

End User Licence Agreement (EULA) for ABACUS Software

I. Object of the Licence

1. ABACUS Research AG, hereinafter referred to as ABACUS, grants to the Customer a personal, non-transferable and non-exclusive licensing right for his own use for the ABACUS programs and modules (hereinafter referred to in brief as the “Software”) duly purchased, registered and activated under his licence number.
2. Besides the ABACUS Software the right of use also extends to all the corresponding documentation.

II. Scope of the Licence

1. The licence entitles the Customer to use a single installation on a single machine at the same time. Here “Machine” is to be understood as signifying any physical machine fitted with one or more processors (CPU), as well as any virtual machine or other type of emulated hardware environment.
2. If the Customer wishes to have the ABACUS Software installed on more than one machine at the same time, then each installation requires its own licence. This also applies to test systems which are installed for a period longer than three months, except if the Customer has purchased a licence that allows for two test installations in addition to the productive installation.
3. The Customer acquires the licence exclusively for his own use. This means that only the Customer, his employees or persons commissioned by him are allowed to have access to the licensed ABACUS Software.
4. Should the Customer wish to make the ABACUS Software available online or remote to other natural or juristic persons or any other third parties for their own use, he will require for this an additional licence in each case. In such cases ABACUS may provide simplified licensing procedures e.g. via the Internet.
5. ABACUS will deliver the current latest version of the program. The Customer can ask to be given an older version, provided that ABACUS will support this older version for at least a further 6 months.
6. If the Customer installs a newer version of the ABACUS Software, then after the update, or in any event at the latest three months after installation, he loses the right to continue using the old version. Should the Customer desire to continue using the old version, an additional licence will have to be obtained for it.
7. The Customer installs the program himself at his own risk or arranges to have it installed by third parties at his own risk.
8. Should the licensed ABACUS Software which the Customer has be fully or partly damaged or mistakenly deleted, then ABACUS will replace it for free while charging their own expenses for data carriers, hours of work and shipping costs.
9. If the Customer purchases a licence for an industry solution that does not scale according to the number of users, but according to another unit (inhabitants, counter, beds, etc.) customary to this particular industry that cannot be controlled by the Software, then the Customer shall report changes to the distribution partner without further demand by the end of September. If this change results in a higher software fee, the difference will be charged subsequently. If it results in a lower software fee, no reimbursement will be made. Increases and – on request of the Customer – permanent decreases in the licensed units are taken into account for maintenance from the following year.

III. Terms of Use

1. The Customer acquires a single, spatially unrestricted, and non-exclusive right of use for the programs and modules which he has licensed.
2. ABACUS retains all rights other than those expressly granted to the Customer in this Agreement. This includes ownership rights, copyrights, designer rights, patent rights, trade mark rights and all other protective rights in the ABACUS Software, distribution rights, rental rights, the right to issue sub-licences and the like.
3. The Customer is allowed to make such backup copies of the program as are required for a secure operation. Where technically feasible, the backup copies must be marked with the copyright notice of the original data carrier and stored securely. Copyright notices may not be deleted, altered or suppressed. Copies which are no longer needed are to be deleted or destroyed. The user manual and other documents provided by ABACUS may only be copied for use internally within the company.
4. Unless given written consent by ABACUS, the Customer is forbidden to pass on the ABACUS Software in any form to third parties or to make it accessible to third parties.
5. Any exploitation of the person's own licence, in particular the leasing, renting and dissemination in tangible or intangible form, the use of the ABACUS Software by or for third parties (e.g. outsourcing, data-processing centre activities, application service providing, offering the ABACUS Software as a service) are not permitted without prior written consent from ABACUS.
6. The components from other suppliers which ABACUS includes with the Software, such as databases, viewers and the like, are only licensed for use with the ABACUS Software and may not be used by the Customer outside this context.
7. The Customer is not permitted to alter the ABACUS Software, and in particular not to decompile it, or to convert the source code into a readable or modifiable form by any other means.
8. ABACUS undertakes to make available to every customer the interface information for its business objects, insofar as this is technically feasible and practicable.
9. Contractual objects, documents, proposals, test programs etc. from ABACUS which are made available to the Customer before or after the conclusion of the Agreement, are deemed to be the intellectual property of ABACUS and its business and trade secrets, and as such are to be kept strictly confidential.
10. The Customer shall ensure by suitable measures that all persons who have access to the programs do also similarly adhere to the duties imposed on him by this Agreement.
11. ABACUS may check that the consent to the Licence Agreement has been given and that the stipulations of the licence are being observed, by making it necessary to activate the ABACUS Software before the ABACUS Software and updates, patches and suchlike can be started up; and ABACUS records, besides the licence number of the Customer, information about the system environment such as IP address, MAC address, server name and suchlike, which the Customer can supplement by providing optional details about the contact person. ABACUS and the distribution partner of the Customer will treat this information as strictly confidential. Furthermore, ABACUS is entitled to confirm the compliance to the licence agreement by a recognised auditing company.

