



BATEMO CELL MODELS

TERMS AND CONDITIONS

SOFTWARE RENTAL

§ 1 Subject Matter of the Contract

(1) Batemo GmbH, Benzstraße 15, 76185 Karlsruhe, Germany (hereinafter referred to as the "**Licensor**") shall rent the Batemo Cell Models software (hereinafter referred to as the "Software") to the Licensee for the agreed period, as well as the licence files required for operation (hereinafter referred to as the "**Licences**") and the associated application documentation (hereinafter referred to as the "**Application Documentation**") in English (hereinafter referred to collectively as the "**Contractual Objects**") under these terms and conditions.

(2) The source code of the Software is not part of the contractual objects.

(3) The product description valid at the time of conclusion of the contract and available to the Licensee prior to concluding the agreement shall decisively determine the quality of the Software delivered by the Licensor. The Licensor shall not be obliged to provide any software with higher specifications.

(4) The Software requires certain hardware and software environments for proper operation, which are defined in the product description; furthermore, it will require an Internet connection. This must be established once within a period of two weeks in order to verify the license. The existence of the hardware and software prerequisites defined here as well as the existence of an Internet connection is a prerequisite for the Software to be able to run.

(5) If separate Software extensions ("add-ons") are purchased by the Licensee, these add-ons shall also be subject to these terms and conditions.

(6) If employees of the Licensor issue warranties prior to the conclusion of the contract, these shall only be effective if they are confirmed in writing by the management of the Licensor.

§ 2 Delivery

(1) The Software is made available to the Licensee in accordance with the provisions of these terms and conditions either on a storage device or as a password-protected installation file for download via the Internet.

(2) Licenses are required for the operation of the Software in accordance with § 3 of these terms and conditions. The licenses are delivered as USB-Dongle (CmStick) or license file (CmActLicense) according to the stipulations of the contract.

(3) Together with the Software, the Licensor shall deliver the application documentation in English electronically to the Licensee.

§ 3 Granting of Rights

(1) With the contractual acquisition of licenses, the Licensor grants the Licensee the simple (non-exclusive) right to run the Software and use it for the period of time specified in the contract with the specified number of licenses. The following types of licenses can be rented by the Licensee:

- **Named User:** If the contract stipulates use with named users, only one registered user per license is entitled to use the Software. Only one natural person may be assigned to a named user. The Licensee is not allowed (and this would represent a copyright infringement) to let several natural persons use the Software under one user name. The Licensee may change the registered user of a named user license twice per contract year.
- **Designated Computer:** The license entitles to use the Software on a single registered computer. The Licensee must ensure that the Software only runs on the designated computer and that only one user, to whom only one natural person is assigned, has access to the designated computer at any time. The Licensee is not allowed (and this would represent a copyright infringement) to let several natural persons use the Software on the designated computer. The Licensee may change the registered computer of a designated computer license twice per contract year.
- **Concurrent:** If concurrent licenses are contractually agreed upon, the Software may be used by any natural persons who are employees of the Licensee. However, the number of concurrent users of the Software may not exceed the number of rented concurrent licenses.

(2) During a contractually agreed test phase, if applicable, the Licensor shall grant the Licensee the simple (non-exclusive) right to use the Software free of charge with the agreed number and type of licenses for the duration specified in the contract. After expiration of the test phase, Licensee's rights under these terms and conditions shall expire even without an express request for return by Licensor, unless Licensee rents the Software in accordance with § 3 (3).

(3) Irrespective of § 3 (2), the Licensor shall grant the Licensee the simple (non-exclusive) right, against payment of the contractually agreed remuneration, to use and let the Software

run for the contractually agreed time with the contractually agreed number and type of licenses (**software rental**).

(4) The Licensee may only use the Software for the purpose of processing its internal business transactions and those of companies affiliated with it within the meaning of Section 15 of the German Stock Corporation Act ("Group Companies"). In particular, computing center operation or the temporary provision of the Software (e.g. as Software-as-a-Service, SaaS) for companies other than group companies or the use of the Software for the training of persons who are not employees of the Licensee or its group companies are only permitted with the prior written consent of the Licensor.

(5) Reproductions of the Software are only permitted to the extent that this is necessary for use in accordance with these terms and conditions. The Licensee may make backup copies of the Batemo Cell Model to the extent necessary in accordance with the rules of technology. Backup copies on movable storage devices shall be marked as such and provided with a copyright notice ("© Batemo GmbH").

