

# Terms and conditions

## SARTORIUS General license conditions

By downloading and/or installing the product, or by using or continuing to use the product (as the case may be) you, the licensee, agree to be subject to and bound by the terms of this agreement between you and “Sartorius” as hereinafter defined. If you do not agree to these terms, you should not download and/or install the product and immediately return all materials and files to the authorized distributor or Sartorius for a full refund of the license fee you paid, if any.

Sartorius may track your usage of the software, including without limitation, usage pattern of the software and technical information regarding the operation system for Sartorius’ internal use. Sartorius shall use this information to improve the software and enhance the user’s experience. This tracking is completely anonymous and no personal information will be collected. Should you not want Sartorius to track such usage, please contact Sartorius by sending an email to [umetrics\\_support@sartorius.com](mailto:umetrics_support@sartorius.com) stating that you would like to opt out of this feature. Note, instruction for opting out may take up to seventy-two (72) hours from the time the email is received by Sartorius.

### 1. DEFINITIONS

Whenever used in this Agreement the following terms shall, to the extent the context does not require otherwise, have the following meaning;

“Activations” means each time Licensee creates a copy of the Product or enters in the key code.

“Agreement” means these Sartorius General License Conditions, applicable between Sartorius and Licensee.

“Effective Date” means the earlier of (i) the date when Licensee has purchased the License from Sartorius, an affiliate of Sartorius or an authorized reseller or distributor of Sartorius, as the case may be, in consideration of the License Fee or (ii) the date when Licensee has downloaded or installed the Product.

“License” means the license granted by Sartorius pursuant to Section 3.

“License Fee” means the compensation to be paid by Licensee in consideration of the delivery of the Product and the grant of the License.

“Maintenance Arrangement” means as set out in Section 3.2.

“Product” means the software, i.e. the computer program in machine-readable object code form (including documentation and any accessories), which is downloaded or installed, including any patches, bug fixes, upgrades, enhancements and new

versions of the Product which are provided as a result of a Maintenance Arrangement, if applicable.

“Product Specification” means the Sartorius’ published list of the Product’s capabilities Sartorius either supplied together with the Product or available on the Sartorius website.

“Term” means the period of time beginning on the Effective Date through the earlier of: (i) the time period set forth in the Sartorius Quote or (ii) as set forth in the key code for each License.

“Third Party Product” means a computer program or any other component included in the Product which Sartorius has not developed, but to which Sartorius has been granted a right from a third party to use as part of, or together with, the Product.

“Sartorius” means (i) Sartorius Stedim Data Analytics AB, reg. no. 556237-7308, a company duly incorporated and organized under the laws of Sweden and having its principal office at Östra Strandgatan 24, 903 33 Umeå, Sweden, being the owner of the associated intellectual property rights in the Product, and/or (ii) subsidiaries and affiliates of Sartorius Stedim Data Analytics AB as identified in the Sartorius Quote, which subsidiaries and affiliates have been granted the contractual right by Sartorius Stedim Data Analytics to resell the Product to end users on the terms set out in these terms and conditions.

“Sartorius Quote” means the Sartorius order form either in hard copy or if licenses are purchased through Sartorius’ website, the Sartorius order confirmation.

“User” means the single (1) physical person designated by the Licensee as the person having the right to use the Product under the License under the terms of this Agreement.

“University License” means a license to use the Product pursuant to Section 3.1(b) of this Agreement and subject to the number of Activations, Users and/or other restrictions pursuant to Sartorius’ Quote during the Term.

## **2. ACCEPTANCE OF LICENSE TERMS**

By downloading, installing the Product and/or entering in the license key code (as the case may be), the Licensee agrees to and accepts the terms of the License (as set forth in this Agreement) under which Licensee benefits from a non-exclusive right to use the Product in accordance with the terms set out in this Agreement.

## **3. LICENSE TERMS**

3.1 Sartorius hereby grants to Licensee a non-exclusive, non-transferable right to Licensee to use the Product in object code form only during the Term for: (a) its internal business purposes only or (b) if a University License, for research and educational purposes only or (c) if an individual is purchasing this license, for the individual’s private use, in each case, each license is subject to the terms and

conditions hereof, any restrictions or parameters in the Sartorius Quote and subject further to the functionality listed in the Sartorius Quote. The Product may only be used by the registered User and not by other employees, agents or consultants of Licensee. Licensee may install and use the Product on a maximum of one single work station/computer and may not install the Product on a server which may be accessed by multiple users through a network, unless the Sartorius Quote specifically provides that Licensee may do so. Notwithstanding installation of the Product on more than one (1) work station/computer, and for the avoidance of doubt, the Product is restricted to use only by the User, unless otherwise specifically provided for in the Sartorius Quote.

