

General Terms & Conditions

StatSoft GmbH

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§ 1 Scope of the contract conditions

1. These General Terms & Conditions of Business of StatSoft GmbH (hereinafter also the "Supplier" or "StatSoft") apply exclusively in respect of entrepreneurs in accordance with Section 14 of the German Civil Code (BGB) and consumers in accordance with Section 13 BGB (hereinafter also the "Customer" or "Buyer").
2. They also apply to the sale of standard software and hardware and to pre-contractual obligations and all future transactions with Buyers, insofar as legal transactions of a similar sort are involved.
3. The Buyer's terms & conditions of purchase are not accepted, even if they are not expressly rejected by us again on receipt.
4. Even if no further reference is made to this on conclusion of contracts of a similar sort with entrepreneurs, the General Terms & Conditions of Business of StatSoft apply exclusively in the version accessible at www.statsoft.de/agb.pdf on submission of the Customer's declaration, unless the contracting partners agree otherwise in writing.
5. The regulations of the German Civil Code on purchase contracts, including where there are supplementary services, apply to the delivery of software, data and hardware. The terms of the service contract apply to individual services. The provisions of the contract for work apply to adaptation of software to the customer's specifications.

§ 2 Subject of the Contract

1. StatSoft shall provide the Customer with the software described precisely in the contract and an operating manual in English or German, at the discretion of StatSoft.
2. As a matter of principle, StatSoft supplies standard software. Representations in product and project descriptions, in advertisements, test programs, brochures and documentation are not assurances of characteristics or guarantees. Assurances of characteristics and guarantees require the express written confirmation of StatSoft.
3. StatSoft shall supply the software in object code on standard data carriers. The Customer has no claim to provision of the source code. If delivery is provided in the form of a download, StatSoft shall supply the customer with a download link, together with the access details required.
4. In addition, StatSoft offers further services, training courses, maintenance services and sale of hardware, for which separate contracts are concluded and separate payment made.
5. The right of use purchased by the Customer (see Section 3(2) and Special provisions for licences with annual terms, no. 3) is restricted to one machine

only, unless the contract specifies multiple use or use on a network (see Section 6).

6. Subjects of the contract, documents, suggestions, test programs, etc. of StatSoft that are made accessible to the Customer before or after conclusion of the contract are deemed to be intellectual property and business and operating secrets of StatSoft and shall be treated in confidence and in accordance with Section 5(3), Section 7(4) and Section 11(6-8).
7. The contract software and the associated services are delivered at the risk and cost of the Customer.
8. Start of the delivery period presupposes resolution of all technical and commercial issues. Delivery dates and delivery periods shall be extended appropriately if the Customer delays in meeting essential or agreed cooperation obligations or fails to do so completely. The same applies in the event of industrial disputes, in particular strikes, and the occurrence of unforeseen obstacles that are out of the control of StatSoft, e.g. delays in deliveries from upstream suppliers, traffic and operational disruptions, energy shortages, etc. Changes made by the Customer shall also lead to an appropriate extension of the delivery period.

§ 3 Copyright

1. The software supplied by StatSoft (program and manual) is subject to copyright and legally protected. All copyright, patent rights, trade mark rights and ancillary rights are held exclusively by StatSoft or the software supplier. Insofar as the rights are held by third parties, StatSoft holds the corresponding rights of use. The software and other information made available by StatSoft may not be utilised or made available to third parties without prior consent.
2. On receipt of the agreed remuneration by StatSoft, the Customer shall receive a simple, non-exclusive, non-transferrable, non-sub-licensable right of use. This right of use may be limited in time (see also the special provisions at the end, clause 2). Reservation of the right of use until payment of the remuneration does not include the right to check the software for the purpose of acceptance.

