

## Software Licence Agreement for the use of *METEONORM*

### I. Subject-matter of the Agreement, Agreement parties and conclusion of Agreement

#### a) *Subject-matter of the Agreement*

1. The subject-matter of the Agreement is the computer program *METEONORM*, Version 6.x (incl. updates) and above (hereinafter referred to as “Software”) and the accompanying user documentation.
2. The Software is a global climatological database combined with a weather generator. It enables both the calculation of long-term and current monthly average values as well as high resolution time series (e.g. hourly values) of typical years.
3. The co-operative *Genossenschaft METEOTEST*, Fabrikstrasse 14, 3012 Bern, Switzerland (hereinafter *METEOTEST*) is the author of the Software. As Licensor, it distributes the Software, including the accompanying user documentation (downloadable at [www.meteonorm.com](http://www.meteonorm.com)). *METEOTEST* is entitled to grant rights to use the Software.

The Software including and above Version 5.0 contains modules which were developed as part of the European Commission research project, IST 1999 12245 “SoDa”. *METEOTEST* has the right to use modules within the Software. Co-author of the UV-Algorithms: UMIST, Department of Physics, Manchester, UK. Co-Author of the temperature model: ENTPE, Lyon, F.

4. The Software constituting the subject-matter of the Agreement is copyright protected by national laws, international conventions and specific agreements with *METEOTEST*.

#### b) *Agreement parties and conclusion of Agreement*

5. The Agreement is being concluded between *METEOTEST* and the Licensee (hereinafter the “User”, collectively the “Parties”). The Agreement shall come into force when *METEOTEST* approves the User’s registration request by activating the Software. Any resellers of the Software act as representatives of *METEOTEST*.

## II. Rights of the User

### a) *Right to use the Software in accordance with the Agreement*

1. The Software may be used by the User exclusively within the scope explicitly set out hereinafter. Any further rights not granted shall remain with *METEOTEST*. By installing the Software, the User approves the licence terms.
2. Upon the conclusion of the Agreement, the User shall receive – unless otherwise agreed – an indefinite (subject to IV.a.1. and V. hereinafter), non-transferable, non-exclusive right to use the Software in accordance with the terms of the corresponding licence (SINGLE USER Licence, MULTI USER Licence or EDUCATION Licence) in association with the user documentation and the licence terms (hereinafter „use in accordance with this Agreement“).
3. The delivery of the Software and the user documentation shall take place over the Website [www.meteonorm.com](http://www.meteonorm.com) or by agreement between the Parties. The choice, installation and start-up of the Software are the sole responsibility of the User.
4. Use of the Software in accordance with this Agreement requires the installation to be carried out by the User and the Software to be activated by *METEOTEST*. The registration necessary for this shall be made upon a corresponding request of the User. The Software shall be activated once the licence fee is paid.

### b) *Rights of reproduction*

5. The User may only reproduce the Software to the extent a reproduction is necessary for use of the Software in accordance with this Agreement. The necessary reproductions include the installation of the Software on a storage medium and the upload of the Software to the main memory.
6. The User is further entitled to make an appropriate number of copies of the Software exclusively for back-up purposes. This right includes the regular making of back-up copies to ensure the quick recovery of data files after a system failure. Copies of the software made for back-up purposes must be marked accordingly and may not be used for other purposes.
7. The user documentation may only be reproduced insofar as is necessary for use of the Software in accordance with this Agreement.

### c) *Limitations of the rights of use*

- 8.1 With the exception of the rights of use expressly set out in these licence terms and those provided by mandatory law, the User does not acquire any rights in the Software and the user documentation.

The User is in particular not entitled to decompile or edit the Software itself or through third parties without the written agreement of *METEOTEST* (including error corrections). Copyright notices, serial numbers as well as other marks serving to identify the software may under no circumstances be removed or changed. Likewise, the reproduction, sale, donation, exchange, lease, loan, sub-licence, transfer to third parties for any time, distribution of and provision of access to the Software by any means are prohibited unless express written authorization has been given to the User.

- 8.2 Accordingly, the transfer of data generated using the Software to third parties without the written agreement of *METEOTEST* is not allowed (subject to II.c.8.3 hereinbelow).

In particular, are not allowed (non-exhaustive list by way of example):

- The direct transfer of data to third parties;
- The indirect provision of access to, that is, distribution of the data by making available to third parties results based on the data (e.g. through web applications, simulation software).

Should the User want to exercise such non-authorized use, an additional written Software Licence Agreement must first be entered into with *METEOTEST*.

- 8.3 The transfer to third parties of data generated using the Software without *METEOTEST*'s agreement is allowed only if such transfer is directly related to the processing of an individual, concrete legal transaction within the User's business operations.

An example of an authorized subsequent use of the data:

- Inclusion of the specifically generated data to document an expert opinion for a Client of the User.

9. Unless otherwise agreed, the Software may only be installed on a single personal computer.

10. The following, integrated climatological databases may only be used in association with the Software. Third parties may not be given access to the databases without the agreement of the data owners (subject to II.c.8.3 hereinabove, by analogy):

- Global radiation data (GEBA): Institute for Atmospheric and Climate Science, Swiss Federal Institute of Technology, Zurich, Switzerland;
- Swiss climate data: MeteoSwiss, Zurich, Switzerland;
- Design Reference Years (DRY), Swiss Federal Laboratories for Materials Science and Technology EMPA, Dübendorf, Switzerland;

- Design Reference Years (DRY), National Renewable Energy Laboratory (NREL), Golden CO, USA;
- Design Reference Years (DRY) SIA, Zurich, Switzerland.

### III. Obligations of the User

#### a) *Obligation to pay the licence fee*

1. The User is obliged to pay a one-off licence fee for all the rights in the Software and the user documentation granted pursuant to this Agreement in accordance with the order form.

#### b) *Payment modalities*

2. The payment of the licence fee can be made by credit card or advance payment at the User's discretion, in accordance with the information on the order form.

#### c) *Obligation to disclose the source*

3. All data generated using the Software must include the clearly visible copyright notice "**Data source METEONORM [used Version]**" in third party correspondence insofar as this is permitted, see II.c.8.1 and II.c.8.3 hereinabove.

The same applies when Software is made accessible to third parties insofar as this is permitted. The User must in such case refer to the author using the clear notice "**METEONORM a product by METEOTEST**".

### IV. Waiver of defect claims and liability

#### a) *Waiver of defect claims*

1. Should the Software contain important (apparent or hidden) defects, *METEOTEST* agrees to refund the User for the paid licence fee. The right to a refund is subject to the User making a written claim for sufficiently documented defects within 30 days of receiving the password to activate the Software. If the licence fee is refunded, the agreement shall be deemed terminated and the User shall no longer be entitled to use the Software.
2. Furthermore, the User shall have – to the extent legally permissible – no claims against *METEOTEST* should the Software contain material and/or title defects. *METEOTEST* provides no warranty for defect-free Software. Likewise, no claims against other persons or institutions having taken part in the development of the Software may be made against *METEOTEST*.

#### b) *Exclusion of liability*

3. *METEOTEST* relies in its services to a great extent on foreign mass data and calculation algorithms and models. The corresponding suppliers, sources and methods are carefully assessed and verified with regards to plausibility. Any further liability for data quality is expressly excluded. *METEOTEST* cannot guarantee the accuracy and completeness of the data supplied.
4. *METEOTEST* in particular does not accept any liability – to the extent legally permitted – for direct or indirect damages incurred by the User as a result of defects in the Software or which otherwise arise in connection with the use of the Software. This exclusion of liability applies to both contractual as well as non-contractual or quasi-contractual claims.

## V. Duration and termination of the Agreement

### a) *Duration*

1. Unless otherwise agreed, the duration of the right to use the Software granted to the User is unlimited (subject to IV.a.1. and V.b.2./c.3.). Any ordinary termination by the Parties is excluded.

### b) *Termination for important cause*

2. Each Party is entitled to terminate the Agreement for important cause at any time without notice. Termination for important cause shall be possible in particular where the other Party commits a serious breach of Agreement (e.g. through an intentional use of the Software not provided for by the Agreement) and does not remedy such breach within 30 calendar days despite a written warning.

### c) *Consequences of termination/duty to return*

3. The User's rights to use the Software shall expire upon termination of this Agreement. The User is obliged to return to *METEOTEST* the Software and user documentation as well as any copies made thereof immediately and of its own accord and/or to delete them from mass storage. **In the case of termination of the Agreement –no matter the cause – the User is not allowed to reclaim any licence fees already paid** (subject to IV.a.1. hereinabove).

## VI. Contract penalty

In the case of an intentional breach of contractual provisions despite a prior written warning from *METEOTEST*, the User must pay a **contract penalty of CHF 3'000.00 per instance of breach**, without prejudice to any claim relating to performance of the Agreement (Art. 160 para. 1 SCO).

## VII. Applicable law and jurisdiction

1. This Agreement and any disputes arising hereunder between the Parties, unless mandatory provisions state otherwise, shall be exclusively subject to Swiss law excluding the United Nations Convention on Contracts for the International Sale of Goods dated 11 April 1980 (CISG).
2. To the extent no other (partially) mandatory jurisdiction is provided for, the courts of Bern (Switzerland) shall have exclusive jurisdiction.

## VIII. Final provisions and severability clause

### a) *Entirety of Agreement*

1. This Agreement constitutes the entire and only agreement with regard to the relationship between the Parties. Any general terms and conditions of the Parties do not apply.

### b) *Written form requirement*

2. Any amendments and additions to this Agreement must be made in writing (Art. 16 SCO).

### c) *Place of performance*

3. The place of performance for all deliveries and services of *METEOTEST* is the place of the registered office of *METEOTEST*. The place of the registered office is also the place of payment for the User.

### d) *Severability clause*

4. Should any part of this Agreement should be or become inoperative or actionable, or should the Agreement be incomplete, this shall not affect the validity and applicability of the remaining provisions which must be interpreted and supplemented so as to achieve, as far as possible, the intended purpose.

Berne, December 23<sup>rd</sup> 2010

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### **Translation**

This is an English translation of the German original. Only the German language version of this Agreement is legally binding.