3.2 The License includes a right to use updates, upgrades (“Enhancements”) to the Product that Sartorius may develop and deliver during the Term, provided that, Licensee is current on maintenance and support that expressly entitles the Licensee to receive such Enhancements to the Product from Sartorius (“Maintenance Arrangement”). After receiving an Enhancement to the Product, the Licensee may no longer use the software that formed the basis for its upgrade eligibility. New versions of the Product must be licensed separately from Sartorius. Maintenance Arrangements, including without limitation support, are not offered for University Licenses.

3.3 The License granted herein does not include the right to disassemble, decompile, reverse engineer (except to the extent such restriction is prohibited by applicable local law in order to obtain interoperability), modify, copy, enhance, translate or create any works derivative of the Product or to permit any other person to have access to the Product by means of timesharing, hosting, application service provider, service bureau, remote computing services, networking, batch processing or any other means, nor permit the whole or any part of the Product to be combined with or become incorporated in any other programs other than as set out in the Product Specification. Licensee may not pledge, assign, sublicense, lease, time share or otherwise transfer, in whole or in part, the Product, without the prior written consent of Sartorius.

#### **4. DURATION OF LICENSE**

The License shall commence on the Effective Date and shall, subject to Licensee’s continued compliance with the terms of this Agreement, continue during the Term, unless earlier terminated as provided in this Agreement. The License shall terminate immediately upon the earlier of (i) the expiration of the Term or (ii) termination of this Agreement, pursuant to the terms of this Agreement. Licensee acknowledges that the Product may automatically cease operating upon the expiration or termination of this Agreement. Sartorius shall have no liability for remotely turning off the Product upon expiration or termination of this Agreement via a Product key.

#### **5. PROPRIETARY RIGHTS**

Licensee is aware of and accepts that the Product is and shall remain the property of Sartorius, or its licensor(s), and that nothing herein shall be construed as transferring any rights whatsoever in the Product from Sartorius to Licensee, except as expressly set out herein.

## 6. WARRANTY

6.1 To the extent the Term is longer than 90 days, and provided the License is not a University License or evaluation license, for a period of 90 (ninety) days from the Effective Date ("Warranty Period"), Sartorius warrants that the Product will function generally in accordance with the Product Specification. Notwithstanding the foregoing, Sartorius has no obligation whatsoever for errors in the Product caused by or related to any Third Party Products.

This warranty shall only apply if;

(a) the Product is used under normal conditions and in accordance with the Product Specification;

(b) Licensee without undue delay has given Sartorius notice of any errors, defect, non-conformities or deviations of the Product and has provided a warranty fault report to Sartorius presenting a specification of the error, promptly after the error has been discovered by Licensee;

(c) any error, defect, non-conformity or deviation of the Product was not caused by inter-working equipment or software not supplied under this Agreement;

(d) any error, defect, non-conformity or deviation of the Product was not caused by Licensee's use of the Product together with equipment or software, other than prescribed by Sartorius; and

(e) Licensee has given Sartorius every opportunity to remedy such error, defect, non-conformity and deviation.

6.2 The express warranties set forth in Section 6.1 above are the only warranties made to Licensee and are provided in lieu of any other express warranties or similar obligations (if any) created by any advertising, documentation, packaging, or other communications. **Except for the warranty contained in section 6.1 above, and to the maximum extent permitted by applicable law, Sartorius provides the product, maintenance arrangement and support services (if any) as is and with all faults, and hereby disclaims all other warranties and conditions, whether express, implied or statutory, including, but not limited to, any (if any) implied warranties, duties or conditions of merchantability, of fitness for a particular purpose, of reliability or availability, of accuracy or completeness of responses, of results, of workmanlike effort, of lack of viruses, and of the lack of negligence, and the provision of or failure to provide support or other services, information, software, and related content through the product or otherwise arising out of the use of the product.**

## 7. INTELLECTUAL PROPERTY RIGHTS INDEMNITY

7.1 Sartorius will indemnify and hold Licensee harmless against all claims that an unmodified version of the Product infringes a patent or copyright, and Sartorius will pay all resulting costs, damages and reasonable attorneys' fees finally awarded, provided that Licensee notifies Sartorius in writing of any such claim in sufficient time to enable Sartorius to effectively defend any such claim, Sartorius has sole control of the defense and all related settlement negotiations and Licensee fully cooperates with Sartorius in the defense and all related settlement negotiations. In the event that it is reasonably determined by a court of competent jurisdiction that use of the Product by Licensee is restricted or prohibited by reason of such infringement, Sartorius, at its sole option, may: (a) obtain for Licensee the right to continue using the Product; or (b) modify the Product such that the Product (as modified) becomes non-infringing; or (c) provide a refund to Licensee based upon amortization of the License Fee on a straight-line basis over five (5) years from the Effective Date.