§ 4 Remuneration, prices, offsetting

1. The remuneration is determined by the individual contractual agreement. All prices are subject to statutory VAT at the time of invoicing for entrepreneurs; for consumers, the statutory VAT is included.
2. Remunerations are due for payment immediately on receipt of invoices without deductions. StatSoft is entitled to demand payment in advance or to collect the remuneration on delivery. The remuneration may only be paid with discharging effect to StatSoft directly or to a bank or post office account specified by StatSoft.
3. If the Customer is in default of payment of a remuneration, StatSoft may demand default interest in the amount of 9 percentage points above the respective base rate and a flat-rate charge of €40.00 from entrepreneurs, and default interest of 5 percentage points from consumers. StatSoft is entitled to make claims for greater damages if StatSoft is able to prove them.
3. If the Customer exceeds the scope of the contractually agreed right of use without notifying StatSoft of this promptly, he shall pay an amount that corresponds to 150% of one payment in accordance with the price list for the scope of use in question for each additional copy used or each additional participant.

4. The Customer may only offset against uncontested or legally established claims. The Customer's payments are always offset in accordance with Sections 366(2), 367 BGB. A right of retention may be asserted only based on claims under this Contract.

§ 5 Duplication rights, protection against access

1. The Customer is not permitted to duplicate the program supplied, including the operating manual, unless the duplications are required for its use. Necessary duplications include only the installation of the program from the original data carrier on the mass storage of the hardware used and loading of the program to the working memory. Any additional manuals required for employees shall be procured through the Supplier.
2. In addition, the Customer is permitted only to make and keep one back-up copy, which shall be marked as such with reference to the program supplied and provided with the copyright mark of the original data carrier, insofar as this is technically possible. Copyright marks may not be deleted, modified or obscured.
3. The Customer is obliged to prevent unauthorized access to the program, the operating manual and the back-up copy by third parties by taking appropriate measures. These shall be kept at a location protected against access by third parties. The attention of employees shall be drawn expressly to compliance with these General Terms & Conditions of Business (T&Cs) and the provisions of copyright. The Customer shall indemnify StatSoft against damages arising from the breach of this obligation.

§ 6 Multiple use / use on a network

1. The Customer may use the software on the hardware available to him. For each individual software package, use on only one hardware configuration with only one access option is permitted. Use is permitted to the extent granted by contract. If the Customer changes the hardware, he must delete the software from the hardware previously in use.
2. Simultaneous storage, holding or use of the software beyond the contractually agreed scope is not permitted. If the Customer wishes to use the software on more than the agreed hardware configurations, by several employees for example, a corresponding number of program packages must be purchased.
3. The use of the software provided on a network or over the internet is permitted only within the framework of the contractual agreement. Only one access option is permitted for each program package at any one time. If the Customer wishes to use a software package within a network, he must prevent simultaneous multiple use by means of access protection mechanisms or purchase the corresponding number of program packages from StatSoft. StatSoft must be notified promptly of the planned network use and the number of connected users. Use on a network is permitted only on full payment of the network fee.

§ 7 Decompilation and program modification

1. Retranslation of the program code provided into other code forms (decompilation) and other forms of reverse engineering of the various manufacturing stages of the software, including program modification, are permitted for the Customer's own use only within the framework of copyright if

it is for the purpose of rectifying a fault, extending the scope or creating interoperability of the software with other programs.

2. Actions corresponding to 1. may only be carried out by third parties if StatSoft does not provide the customer with the necessary information and documentation within an appropriate period in return for an appropriate fee and StatSoft does not itself want to carry out the program modifications required by the Customer in return for an appropriate fee. StatSoft shall be granted an adequate period in which to check the handover of the order and be notified of the name of the appointed third party in writing.
3. The Customer shall keep the program information acquired by actions under 1. secret and oblige third parties involved to do the same and indemnify StatSoft against any damages in the event of a breach of this obligation.
4. Copyright marks, serial numbers and other features used for program identification must not be removed or modified under any circumstances.

