

TERMS AND CONDITIONS OF PURCHASE

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NOTE: OPERATING THE HARDWARE / LICENSED SOFTWARE OR PAYING THE INVOICE FOR THE HARDWARE / LICENSED SOFTWARE INDICATES ACCEPTANCE OF THE FOLLOWING TERMS AND CONDITIONS, INCLUDING ANY LICENCE AND/OR SHARED RESOURCES AGREEMENT.

1. Purpose

This Agreement defines the terms and conditions for the purchase of a software licence and computer and scanner hardware by the Image Science Software GmbH (hereinafter called "ImSc").

2. Software licence

2.1 Object

After the Customer has paid the licence fee, ImSc grants the Customer a personal, non-transferable and non-exclusive right ("licence") to use and store the software and program modules described in the Licence Agreement on a single designated computer or workstation at a single location. The licence will terminate at the duration time specified in the Licence Agreement and/or if the Customer destroys all versions and copies of the licensed software. The licence will also terminate, without the necessity of a written notice from ImSc, if the Customer does not comply with any term or condition of this Agreement.

2.2 Delivery

For the installation of the software XWindows, FORTRAN 90, C compiler and preferably internet access must be made available to ImSc. Delivery of the software is established when ImSc has mailed the software by media (diskette, CD etc.) or when ImSc has remote-loaded the software via Internet. The Customer is obliged to inform ImSc two weeks after the installation or mailing of the software that there are technical errors in the installed software otherwise the adequate functioning of the programs is assumed.

2.3 Training

The cost for introduction in the use of the software and training will be at the Customer's expense.

2.4. Date of Maturity

The licence fees must be paid in full two weeks after receipt of the account. Prices do not include costs of packing, transportation, duties and/or tax.

2.5. Copyright

The software products are licensed and are not sold to the Customer. The entitlement to the intellectual property is transferred to the Customer by this licence. The Customer is allowed to make copies of the licensed software to archive the software if those copies are used to replace the destroyed software copy on a workstation listed in the Licence Agreement. THE CUSTOMER IS OBLIGED TO PUT A COPYRIGHT NOTICE FROM IMSc ON ANY COPY OF THE SOFTWARE. THE CUSTOMER IS OBLIGED TO CREATE A LISTING WHICH SHOWS THE NUMBER AND LOCATION OF ALL CREATED COPIES. The Customer must place this listing at ImSc's disposal if ImSc suspects abuse.

2.6. Transfer and Use Restrictions

THE CUSTOMER IS OBLIGED TO USE THE LICENSED SOFTWARE ONLY FOR HIS OWN PURPOSES AND IS OBLIGED TO KEEP THE SOFTWARE SECRET FROM ANY THIRD PARTY. It is the Customer's duty to employ reasonable safeguards to ensure that at no time can a third party use and/or copy the software in whole or in part. The Customer is obliged to ensure that no transfer of the software takes place through any network. The Customer is obliged to inform ImSc of changes to the software, as long as Article 2.7 is not in force. The Customer is liable for all damages which ImSc sustains if the Customer does not carefully adhere to this Article.

2.7. Module "SAMPLE"

The Customer may use module "SAMPLE" (if part of the software package) to implement and develop his/her own algorithms and commands within the licensed software without being obliged to inform ImSc.

2.8. Breach of Contract

If the Customer has committed a breach of contract the Customer is in all cases obliged to pay ImSc a fine, which is the licence fee multiplied by five.