7.2 The provisions of Section 7.1 above shall not apply to any claim arising out of designs, specifications, modifications or enhancements originating with, or requested by Licensee, nor shall it apply to the combination of the Product with other equipment or software not supplied by Sartorius if such infringement or misappropriation would not have occurred but for such combination. **This section states Sartorius' sole liability hereunder with respect to infringement of any intellectual property and proprietary rights.**

## 8. LIABILITY OF LICENSEE

Licensee shall be responsible for its activities related to the use of the Product. Licensee undertakes to indemnify and hold Sartorius harmless from any liability resulting from any unauthorized use of the Product or the copies thereof by Licensee or by a third party who has obtained, lawfully or unlawfully, the Product or copies thereof from Licensee, including, but not limited to, claims from third parties, damages, lost profits and additional license fees for Sartorius or other costs, including reasonable attorneys' fees.

## 9. LIABILITY OF SARTORIUS

The following shall apply with regard to Sartorius' liability under this Agreement;

9.1 To the maximum extent permitted by law, Sartorius' entire liability and Licensee's exclusive remedy for any breach of the warranties contained in Section 6 or any other liability relating to the Product shall be, at Sartorius' option, to repair, replace or modify the Product. In the event Sartorius considers, at its sole discretion, that none of the above alternatives is possible at a reasonable cost to Sartorius, then Licensee shall be obliged to stop using the Product (whereupon the Agreement shall be considered as terminated with immediate effect) and the Licensee will in such case as full and final compensation obtain a pro-rata refund of the price paid for the Product license, based upon amortization of the License Fee on a straight-line basis over five (5) years from the Effective Date. The foregoing shall be Sartorius' sole obligation and Licensee's sole remedy for a breach of warranty or any other liability

relating to the Product by Sartorius.

9.2 To the maximum extent permitted by law, Sartorius shall not be liable for any indirect, consequential, special or punitive damages arising from this agreement such as commercial loss, loss of orders, any commercial disturbance, loss of profits (irrespective of whether lost profits constitute direct or consequential damages), loss of data or third party claims, even if Sartorius has been advised of the possibility of such damages.

**Further, to the maximum extent permitted by law, the liability of Sartorius for any and all causes with respect to the product, breach of contract, warranty or otherwise, shall in aggregate not exceed the license fee paid, unless such liability has been directly caused by Sartorius' gross negligent act or omission or wilful misconduct.**

9.3 The parties acknowledge that the limitations and exclusions of liability are reasonable in the context of this Agreement and, in particular, recognize that the License Fee has been agreed on the basis of the limitations and exclusions of liability set out herein.

## **10. FORCE MAJEURE**

Sartorius shall not be liable for any delay in performing its obligations hereunder if such delay is caused by circumstances beyond its reasonable control. The performance of Sartorius' obligations shall be suspended during the period that the said circumstances persist and Sartorius shall be granted an extension of time for performance equal to the period of the delay.

## **11. CONFIDENTIALITY**

11.1 Licensee undertakes to treat as confidential and keep secret all information contained or embodied in the Product and the Product documentation or otherwise received from Sartorius (hereinafter collectively referred to as the "Information") provided that this Section 11 shall not extend to any information which was rightfully in the possession of Licensee without confidentiality obligations prior to the commencement of the negotiations leading to this Agreement or which is already public knowledge or if it does become so at a future date, without fault of Licensee (otherwise than as a result of a breach of this Section 11).

11.2 Licensee shall not without the prior written consent of Sartorius divulge any part of the Information to any person except to (i) Licensee's employees and third party consultants on a strict need to know basis, (ii) Licensee's auditors and any other persons or bodies having a right, duty or obligation to know the business of Licensee and then only in pursuance of such right, duty or obligation, and (iii) any person who is from time to time appointed by Licensee to maintain any equipment on which the Product is being used (in accordance with the terms of the License) and then only to the extent necessary to enable such person properly to maintain such equipment.