§ 8 Resale, subleasing

1. The Customer is entitled to pass on the purchased copy of the contract software permanently to a third party together with all the licensing information and documentation. In this case, he shall completely stop using the program, remove all installed copies from his computers and delete all copies on data carriers or hand them over to StatSoft. Insofar as the Customer is under a longer statutory retention obligation and cannot delete copies of the program, transfer is not possible until the end of the retention obligation. To implement the transfer of the subject of the contract, the Customer shall notify StatSoft so that StatSoft can provide the necessary releases, system adjustments (changes to the details of the licence holder) and installation support services in consultation with the third party. In addition, the Customer shall provide StatSoft with written confirmation of full completion of the measures specified. Furthermore, the Customer shall expressly agree compliance with these T&Cs and in particular the scope of the rights under Sections 3, 7 and 8 with the third party. Splitting of licence volume packages purchased is not permitted.
2. The Customer may transfer the software including the operating manual to third parties temporarily only under the conditions set out in 1. Transfer of the software in the form of renting it out for financial gain or leasing it is not permitted. For the period of transfer, the Customer does not have any right to use the software himself.

§ 9 Warranty

1. StatSoft shall provide a warranty for any contractually agreed property and for the Customer's use of the contractual software without breaching the rights of third parties. The material defect warranty does not apply to defects resulting from the fact that the contract software is used in a hardware or software environment that does not meet the agreed system requirements or to changes and modifications that the Customer has made to the software without being entitled to do so by law, by the underlying software agreement or by prior written consent from StatSoft.
2. If the Customer is an entrepreneur, he shall check the contract software immediately on receipt for obvious defects and notify StatSoft promptly if there are any; otherwise, a warranty claim for these defects is excluded. The same

applies if a defect of this sort occurs at a later date. Section 377 of the German Commercial Code applies.

3. If the Customer is an entrepreneur, StatSoft is initially entitled to provide supplementary performance in the event of a material defect, i.e. at its own discretion to rectify the defect ("repair") or provide a replacement delivery. As part of a replacement delivery, the Customer may be given a new version of the software, unless this leads to unreasonable disadvantages. In the case of legal defects, the Seller shall provide the Customer at its discretion with a legally proper usage option or modify the software in such a way that the rights of third parties are no longer being breached.
4. If necessary, StatSoft is entitled to provide the warranty services on the Customer's premises. StatSoft also meets its obligation to carry out a repair by providing updates with an automatic installation routine for download on its homepage and offering the Customer telephone support to resolve any installation problems that occur.
5. This is without prejudice to the right of the Customer to reduce the purchase price or withdraw from the contract at his discretion if the repair or replacement delivery fails twice. There is no right to withdraw in the case of minor defects.
6. If the Customer is a consumer, the statutory warranty regulations apply without restriction.
7. Except for claims for compensation, warranty claims on the basis of material defects shall expire in two years, or in one year if there is no consumer involved in the transaction. This is without prejudice to the limitation period in the case of recourse for delivery under Sections 438(1) no. 2, 479(1), 634a BGB. In the case of sale on a data carrier, the limitation period shall commence on delivery of the contract software, in the case of sale by download over the internet, on notification and enabling of the access details for the download area.

Section 10 Liability

1. In view of the complexity of software programs, the Customer is aware that faults cannot be excluded with absolute certainty. Apart from the warranty, StatSoft therefore accepts liability to the following extent:
 1. If StatSoft is responsible for that fact that the software cannot be used by the Customer in accordance with the contract as a result of a failure to provide or incorrect provision of suggestions and advice before or after conclusion of the contract or breach of other ancillary contractual obligations - in particular, instructions on operation and maintenance of the subject of the contract - the provisions on the warranty in Section 9 and below in Section 10(2) apply with exclusion of other claims by the Customer.
 2. For damage that does not occur to the item supplied itself, StatSoft accepts liability - whatever the legal basis - only
 - a) in the case of malicious intent or gross negligence on the part of its representatives or vicarious agents;
 - b) in the case of loss of life, physical injury or damage to health for which it is culpable;
 - c) in the case of defects and other circumstances that it has fraudulently concealed;
 - d) or in the case of defects the absence of which it has guaranteed or insofar as a guarantee of quality or any other guarantee has been provided.

3. In the case of culpable breach of material contractual obligations, StatSoft is liable only for the damages that are typical of the contract and are reasonably foreseeable. Material obligations are those the fulfilment of which is necessary to achieve the aim of the contract, e.g. we are required to provide the Customer with the item free of material and legal defects and give him ownership rights over it.
4. Liability for data loss is restricted to the typical restoration work that would have occurred in the case of regular preparation of back-up copies in accordance with the risk.
5. Other claims, in particular liability without fault, are excluded.
6. StatSoft remains entitled to claim joint culpability.
7. This is without prejudice to liability under the German Product Liability Act.
8. Expiry
 - a) All liability claims by a Customer who is not a consumer shall expire in twelve months, starting from the time at which the Customer became aware of the circumstances on which the claim is based or should have become aware of them without gross negligence. They shall expire at the latest at the end of the maximum periods stipulated in Section 199 BGB.
 - b) In cases covered by 2.a)-d), the statutory periods apply to all claims.
9. The obligation to provide evidence of the culpability of StatSoft lies with the Customer, unless he is a consumer.

§ 11 Collaboration obligations of the Customer, audit right

1. The Customer has checked that the specifications of the software meet his wishes and requirements before conclusion of contract. He is aware of the main functional features and conditions of the software.
2. Unless the Customer is a consumer, he is obliged to inspect the software, including the operating manual, immediately after delivery (within 8 working days). Defects that are or can be identified in this way must be reported to StatSoft in writing within a further 8 working days. The report of the defect must include a clear, detailed description of it.
3. Defects that were not identified in the course of the immediate inspection described above shall be reported to StatSoft within 8 working days of discovery, in compliance with the complaint requirements specified above under 1.
4. In the case of a breach of the obligation to inspect and submit complaints by a Customer who is an entrepreneur, the software shall be deemed to have been accepted with the defect in question.
5. Insofar as is useful for fulfilment of the contract, the Customer shall support StatSoft in executing the contract free of charge by e.g. providing employees, work spaces, hardware, an operating system and basic software, data and telecommunications equipment and cables. He shall grant StatSoft access to the hardware and software either directly or by means of data transfer and provide the necessary environmental conditions.
6. The Customer shall take the necessary measures in case the subjects of the contract do not work properly in whole or in part, e.g. by regular data back-ups, diagnostics, regular checks of the results, an uninterruptible power supply, documentation of data back-ups, journaling, special arrangements for defence against viruses, in particular, in accordance with the latest technology.

7. The Customer shall carry out a data back-up immediately before an intervention into the Customer's IT systems by StatSoft which is necessary to perform the service. StatSoft shall notify the Customer of such interventions in good time.
8. The Customer undertakes only to deploy suitable employees to use the software supplied and to log appropriately the use of the software and any unusual incidents that occur.
9. If the Customer does not meet his cooperation obligations, StatSoft shall be discharged from its performance obligation. If StatSoft nevertheless performs the service, it shall charge the Customer for the additional work.
10. The Customer is obliged to allow StatSoft or the software manufacturer of the subject of the contract on demand to check proper use of the contract software, in particular that the Customer is using the program in accordance with the licence purchased by him in terms of quality and quantity. In this connection, the Customer shall provide StatSoft or the software manufacturer of the subject of the contract with information, sight of relevant documents and paperwork and facilitate an audit of the hardware and software environment used by StatSoft or the software manufacturer of the subject of the contract or an auditing company appointed by the StatSoft or the software manufacturer of the subject of the contract that is acceptable to the Customer. StatSoft or the software manufacturer of the subject of the contract is permitted to carry out the audit on the premises of the Customer during normal business hours or to arrange for it to be carried out by third parties who are obliged to maintain confidentiality. StatSoft or the software manufacturer of the subject of the contract shall ensure that the business operations of the Customer are disrupted as little as possible by the work on site. If the audit demonstrates that the licence number purchased is being exceeded by more than 5% (five percent) or is otherwise being used in breach of the contract, the Customer shall meet the costs of the audit; otherwise, the costs shall be met by StatSoft or the software manufacturer of the subject of the contract.

§ 12 Retention of title

1. StatSoft shall retain title to the software supplied to the Customer until full payment of all existing or subsequent claims under this contractual relationship at the time of delivery; in the case of payment by cheque or bill of exchange, until clearance of the payment.
2. If the Customer is in arrears on payments or in significant breach of his cooperation obligations, assertion of the retention of title by StatSoft shall not be deemed to be withdrawal from the contract, unless StatSoft explicitly notifies the Customer of this.
3. If StatSoft asserts its retention of title, the right of the Customer to use the software is void. All program copies made by the Customer must be deleted.

§ 13 Written form

1. All agreements that contain a change, addition or clarification of these contractual conditions and any special assurances and undertakings must take written form to be effective. If they are declared by representatives or agents of StatSoft, they are binding only if StatSoft has given its written consent to them.

§ 14 Place of performance, court of jurisdiction

The place of performance for all services under the business relationships existing with StatSoft and the place of jurisdiction is the registered office of StatSoft in Hamburg, provided that the Customer is not a consumer but a merchant, legal person under public law or special fund under public law. The same applies if the Customer does not have a general place of jurisdiction in Germany or the EU or his domicile or usual place of residence is not known at the time that legal action is filed. This is without prejudice to the right to take action in a court at a different place of legal jurisdiction.

§ 15 Choice of law

German law applies. If the Customer is a consumer, this choice of law applies only to the extent that the protection given by mandatory provisions of the law of the state in which he normally resides is not removed (favourability principle).

§ 16 Dispute resolution

As a matter of principle, StatSoft is prepared to participate in dispute resolution proceedings before the consumer dispute resolution body Allgemeine Verbraucherschlichtungsstelle des Zentrums für Schlichtung e.V., 77694 Kehl am Rhein, Straßburger Straße 8, Tel. 07851 / 795 79 40, www.verbraucher-schlichter.de.

Special provisions for software with annual terms

1. The above T&Cs apply also to the purchase of software with terms limited to one year unless alternative regulations are specified expressly in the following provisions.
2. The Customer purchases the software with a simple right of use limited to one year. His attention has been drawn explicitly to the time limit on the right of use by StatSoft.
3. The other rights available to the Customer under the usage agreement are:
 - a) Provision of the latest version of the software supplied free of charge.
 - b) Free support by email or fax for questions about installation and basic operation of the software within normal business hours.
4. A special usage fee shall be paid to StatSoft for use. The usage fee for the first year is included in the introductory price of the software. The usage agreement shall be extended automatically by one year unless it is terminated in writing three months before the year of use elapses or, in the case of longer usage periods, three months before the usage period elapses.
5. The usage right is available to the Customer only on full payment of the usage fee to StatSoft without discount. On receipt of payment, StatSoft shall provide the Customer with the corresponding key code with which the software can be enabled for use for the following year.
6. The usage right is restricted to the number of users specified in the agreement. The metering software included in the software, which prevents over-use, must not be bypassed or suspended (see also Section 6(3)).

Special provisions for software training courses

1. Unless alternative regulations are agreed below, the above T&Cs also apply to agreements by StatSoft with the Customer regarding software training courses.
2. The training courses shall be arranged by qualified personnel in such a way that an average, attentive participant can achieve the training objective. Success is not guaranteed.