IV. Rights in the Event of Defects

1. ABACUS guarantees that the contractual use of the Software by the Customer is not opposed by any rights of third parties. Hence ABACUS guarantees that in the case of defects of title, it

will ensure for the end Customer a legally sound use of the Software, or of an equivalent software, at its own discretion.

2. The Customer is to inform ABACUS in writing immediately should a third party make a claim regarding protective rights (copyright or patent rights) in the Software. The Customer authorises ABACUS to deal with the dispute with the third party on its own. As long as ABACUS makes use of this authorisation, the Customer is not himself entitled to recognise the claims of the third party without first receiving the consent of ABACUS; ABACUS then at its own expense defends against the claims of the third party, and releases the Customer from all costs connected with the defence against these claims, unless they are based on behaviour by the Customer in breach of duty (e.g. the use of the program in breach of the Agreement).
3. The ABACUS Software is of the usual quality expected for ERP systems. It is not, however, error-free. Minor impairments of function or impairments of function which are due wholly or in part to hardware defects, environmental conditions, improper use or the like do not constitute a defect.
4. Should there be a defect, a claim can be made about this within 12 months from the time of the first installation or within 6 months from the time of the update, to the distribution partner who issued the ABACUS Software to the Customer for his use or installed it for him. The distribution partner is to be notified of the defect immediately in writing.

V. Liability and Limitation of Liability

1. ABACUS disclaims any liability of any kind – insofar as this is legally admissible. In any event, the liability will not exceed the sum which the Customer has paid as license fee.
2. ABACUS is not liable to the Customer or third parties in any way for any kind of damages, losses, claims or costs and the like, in particular not for expenses incurred by the Customer, damages resulting from interruptions to operation, indirect or concomitant damages and consequential damages such as lost profit, failure to realise savings, and claims raised by third parties.
3. The Customer is liable to ABACUS for damages caused by any installation, use or passing on to others of the ABACUS Software in a manner which is in breach of contract or unlawful.

VI. Duration and Termination

1. Ownership of the goods delivered, and the limited rights to use of the ABACUS Software, only pass to the Customer when the signed Licence Agreement has been received and the contractual fee has been paid in full.
2. If the Licence Agreement is not signed and delivered, or the contractual fees paid, even within an appropriate extension of the deadline, ABACUS is entitled to have the Customer return the delivered goods and/or provide a written confirmation that these and all copies thereof have been destroyed.
3. The Customer may terminate the Licence Agreement at any time by giving written notice to ABACUS. Such a termination will always include all the programs and modules.
4. ABACUS is not entitled to terminate this Licence Agreement if the ABACUS Software is being used in compliance with the Agreement. However, should the Customer infringe the Licence Agreement in a serious manner, specifically if he fails to observe the scope of the licence rights granted to him or infringes the copyrights of ABACUS, ABACUS may then terminate this Licence Agreement with immediate effect and without giving prior warning.

5. In the event of the Licence Agreement being cancelled, the Customer has no claim to reimbursement of licence fees. He is, however, obliged to erase the installation and to destroy all the data carriers received from ABACUS. Should ABACUS request it, the Customer has to provide written confirmation of the destruction or erasure of programs.
6. Notice of termination must always be given in written form.

VII. General Provisions

1. The rights of the Customer in relation to ABACUS are declared exhaustively in this Licence Agreement.
2. Additional or differing Licence stipulations are only valid if made in writing and signed with legal effect by both contractual parties.
3. Should parts of this Licence Agreement prove to be invalid, the remaining provisions will still remain valid. In such a case the Agreement is to be designed by drawing on the legal provisions and the regulations usual within the sector, in such a way as to ensure that a satisfactory financial settlement is achieved as far as possible.
4. This Agreement is governed by Swiss law. Place of jurisdiction is St. Gallen.

Acceptance

of the End User Licence Agreement (EULA) for ABACUS Software

Company Name

Department

Contact person

Street

Postcode/town

Telephone

Country

Licence number

By affixing a legally valid signature, the Customer agrees to the provisions of the licence for the ABACUS Software.

Place, date

Name:

Signature:

Name:

Signature:
