

General Software Licensing Conditions

Section 1 Scope

- (1) These General Software Licensing Conditions apply to the use, for a limited period of time, of software products belonging to Intrexon Bioinformatics Germany GmbH (hereinafter: "IBG") by the Licensee, who is a business person.
- (2) The General Software Licensing Conditions also apply, as amended, (most recent version available at www.genomatix.de) to pre-contractual obligations and future contracts of a similar type governing the use of software products with the same license number for a limited period of time, without the need for IBG to refer to them again in each individual case.
- (3) Solely these General Software Licensing Conditions apply. Deviating, contrary or supplementary general terms and conditions of trade on the part of the Licensee will only become an integral part of the contract if and to the extent that IBG has expressly agreed to their validity. This approval requirement applies in all cases – for example even if IBG makes the delivery to the Licensee without reservation, in full knowledge of the latter's terms and conditions of trade.

Section 2 Conclusion of a contract

- (1) Offers made by IBG are non-binding and subject to confirmation.
- (2) By ordering the software, the Licensee is making a binding offer to enter into a contract. Unless stated otherwise in the order, IBG is entitled to accept this offer to enter into a contract within four weeks of its receipt.
- (3) The order is accepted by means of a written confirmation of the order, or by notifying the Licensee of the access data for logging in.

Section 3 Object of the contract

- (1) The scope, type and quality of the software are determined by the contents of the order confirmation or invoice, where the delivery was made without prior confirmation. Any other specifications or requirements will only become an integral part of the contract if the parties agree this in writing or if IBG has confirmed this in writing.
- (2) IBG hereby allows the Licensee to use, for a limited period of time, the software designated in its order confirmation or invoice and grants the Licensee the necessary rights for the contractual use of this software in accordance with Section 4.
- (3) IBG will make the software available to the Licensee for use via a server. IBG will notify the Licensee of the access data for logging into the protected area.
- (4) IBG reserves the right to enhance or change the software at any time.
- (5) The software is not tested or approved for use in the diagnostic and/or clinical field and under no circumstances should be used for such purposes where FDA or similar regulatory approval is required.

Section 4 Granting of rights

- (1) The software (specific algorithms and data content) is protected by law. The copyright, patent rights, trademark rights and all other ancillary rights to the software, and to any other objects that IBG gives or makes available to the Licensee as part of the contract's initiation and execution, belong exclusively to IBG, provided that IBG is the holder of these rights.
- (2) The Licensee is only entitled to use the software to process the Licensee's own data in his/her own institution for his/her own purposes. 'Own institution' means the establishment of the Licensee and his/her employees specified by name in the order. Any extension of the group of users to include other institutions of the Licensee must be expressly consented to in writing by IBG. IBG will grant the Purchaser the necessary authority for this use in the form of a non-exclusive, non-assignable right of use that is limited in time to the term of the licensing agreement. No additional use by third parties is permissible unless IBG has given its express, written consent. The Licensee must ensure that appropriate safeguards are in place and may not allow the software to be accessed outside his/her establishment.
- (3) The access data for logging in that was provided to the Licensee must not be passed on to any third parties. In particular, the Licensee is not permitted to sell, lend, or hire out the software or to sub-license it in any other way, or to communicate the software to the public or make it publicly available.

Section 5 Delivery/performance

The delivery/performance is effected at IBG's registered office, which is also the place of fulfillment.

Section 6 Prices and terms of payment

- (1) Unless otherwise agreed in individual cases, IBG's current prices at the time of the contract's conclusion shall apply, plus the applicable statutory value added tax.
- (2) Any customs duties, charges, taxes or other public dues will be borne by the Licensee. Each party will bear their own banking charges.
- (3) The license fee is due and payable net without deductions within 30 days of the provision of the software and receipt of the invoice by the Licensee. Instead of issuing an invoice, IBG can also prepare an electronic bill that can be sent by email.
- (4) Upon the expiration of the above-mentioned payment period, the Licensee will be in default. For the duration of the default, interest will be charged on the license fee at a rate of eight percentage points over the prevailing base rate.
- (5) The Licensee is only entitled to offset claims or exercise rights of retention to the extent that his/her claim is undisputed or has been finally adjudicated upon by the courts.