(6) The Licensee shall only be entitled to make changes, extensions and other modifications to the Software within the meaning of § 69 c no. 2 of the German Copyright Act (UrhG) to the extent that the law permits such modifications, extensions and other modifications. Before the Licensee eliminates errors by himself or through third parties, he will allow the Licensor three attempts to eliminate the error.

(7) The Licensee shall only be entitled to decompile the Software within the limits of § 69 e UrhG and only if the Licensor, after written request with a reasonable period of notice, has not provided the necessary data and/or information to establish interoperability with other hardware and software.

(8) The publication and revision of the application documentation is not permitted. Reproduction (e.g. in the form of photocopies, printouts or making it available to own employees) is only permitted for internal company purposes.

(9) Copyright or other property right notices within the Software may neither be removed nor changed.

§ 4 Transfer of the Contractual Objects

(1) The Licensee is not entitled to give the contractual objects to third parties without the permission of the Licensor, especially not for selling them on or leasing them.

(2) It is permissible for the Licensee's employees or other third parties subject to the Licensee's right of instruction to use the Software dependently within the scope of the intended use.

§ 5 Remuneration, Terms of Payment

(1) The Licensee shall pay the contractually agreed price plus statutory VAT/sales tax for the transfer of the contractual objects and the granting of the rights of use to the Software. During the test phase, in accordance with § 3 (2) of these terms and conditions, the contractual objects and the rights of use of the Software are provided free of charge.

(2) Unless otherwise agreed between the parties, the remuneration (rent) is due and payable at the beginning of the period of use, subsequently at the beginning of each quarter, but not before the contractual objects are made available.

(3) In the event of late payment, the Licensor shall charge the statutory interest on arrears after prior written notice of the delay to the Licensee.

(4) The Licensor is entitled to increase the remuneration for the first time after the expiry of twelve months after concluding the contract with a written notice of three months to the end of the month, if and insofar as his costs incurred for the maintenance of the contractual objects have increased. The Licensee has the right to terminate the rent within a period of six weeks after receipt of the announcement of a rent increase. In the event of a reduction in the corresponding costs of the Licensor, the Licensee may demand a corresponding reduction in the remuneration after the expiry of the period referred to in the first sentence.

§ 6 Installation, Training, Maintenance, Parameterization

(1) For the installation of the Software, the Licensor refers to the installation instructions within the application documentation. At the request of the Licensee, the Licensor shall undertake the installation of the Software on the basis of a separate agreement.

(2) The Licensor shall regularly provide the Licensee with general user instructions as well as other special instructions and information on important questions and problems in using the Software.

(3) The Licensor shall provide brief advice in the event of defects, application problems, malfunctions or other difficulties arising in connection with procedures of the Software on work days from Monday to Friday between 9:00 a.m. and 4:00 p.m., except on public holidays, at the Licensor's registered office. The Licensor accepts inquiries by e-mail sent to support@batemo.de.

(4) These terms and conditions do not govern any adaptation of the Software, the creation of a Batemo Cell Model for the Licensee with the underlying performance of parameterization and validation measurements or the provision of training courses by the Licensor.

§ 7 Adjustments to New Versions and Further Development of the Software

(1) If the Licensee wishes to use the Software in a newer version of the software environment (in particular newer versions of MathWorks® MATLAB® Simulink®), the Licensor will adapt the Software to the new version of the software environment upon request. For this purpose, the Licensor shall provide the Licensee with the required newer version of the Software as an installation file.

(2) The Licensor will continue to develop the Software; any new functions or improvements of the Software shall only be made available by the Licensor for the latest version of the Software, which may require the latest version of the software environment. The Licensee is not entitled to the introduction of new functions or improvements of the Software for older versions of the Software. For technical reasons, the Licensor cannot guarantee that new functions and improvements introduced in newer versions of the Software can also be made available for Batemo Cell Models created for older versions of the Software.

(3) Insofar as individual adaptations to the Software have been made as specified by the Licensee, the Licensor shall make such adaptations in newer versions of the Software for a separate fee.

(4) The delivery of new versions of the Software shall be carried out by providing a new installation file. The transfer of the source code is not owed. The Licensor grants the Licensee

the right to use newer versions of the Software or changes to the Software in accordance with the terms and conditions on which the transfer of the Software is based.

(5) The Licensee shall be responsible for installing new versions of the Software properly and in accordance with these terms and conditions. At the Licensee's request the Licensor will support the Licensee in this respect for a separate fee.

(6) Separate add-ons to the Software offered by the Licensor do not constitute new versions of the Software within the meaning of § 7 (1) of these terms and conditions. Add-ons must therefore be purchased or rented separately by the Licensee.

§ 8 The Licensee's Obligations to Cooperate and Provide Information

(1) The Licensee will carefully store the provided contractual objects in order to exclude misuse.

(2) The Licensee has familiarized himself with the essential functional features of the Software and bears the risk as to whether the Software meets his wishes and needs; in case of doubt, he has obtained advice from employees of the Licensor or from competent third parties prior to concluding the contract.

(3) The Licensee is solely responsible for setting up a functional hardware and software environment for the contractual objects that is sufficiently dimensioned - also taking into account the additional space required by the contractual objects. The hardware and software environment required and necessary for the operation of the Software is defined in the application documentation.

(4) Before using the Software, Licensee shall thoroughly test the Software for freedom from defects and for usability in the existing hardware and software configuration.

(5) The Licensee shall observe the instructions given by the Licensor for the installation and operation of the Software.

(6) Insofar as the Licensor has further obligations beyond the provision of the contractual objects, the Licensee shall cooperate to the required extent free of charge, e.g. by providing employees, work rooms, hardware and software, data and telecommunication facilities.

(7) The Licensee grants the Licensor access to the contractual objects for the purpose of troubleshooting and error correction, either directly and/or by means of remote data transmission. The Licensor is entitled to check whether the contractual objects are used in

accordance with the provisions of these terms and conditions. For this purpose, he may demand information from the Licensee, in particular about the period and scope of use of the contractual objects.

(8) The Licensee shall take reasonable precautions in the event that the Software does not function properly in whole or in part (e.g. through daily data backups, fault diagnosis, regular checking of data processing results).

(9) Unless this is expressly stated by the Licensee beforehand, the Licensor may assume that all of the Licensee's data with which the Licensor may come into contact has been backed up.

(10) The Licensee shall bear any disadvantages and additional costs resulting from a violation of these obligations.

§ 9 Defects of Quality and Defects of Title for Software Rental

(1) The Licensee is obliged to document any defects in the contractual objects in a manner that is as comprehensible as possible for the Licensor and to notify the Licensor immediately. In doing so, he shall take into account the Licensor's instructions for problem analysis within the scope of what is reasonable for him and shall forward to the Licensor all information available to him that is necessary for the elimination of the defect.

(2) During the free test phase, the provisions of § 11 of these terms and conditions shall apply with regard to the warranty.

(3) Defects shall be remedied at the Licensor's discretion by subsequent fulfillment. For this purpose, the Licensor shall, at his discretion, provide the Licensee with a new, defect-free version of the Software or remedy the defect; the defect shall also be deemed to be remedied if the Licensor shows the Licensee reasonable possibilities to avoid the effects of the defect. In the event of defects in title, the Licensor shall, at his discretion, provide the Licensee with a legally unobjectionable opportunity to use the Software or exchanged or modified equivalent components of the Software.

(4) A termination by the Licensee according to § 543 para. 2 sentence 1 no. 1 BGB (German Civil Code) justified by not granting the contractual use is only permissible if the Licensor has been given sufficient opportunity to remedy the defect and this has failed. A failure to remove defects is assumed only if it is impossible, if it is refused or unreasonably delayed by the

Licensor, if there are justified doubts about the chances of success or if it is unreasonable for the Licensee for other reasons.

(5) The Licensee's rights due to defects are excluded if the Licensee makes or has made changes to the Software without the consent of the Licensor, unless the Licensee proves that the changes do not have any unreasonable effects on the analysis and elimination of the defects. The rights of the Licensee due to defects shall remain unaffected, provided that the Licensee is entitled to make changes, in particular within the scope of exercising the right of self-elimination according to § 536a para. 2 BGB (German Civil Code), and that these changes have been carried out and documented in a professional and comprehensible manner.

(6) If the Licensor provides services for troubleshooting or elimination of errors without being obliged to do so, he may charge for this service in accordance with his usual rates. This specifically applies if a defect cannot be proven or is not attributable to the Licensor. In addition, the additional expenditure on the part of the Licensor that arises because the Licensee has not properly fulfilled his obligations in accordance with § 8 of these terms and conditions shall be remunerated.

(7) If third parties assert claims that prevent the Licensee from exercising the rights of use granted to him under these terms and conditions, the Licensee shall notify the Licensor immediately and comprehensively in writing and hand over the defense against such claims to the Licensor as far as possible. The Licensee shall provide the Licensor with all reasonable assistance in this regard. The Licensor shall defend against such claims at its own expense and shall indemnify the Licensee against all costs and damages associated with the defense of such claims, provided that such costs and damages are not based on the Licensee's breach of duty.

§ 10 Liability for Software Rental

(1) In all cases of contractual and non-contractual liability which do not occur in the free test phase according to § 3 (2) of these terms and conditions (see § 11), the Licensor shall pay damages exclusively in accordance with the following limits:

- a) in the case of intent and gross negligence in the full amount, as well as in the absence of a quality for which the Licensor has assumed a warranty;

b) For damages other than those mentioned in a), which are based on a slightly negligent violation of essential contractual obligations (cardinal obligations), the Licensor shall be liable under limitation to compensation for foreseeable damages typical for this type of contract. Essential contractual obligations within the meaning of the first sentence are obligations whose violation endangers the achievement of the purpose of the contract, whose fulfilment makes the proper execution of the contract possible in the first place and on whose compliance the Licensee regularly relies.

c) Any further liability for damages other than those mentioned in a) which are based on a slightly negligent breach of duties other than those mentioned in b) is excluded.

(2) The limitations of liability according to § 10 (1) of these terms and conditions do not apply to liability for personal injury and liability according to the Product Liability Act.

(3) The strict liability of the Licensor according to § 536a (1), 1st alternative BGB (German Civil Code) due to defects that already existed at the time of the conclusion of the contract is excluded.

(4) The Licensee shall be responsible for regularly backing up his data. In the event of a loss of data for which the Licensor is responsible, the Licensor is therefore only liable to the amount of the restoration costs for the data that would have been lost even if the data had been backed up properly.

§ 11 Warranty and Liability During the Free Test Phase

During the free test phase in accordance with § 3 (2) of these terms and conditions, the statutory warranty and liability regulations of loans (§§ 599, 600 BGB) shall apply departing from § 9 and § 10.

§ 12 Term of Contract, Termination of the Software Rental

(1) The rent begins at the time the Software is provided on a storage device or made available for download (and notification of the provision).

(2) If a fixed term has been contractually agreed between the parties, the contract shall end upon expiry of this term, unless the parties extend the contractual relationship by mutual consent. An ordinary termination of the contractual relationship is not possible. If the parties

have not agreed on a fixed term, the lease shall run for an indefinite period of time. Either party has the right to terminate the lease by giving 4 weeks' notice to the end of the month.

(3) The right of each party to extraordinary termination for good cause remains unaffected.

(4) A termination or extension of the contract requires text form to be effective.

§ 13 Legal Consequences of the Termination of the Contract

(1) Upon termination of the contractual relationship, the Licensee shall cease using the Software and remove all installed copies of the Software from his computers and/or the network. Any copies and/or backup copies of the Software that may have been made shall be completely and permanently deleted.

(2) Any use of the Software after termination of the contractual relationship is not permitted.

§ 14 Confidentiality and Data Protection

(1) The contracting parties undertake to treat all knowledge of confidential information and company secrets of the other contracting party obtained in the course of the initiation and execution of the contract as confidential for an unlimited period of time and to use it only for the purposes of implementing the contract. The Licensor's trade secrets also include the subject matter of the contract and the services rendered under these terms and conditions.

(2) The Licensee shall only make the subject matters of the contract accessible to employees and other third parties to the extent that this is necessary for the exercise of the rights of use granted to him. He shall instruct all persons to whom he grants access to contractual objects about the rights of the Licensor to the subject matters of the contract and the obligation to maintain the confidentiality.

(3) The obligation of confidentiality does not cover information and documents that are generally known and accessible at the time of disclosure or that were already known to the receiving contractual party at the time of disclosure or that have been legitimately made accessible to it by third parties.

(4) The Licensor shall comply with the regulations on data protection, especially if he is granted access to the Licensee's operation or hardware and software. The Licensor shall ensure that his vicarious agents also comply with these provisions, in particular the Licensor shall oblige them to maintain confidentiality before commencing their work.

§ 15 Final Provisions

(1) Exclusive place of jurisdiction for all disputes arising from and in connection with these terms and conditions is the business location of the Licensor.

(2) German law applies exclusively, excluding the UN Convention on Contracts for the International Sale of Goods (CISG).

(3) The conclusion of the contract as well as subsequent amendments and additions to the contract shall require the written form in order to be effective. This also applies to any amendment of this clause. No verbal variations on this agreement have been made.

(4) Should individual provisions of these terms and conditions be or become invalid or unenforceable in whole or in part, the validity of the remaining provisions of these terms and conditions shall not be affected thereby. The same applies in the event that these terms and conditions contain a regulation gap.