2.9. Software Maintenance

The software maintenance or Shared Resources is agreed for the software modules specified in the software maintenance or Shared Resources Agreement. After receiving payment of the fees, ImSc guarantees the following corresponding services:

- a) Installation of the latest software upgrade. Only one upgrade media will be delivered for a single and for a multiple user licence if no other arrangement has been made. New manuals are not part of the software maintenance.
- b) Adequate correction of software errors by ImSc. "Adequate correction" means that ImSc will change the software in a way that is not a commercially unreasonable demand. Software maintenance is possible only for modules which are supported by ImSc. If the original code has been changed by the Customer, ImSc disclaims all warranties. If the software ImSc provides is from an outside merchant, then the Terms and Conditions of Purchase of the outside merchant are in force.
- c) Re-installation of programs and/or modules which have been destroyed by incorrect use of the software or by technical faults.
- d) Support by electronic mail (e-mail) or phone (Shared Resources only).
- e) User support (Shared Resources only).

The fees for software maintenance or Shared Resources must be paid no later than the starting day of the Agreement. The Agreement is unlimited unless otherwise explicitly agreed. The Agreement can be cancelled only at the end of each software maintenance or Shared Resources year either by the Customer or by ImSc by a 3 month written notice of such intention. Prices do not include cost of packing, transportation, duties and/or tax unless otherwise explicitly agreed.

2.10. Limited Warranty

For 6 months after the date of shipment ImSc guarantees that the media on which the software is delivered will be free from defects in material and workmanship or that the software will be correctly loaded via Internet. IMSC DOES NOT GUARANTEE THE CONTENTS OF THE SOFTWARE. THE SOFTWARE IS ALWAYS DELIVERED "AS IS" AND WITHOUT WARRANTY AS TO THE PERFORMANCE OR RESULTS THE CUSTOMER MAY OBTAIN BY USING IT. The Customer agrees that the software may not be error free. THE ENTIRE RISK AS TO THE PERFORMANCE AND RESULTS OF THE SOFTWARE IS ASSUMED BY THE CUSTOMER. IMSC IS NOT OBLIGED TO MAINTAIN ANY WARRANTY INSURANCE. The warranty is valid only for the Customer and is not transferable. If part(s) of the software were developed by outside merchants the warranty of the outside merchants are in force for this software part(s).

2.11. Test Versions

The Customer can obtain a test version to test and evaluate the software package and/or the software modules distributed by ImSc. ImSc is not obliged to deliver such a test version. Fees for the test version must be paid by the Customer. The licence to run a test version is limited to one workstation and to a predetermined time span. The Customer is not allowed to move the test version to another computer or to transfer the test version to a third party. After termination of the test version licence the Customer is obliged to delete the test version including all updates and backups, and to destroy everything that has been created with the test software.

2.12. Disclaimer of Warranty and Limitation of Remedies

To a maximum extent permitted by applicable law the Customer understands and agrees as follows: The limited warranty of this Agreement replaces all other warranties, expressed or implied, including any warranties of merchantability, fitness for a particular purpose, and noninfringement. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY IMSC, ITS EMPLOYEES, DISTRIBUTORS, DEALERS OR AGENTS SHALL INCREASE THE SCOPE OF THE ABOVE WARRANTIES OR CREATE ANY NEW WARRANTIES, IMSC DISCLAIMS AND EXCLUDES ALL OTHER IMPLIED OR EXPRESSED WARRANTIES. IN NO EVENT SHALL THE LIABILITY OF IMSC INCLUDE ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR DAMAGES FOR ANY LOSS OF DATA, EVEN IF IMSC HAS KNOWLEDGE OF THE POTENTIAL LOSS OR DAMAGE.

3. Hardware

3.1. Date of Maturity

Hardware costs must be paid in full two weeks after receipt of the account. If the hardware costs are higher than 10000 DM (5000 US \$) the cost must be paid as follows: 1/3 after confirmation of order, 2/3 two weeks after receipt of the account. Prices do not include costs of packing, transportation, duties and/or tax.

3.2. Delivery

The Customer is obliged to inform ImSc five days after receipt of the product that there are hardware damages otherwise the adequate delivery without transportation damages is assumed.

3.3. Time of delivery

In case of a non-fulfilment of delivery obligations by ImSc the Customer cannot withdraw this Agreement or force ImSc to pay a compensation without having accepted an adequate number of days of grace. ImSc reserves itself the right to extend the time of delivery in cases of unforeseen circumstances, war, natural disasters, etc.

