support@sealsystems.de
- c) Online Ticket System JIRA

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## 8.2 Support

The 1<sup>st</sup>-Level user support has to be carried out by qualified employees of the Licensee, who are familiar with the basic functionalities of the Software. 2<sup>nd</sup> and 3<sup>rd</sup>-Level support is the responsibility of SEAL Systems. SEAL Systems Support is advising the Licensee when he is bringing into service the Software and updating it. SEAL Systems Support is supporting the analysis and the verification if failures are being caused by the licensed products or their associated environment.

SEAL Systems Support is carried out by qualified employees. By providing an appropriate number of support staff and the corresponding technical environment, SEAL Systems is ensuring, that SEAL Systems Support is able to answer requests for support according to the following measures during the service hours specified in Paragraph 8.1.

## 8.3 Error elimination

Errors have to be reported and documented in writing by the Licensee. They must be reproducible on the customer reference system specified in the SLA. Error elimination is on principle carried out on the reference system.

SEAL Systems will eliminate software failures, that are reported by the Licensee according to Paragraph 8.1 and approved by SEAL Systems, free of charge and in reasonable time according to the reaction- and handling times of Paragraph 8.5. At the latest, the failures will be eliminated in the next update of the Software. The revised Software will be made available for the Licensee including documentation.

If field work is to be carried out by SEAL Systems to fulfill the service agreement - for example to install new or modified software – SEAL Systems will charge the costs of this work according to the current hourly or daily rates.

## 8.4 Error/Support categories

**Category 1 – “Blocker”:** The Software is completely inoperable and/or there is data corruption occurring. All users are affected by the error.

**Category 2 – “Critical”:** Several functions of the Software are inoperable or running incorrect. Functions needed for day-to-day business are partially or completely inoperable. More than 50% of users are affected by the error.

**Category 3 – “Major”:** A single or several functions of the Software are inoperable or running incorrect. A significant disturbance in day-to-day business is not given. Users have possibilities to by-pass the error.

**Category 4 – “Minor”:** Uncritical errors, configurational requests, requests for updates and consulting.

## 8.5 Reaction and handling times:

The **reaction time** is the time period, within which SEAL Systems is obliged to begin the identification and analysis of a reported problem. The reaction time is corresponding to the error category. It starts with the receipt of an error report and is running during the service hours according to paragraph 8.1.

The **handling time** is the time period, within which SEAL Systems is attending to a reported error and normally successfully solving it. The handling time is corresponding to the error category. The handling time starts with the ending of the reaction time and is running during the service hours according to paragraph 8.1.

Standard Service	Reaction Time	Handling Time	Feedback
Category 1	2 hours	Continuous, with highest priority – 8 hours	Continuous
Category 2	4 hours	Continuous – 16 hours	After 1 working day
Category 3	8 hours	4 working days	After 2 working days
Category 4	2 working days	With following software release or upon consultation	upon consultation

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If it is not possible to eliminate the reported error within the corresponding standard handling time, SEAL Systems will work to offer the Licensee a solution, partial solution or by-pass, that reduces the error to the next minor category.

## **8.6 Updates**

SEAL Systems will perform product changes in the context of perfective maintenance to adapt the Software to changes of norms and regulations, to eliminate reported errors (8.3) or to improve and extend the Software within reasonable time periods. Updates will also be provided to ensure the adaption to:

- a) New versions of operation systems
- b) New versions of CAD systems, subject to the CAD interface being licensed as a product and not being licensed specifically for one product version.
- c) New releases of third-party software, subject to the third-party product being displayed and licensed as an integration or interface product by SEAL Systems.

Such adaptations, improvements and extensions are available to the Licensee with the next software update delivered by SEAL Systems.

## **8.7 New releases of the Software**

Maintenance services do not contain an obligation to extend the Software on request of the Licensee. However, SEAL Systems will consider wishes and requirements of customers adequately when planning new releases of the Software.

New versions of the Software containing error corrections and functional improvements and extensions will be made available to the Licensee free of charge on demand.

## **8.8 Additional Services**

The provision of non-standard data carriers, on-site installation, as well as the costs of transport, installation and initial user training are not included in the maintenance rate and will be calculated separately.

If the Licensee orders such additional services from SEAL Systems, SEAL Systems will provide these services according to the conditions of the currently valid price list.

## **8.9 Device connections**

If the Software contains generic device drivers, the Licensee can exchange device driver licenses for alternative types of devices of the same category free of charge on demand. If on-site work by SEAL Systems is necessary for installation and bringing into service of the new device, SEAL Systems will charge the costs of this work according to the current hourly or daily rates.