11.3 Licensee undertakes to ensure that the persons and bodies mentioned in Section 11.2 are made aware prior to the dis-closure of any part of the Information

that the same is confidential and that they owe a duty of confidence to Sartorius. Licensee shall be solely responsible for such third party's compliance with this Section 11.

## **12. TERMINATION AND EFFECTS OF TERMINATION**

12.1 Sartorius may terminate this Agreement with immediate effect if the Licensee commits any material breach of the terms and conditions of this Agreement.

12.2 In addition to the foregoing, Sartorius may also terminate the Agreement, wholly or partly, with immediate effect without cause, provided however, that the Licensee in such case shall receive a pro-rata refund of the price paid for the Product, based upon amortization of the License Fee on a straight-line basis over two (2) years from the Effective Date.

12.3 Forthwith upon the termination of this Agreement, Licensee shall, if requested by Sartorius, cause the Product to be returned to Sartorius or destroy the Product and shall certify in writing to Sartorius that the same has been done.

12.4 Any termination of the License or this Agreement (howsoever occasioned) shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination, including Sections 1, 3.3, 5, 6.2, 8, 9, through 11.

## **13. ASSIGNMENT**

Licensee shall not be entitled to assign, sub-license or otherwise transfer its rights and obligations under this Agreement, whether in whole or in part without the prior written consent of Sartorius. Sartorius is entitled to assign this Agreement and all of its rights and obligations hereunder. This Agreement will be binding upon and will inure to the benefit of the parties and permitted successors and assigns.

## **14. WAIVER**

The failure of either party hereto to insist upon the strict adherence to any term of this Agreement on any occasion shall not be considered as a waiver of any right hereunder nor shall it deprive that party of the right to insist upon the strict adherence to that term or any other term of this Agreement at some other time.

## **15. AGREEMENT, EXCLUSION OF WARRANTIES**

This Agreement supersedes any and all other agreements, oral or written, between the parties hereto with respect to the subject matter hereof. Unless otherwise expressly set out in this Agreement, all liability for representations and warranties (whether written or oral) made prior to the date hereof are hereby excluded (except for fraudulent representations) and all implied warranties are to the maximum extent permitted by law hereby excluded.

## **16. GOVERNING LAW**

16.1 United States of America. If the Product is sold by any Sartorius entity located in the United States of America, New York state law governs the interpretation of this Agreement and the Agreement shall be governed by and construed and enforced in accordance with the substantive laws of the state of New York without regard to its principles of conflicts of laws or the United Nations Convention on the International Sale of Goods. Both parties hereby consent to the exclusive jurisdiction of the courts of the County and State of New York and expressly waive any objections or defense based upon lack of personal jurisdiction or venue.

16.2 Outside the United States of America. If the Product is sold by any Sartorius entity anywhere else in the world other than the United States of America and to the extent permissible by applicable law, this Agreement shall be governed, construed and enforced in accordance with the substantive laws of Switzerland without regard to its principles of conflicts of laws or the United Nations Convention on the International Sale of Goods. All dispute, controversy or claim arising out of or relating to this Agreement or its validity shall be finally settled according to the ICC Rules of Conciliation and Arbitration without recourse to the ordinary courts of law (except as regards interlocutory relief). The place of arbitration is Zuerich, Switzerland. The arbitral proceedings are to be held in the English language.

## **17. IRREPARABLE HARM AND INJUNCTIVE RELIEF**

Licensee acknowledges that its use or disclosure of the Product or Information or the threat to make such use or disclosure in a manner inconsistent with this Agreement, will cause Sartorius extensive and irreparable harm, and hereby consents that Sartorius shall have the right, at any court of competent jurisdiction in any location where the Product is being used by Licensee, to injunctive relief without the need to post a bond to prevent the threatened or actual unauthorized use or disclosure.

## **18. EXPORT CONTROLS**

This license is subject to all applicable laws and regulations of the United States and of other controlling jurisdictions regarding the export, re-export, transfer, import, or use of the Product. This license is also subject to all applicable laws and regulations regarding sanctions/embargoes imposed against certain persons, entities, activities and countries. You must comply with all applicable export, import, and sanction/embargo laws and regulations of any jurisdiction relating to the Product, including without limitation, its procurement and use. If you have reason to believe that your download (including any demo version) or purchase of the Product is prohibited under any law or regulation, you should not proceed with the download or license purchase.