3.4. Warranty

After the Customer has paid the hardware costs, ImSc warrants the delivered product against any defect in material and workmanship for 6 month from the date of delivery if not otherwise agreed. The warranty will also terminate, without the necessity of a written notice from ImSc, if the Customer does not comply with any term or condition of this Agreement. The following are not covered by the warranty:

- a) damage to or deterioration of the external cabinet;
- b) any unit that has been altered or on which the serial number has been defaced, modified, or removed;
- c) damage, deterioration or malfunction resulting from:
 - accident, misuse, abuse or neglect;
 - failure to follow instructions supplied with the product;
 - any shipment of the product (claims must be presented to the carrier), if not agreed otherwise;
 - repair or attempted repair by anyone not authorised by ImSc to repair the product;
 - causes other than product defects, including lack of technical skill, competence or experience of the user.

The warranty is valid only for the Customer and is not transferable. Returning any hardware or part of the hardware to enforce warranty without prior authorisation by ImSc is not allowed.

3.5. Disclaimer of Warranty and Limitation of Remedies

To a maximum extent permitted by applicable law the Customer understands and agrees as follows: The limited warranty of this Agreement replaces all other warranties, expressed or implied, including any warranties of merchantability, fitness for a particular purpose, and noninfringement. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY IMSc, ITS EMPLOYEES, DISTRIBUTORS, DEALERS OR AGENTS SHALL INCREASE THE SCOPE OF THE ABOVE WARRANTIES OR CREATE ANY NEW WARRANTIES, IMSc DISCLAIMS AND EXCLUDES ALL OTHER IMPLIED OR EXPRESSED WARRANTIES. IN NO EVENT SHALL THE LIABILITY OF IMSc INCLUDE ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR DAMAGES FOR ANY LOSS OF DATA, EVEN IF IMSc HAS KNOWLEDGE OF THE POTENTIAL LOSS OR DAMAGE.

3.6. Property rights

ImSc retains title to and right of possession of the hardware supplied by ImSc until full payment has been made by the Customer. In case of delayed payment ImSc has the right to enter the office of the Customer and to take away the hardware to assert ImSc's property rights on the hardware sold to the Customer.

3.7. Export clauses

If the Customer intends to export the hardware the Customer must follow the import and export clauses of the Federal Republic of Germany, of the country in which the Customer operates the hardware and of the country of hardware origin. The Customer must also follow the export clauses of his own country.

4. Controlling Law and Miscellaneous

This Agreement including the Licence Agreement, constitutes the full and complete understanding between ImSc and the Customer with respect to all matters related to the subject hereof. THIS AGREEMENT MAY BE MODIFIED ONLY BY A WRITTEN AMENDMENT SIGNED BY IMSc. NO PROVISION APPEARING ON ANY FORM ORIGINATED BY THE CUSTOMER THAT WOULD MATERIALLY ALTER THIS AGREEMENT SHALL BE APPLICABLE UNLESS IT IS EXPRESSLY AGREED TO IN WRITING BY IMSc.

If the performance by either party of any of its obligations under this Agreement shall be prevented by circumstances beyond its reasonable control, then such party shall be excused from performance for the duration of the relevant event. ImSc will not be held responsible for delays or lack of performance in case of war, natural disasters, etc., as designated by the German Courts.

The provisions of this Agreement are independent of one another, and the invalidity of any provision or portion shall not affect the validity or enforceability of any other provision. If any one or more clauses or sub-classes of this Agreement are prohibited, then it or they shall be deemed to be omitted. The parties shall uphold the remainder of this Agreement, and shall negotiate an amendment which, as far as legally feasible, maintains the economic status of the parties.

This Agreement shall be governed by the laws of the Federal Republic of Germany. The exclusive place of jurisdiction at which all disputes between the two parties is to be instituted shall be Berlin.