## **8.10 Adaption to system environment**

If the Licensee changes the platform of his operation system, SEAL Systems is granting him a discount on the licenses which are to be devolved. The discount is specified in the price list valid at the date of the change mentioned above.

## **9. Responsibilities of the Licensee**

- 9.1 The Licensee will use the latest released version of the licensed software. The customer will install any updates, revisions or new releases sent to him under these terms.
- 9.2 If the Licensee alters or supplements the licensed software, SEAL Systems has the right to refuse any service subject to these conditions.

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- 9.3 The Licensee is only entitled to service under these terms if the software to be serviced is running together with a valid and maintained operating system and compiler.
- 9.4 When notifying SEAL Systems of an error or suspected error, the Licensee will send to SEAL Systems sufficient documentation to reproduce the error. This documentation includes but is not limited to: examples of output from the suspect program, a listing of the related input, and a sample program in source code which produces the suspected error, as well as any other explanation of where the suspected problem may lie.
- 9.5 Software updates delivered by SEAL Systems are to be installed on the customers reference machine first. Distribution to other machines, in particular production machines, must only be done after determination by the customer of the error-free operation on the reference machine.

## **10. Limitation of Liability**

- 10.1 SEAL Systems shall not be liable for any injury or damage to the Licensee or his employees, unless caused by SEAL Systems gross negligence.
- 10.2 Except as provided in Section 11 herein, Patent and Copyright Indemnification, Licensee agrees to indemnify and hold harmless SEAL Systems from any loss, damage, injury or expense, including attorney`s fees, which shall arise from Licensee`s use of the Software.
- 10.3 SEAL Systems liability for damages to Licensee for any cause whatsoever and regardless of the form of action whether in contract or in tort including negligence, shall be limited to the amount of the License fee which has been received by SEAL Systems.
- 10.4 In no event will SEAL Systems be liable for any damages caused by Licensee`s failure to perform Licensee`s responsibilities or for lost profits or revenue, lost goodwill, or special, incidental, indirect, punitive, or consequential damages suffered by Licensee or others, even if SEAL Systems has been advised of the possibility of such damages, or for any claims against Licensee by any other party.

## **11. Patent and Copyright Indemnification**

SEAL Systems will defend, at its expense, any action brought against the Licensee to the extent that it is based on a claim that the Software or part thereof, used within the scope of the License hereunder, infringes a copyright or a patent in a european country or the United States, and SEAL Systems will pay any costs, damages, and attorney fees finally awarded against the Licensee in such action which are attributable to such claim, provided that the Licensee notifies SEAL Systems promptly in writing of the claim and that SEAL Systems may fully participate in the defense and/or agrees to any settlement of such claim.

Should the Software become, or in SEAL Systems opinion is likely to become, the subject of such a claim of infringement of copyright or patent, SEAL Systems may procure for the Licensee the right to continue using the Software, or replace or modify it to make it non-infringing. If neither of the foregoing alternatives is reasonably available to SEAL Systems, then SEAL Systems may terminate the SLA as to such Software upon thirty (30) days written notice to the Licensee, and SEAL Systems shall grant a credit to Licensee for the terminated Software as amortized over the term of the Agreement. SEAL Systems shall have no liability for any claim of copyright or patent infringement based on (1) the use of other than a current unaltered release of the Software available from SEAL Systems if such infringement would have been avoided by the use of a current unaltered release, or (2) the use or combination of the Software with non-SEAL Systems programs or data. The foregoing states the entire liability of SEAL Systems with respect to infringement of any copyrights or patents by the Software or Documentation or any parts thereof.

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## **12. General Terms**

- 12.1 Both Parties agree that all controversies, claims and matters of differences arising under this agreement, or the breach thereof, may be submitted to arbitration in accordance with the rules and practices of the Chamber of Commerce in Darmstadt, or under such other rules or at such other place as the parties may mutually agree.
- 12.2 No dispute in any way affecting computer software shall be subject to arbitration, and to the extent provided by law, SEAL Systems shall have the right, by injunction or otherwise, to enforce her rights in her software, and to prohibit Distributor or any other person or entity the use of any part of SEAL Systems software in violation of this agreement.
- 12.3 The SLA constitutes the entire agreement between the parties. No modification or waiver of any of the provisions hereof shall be binding upon either party unless made in writing and signed by authorized representatives of both parties. A mere acknowledgement of any action inconsistent with the terms of this SLA is not to be regarded as acceptance or approval.
- 12.4 Any provision of these conditions found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the rest of these conditions, and shall be substituted as soon as possible by a next possible term, which is possible by law.
- 12.5 The SLA shall be governed by and construed in accordance with the laws of Germany. Any action against SEAL Systems under the SLA must be commenced within one year after such cause of action accrues.