Section 7 Term and termination

- (1) The contract is concluded for the period specified in the order confirmation or invoice. The Licensee can extend the license prior to its expiration subject to the payment of a fee. Extending the software license after the license term has expired can result in initial set-up and support costs, which will be communicated to the Licensee before the extension is implemented. The option of immediately terminating the license for good cause remains unaffected by this.
- (2) Any termination must be made in writing.
- (3) All of the Licensee's analytical data will be deleted 30 days after the license's expiration.

Section 8 Defect claims

- (1) The statutory provisions apply with regard to the rights of the Licensee in the event of material defects and defects in title, unless otherwise specified below.
- (2) The software is suitable for use in accordance with the contract. It fulfills the criterion of practical suitability and is of standard quality for software of this type. Software errors are technically unavoidable. A functional impairment of the program resulting from hardware defects, environmental conditions, operating errors or similar causes is not a software defect. Negligible reductions in quality will not be taken into account.
- (3) If the software provided is defective, IBG will remedy the defect within a reasonable time period. The Licensee will help IBG to analyze and remedy the defect by giving a precise description of any problems that occur and providing IBG with comprehensive information.
- (4) The Licensee is entitled to claim compensation for damages or for the reimbursement of expenses incurred in vain only in accordance with Section 9; all other claims are excluded.

Section 9 Liability

- (1) IBG will be liable to pay compensation – regardless of the legal basis – in cases of intent or gross negligence. In cases of ordinary negligence, IBG will be liable only
 - a) for damages due to loss of life, bodily injury or damage to health or, where claims are brought under the German Product Liability Act (Produkthaftungsgesetz),
 - b) for damages due to the violation of a material contractual obligation (obligations, whose fulfillment is a prerequisite for the proper fulfillment of the contract and on whose observance the other party to the contract can reasonably expect to be able to rely); in this event, IBG's liability will be limited to compensation for any foreseeable, typically occurring damages however. Compensation for consequential damage – i.e. damage that is not rectified by the remedial action undertaken and is sustained by assets other than the goods in question, e.g. an operational failure caused by the defect – is excluded.
- (2) IBG is not liable for initial defects, except where the conditions set out in sub-section (1) are given.
- (3) IBG assumes no liability for data losses on the part of the Licensee.

Section 10 Non-disclosure

- (1) The parties to this contract mutually undertake to treat as confidential – even after this contract has come to an end – all information made available to them prior to or during the execution of the contract (whether in writing, orally or in any other manner and whether directly or indirectly) – particularly information of a technical, commercial or financial type and including all documents and know-how. They also undertake to refrain from passing on such information to third parties and from making it accessible in any other form, to take all necessary precautions to prevent third parties accessing this information and to make it accessible only to those employees and/or representatives or contractors who have likewise undertaken to adhere to the above-mentioned confidentiality requirement, even after leaving their employment, provided that the information is flagged as "*confidential*" or described as "*confidential*" when conveyed orally, and unless the information in question was common knowledge before its disclosure or becomes common knowledge after its disclosure through no fault of the receiving party, or the information was already in the possession of the receiving party before its disclosure, or was or is lawfully obtained from a third party without restriction, or if the disclosing party has waived this non-disclosure obligation in writing.

- (2) IBG will process the personal data required for executing the business transaction in compliance with the data protection regulations. After the successful delivery of the service/product, IBG may cite the Licensee as a reference customer.

Section 11 Choice of law and jurisdiction

- (1) These General Software Licensing Conditions and all legal relations between IBG and the Licensee are subject to the laws of the Federal Republic of Germany, to the exclusion of all international and supranational (contractual) legislation.
- (2) If the Licensee is a merchant, the sole – and international – place of jurisdiction for all disputes arising directly or indirectly out of this contractual relationship is IBG's registered place of business in Munich, Germany.

Section 12 Final provisions

Should one of the provisions of these General Software Licensing Conditions prove to be invalid, this will not affect the validity of the remaining conditions or agreements. Instead of the invalid provision, whichever provision most closely approximates the economic spirit and purpose of the invalid provision will be deemed to be agreed.

Last updated: October 2018