3. Costs for travel to and from the course shall not be met by StatSoft. Accommodation for the course participants is not included in the course fees, unless an express alternative agreement is made in writing between StatSoft and the Customer. The same also applies to subsistence (food and drink).
4. If a course is cancelled, alternative dates for running the course shall be suggested by StatSoft and agreed with the Customer. If the training takes place on StatSoft's premises and if the cancellation is caused intentionally or through gross negligence by StatSoft, StatSoft shall accept liability for the travel costs incurred by the Customer as a maximum. Costs for accommodation and any lost work by the Customer's employees shall not be met by StatSoft. The Customer is obliged to minimize the damages. The amount of damages shall be limited to a maximum of twice the fee due under the contract in question.
5. Course documents, if provided by StatSoft, are made available only for the personal use of participants. Copyright is either held by StatSoft or StatSoft has its own right to use and distribute the documents in the context of the course. Duplication is prohibited, including of parts of the documents.
6. If the participants are provided with computers for learning and practice purposes, the participants are prohibited from using data carriers in the computers that have not been approved for the course by StatSoft. The participants and the Customer are liable without limitation in respect of StatSoft for any damage and consequential damage caused by external data carriers.
7. Participants are also forbidden from downloading or copying data from the computers made available to them by StatSoft and from storing those data on other data carriers. In addition to the data present on individual computers, this also applies to data from publicly accessible sources (the internet, etc.) which can be loaded by computer. The participants and the Customer are liable without limitation in respect of StatSoft for any damage and consequential damage caused by breach of this provision, including for claims made by third parties against StatSoft.

Special provisions for consulting & programming

1. Unless alternative regulations are agreed below, the above T&Cs also apply to services provided by StatSoft for Customers in the area of consulting and programming.
2. Consulting covers all advisory, support and accompanying activities by StatSoft for a Customer in relation to set-up and use of the software sold by StatSoft. Programming covers all programming and software modifications made by StatSoft employees to the software of StatSoft or to external software.
3. Consulting and programming services shall be provided by StatSoft exclusively on the basis of the specifications, information and data to be provided by the Customer. The results and information arising from the findings reached by use of the software must be checked by the customer immediately in terms of their practical effects. Before the results of use of the software and the results from data analysis are applied to the business processes of the Customer, theoretical and practical tests regarding their effects must be carried out by the Customer.
4. StatSoft cannot provide any guarantee regarding the results of use of the software in relation to their benefits and accuracy, insofar as the specifications, information and data provided by the Customer has been used by StatSoft. The

Customer has no right to make warranty claims if he has modified the software or had it modified by third parties.

5. If there are errors in the results of the use of the software because of defective consulting or programming services, StatSoft has the right to repeat the service. StatSoft cannot provide any warranty or guarantee regarding the specific results of its consulting and programming services.
6. If StatSoft is responsible for that fact that the software or the results of its application cannot be used by the Customer in accordance with the contract as a result of a failure to provide or incorrect provision of consulting services, in particular suggestions and advice, or programming services before or after conclusion of the contract or breach of other ancillary contractual obligations - in particular, operation of the software - the following liability regulations apply with exclusion of other claims by the Customer:
 - a) For damage that does not occur to the software itself, StatSoft accepts liability - whatever the legal basis - only - in the case of malicious intent or gross negligence on the part of its representatives or vicarious agents; - in the case of loss of life, physical injury or damage to health for which it is culpable; - in the case of defects and other circumstances that StatSoft has fraudulently concealed; - or in the case of defects the absence of which it has guaranteed or insofar as a guarantee of quality or any other guarantee has been provided.
 - b) In the case of culpable breach of material contractual obligations, StatSoft is liable only for the damages that are typical of the contract and are reasonably foreseeable.
 - c) Other claims, in particular liability without fault, are excluded.
 - d) This is without prejudice to liability under the German Product Liability Act.
7. The limitation period for warranty claims by a Customer who is not a consumer is 12 months, starting from the end of the year in which the claim comes about and the Customer became aware of the circumstances on which the claim is based or should have become aware of them without gross negligence. The claims shall expire three years after they come about, irrespective of awareness or lack of awareness resulting from gross negligence.
8. In cases covered by 7 a)-d), the statutory periods apply to all claims.

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