



# **BATEMO CELLS**

**TERMS AND CONDITIONS**

**CUSTOM BATEMO CELL**

## § 1 Subject Matter of the Contract; Scope of Performance

(1) Batemo GmbH, Haid-und-Neu-Straße 7, 76131 Karlsruhe, Germany (hereinafter referred to as: "**Licensor**") shall carry out parameterization and validation measurements for a battery cell type for the Licensee and the Batemo Cells software (hereinafter referred to as: the "**Software**"), create a Batemo Cell and simulate all validation measurements. The Licensor shall provide the Licensee with the necessary compiled model files and the prepared validation results for installation (hereinafter collectively called: "**Batemo Cell**").

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

(3) The Licensee shall install the Batemo Cell supplied in a new installation file independently.

(4) This agreement does not cover the provision of training or other services. These services are subject to remuneration and may be subject to separate agreements between Licensor and Licensee.

(5) The services owed by the Licensor are set out in the service description which is made available to the Licensee prior to the conclusion of the agreement. The quality of the Batemo Cell shall be determined decisively by the specifications set out in the description of services. The Licensor shall not be obliged to provide the Batemo Cell with any higher specifications.

## § 2 Rights to the Batemo Cell

(1) With regard to the individual creation of the Batemo Cell and the underlying concrete measurement and simulation results used to create the Batemo Cell, the Licensor shall grant the Licensee the exclusive right to use the Batemo Cell within the scope of his operation in connection with the Software already licensed. The Licensor shall not use the Batemo Cell created under these contractual provisions and the underlying measurement and simulation results for any other purpose. Apart from granting the exclusive right of use for the Batemo Cell thus created and its underlying measurement and simulation results, the type and scope of rights of use granted for the Batemo Cell shall be governed by the Software license terms and conditions concluded between the contracting parties (Batemo Cells Software Purchase or Software Rental Terms and Conditions); the rights of use granted there for the Software shall apply accordingly to Batemo Cell.

(2) The Batemo Cell may only be reproduced to the extent that this is necessary for use in accordance with the contract. The Licensee may make backup copies of the Batemo Cell to the extent necessary in accordance with the rules of technology.

(3) The Licensee shall only be entitled to make changes, extensions and other modifications to the Batemo Cell 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.

(4) The Licensee shall only be entitled to decompile the Batemo Cell within the limits of § 69 e of the German Copyright Act and only if the Licensor has failed to provide the necessary data and/or information to establish interoperability with other hardware and software after a written request with a reasonable period of notice.

(5) Copyright or other proprietary rights notices within the Batemo Cell may neither be removed nor changed.

### **§ 3 Remuneration**

(1) The Licensee shall pay the contractually agreed price plus statutory VAT/sales tax for the scope of services specified in § 1 and the rights of use granted in accordance with § 2.

(2) The contractually agreed terms of payment apply. Prices are due and payable upon invoicing.

(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 Obligations to Cooperate**

(1) The Contracting Parties shall cooperate in good faith. If a contracting party realizes that information and requirements, whether its own or those of the other contracting party, are incorrect, incomplete, ambiguous or not feasible, it must immediately inform the other party and advise them of the anticipated consequences.

(2) The Licensee shall support the Licensor in the performance of its contractual obligations. This shall include in particular the provision of battery cells for which the Batemo Cell is to be created as part of the work; furthermore the provision of necessary information and other documents, of means of communication and connections as well as hardware and software and making premises available where necessary.

(3) The Licensee shall grant the Licensor access to the Software provided and to the Batemo Cell for the purpose of troubleshooting and error correction, either directly and/or by means of remote data transmission.

## **§ 5 Acceptance**

- (1) Once the installation of the Batemo Cell has been completed, the Licensee shall carry out an acceptance test of the Batemo Cell received.
- (2) The acceptance of services requires a functional test. The functional test shall be deemed to have been successfully completed if the Batemo Cell meets the agreed requirements in accordance with the current service description.
- (3) During the functional test, the Licensee shall notify the Licensor immediately of any deviations of the delivered services from the performance requirements. The Licensor shall remedy any defects detected within a reasonable period of time.
- (4) If, after the functional test of the Software has been carried out, the Software essentially corresponds to the specifications of the current version of the application documentation, the Licensee shall declare acceptance without delay.
- (5) If within a period of one month after completion of the functional test, the Licensee fails to report any significant defects, the Software shall be deemed to have been accepted.

## **§ 6 Warranty**

- (1) As part of its performance, the Licensor will carry out a proper measurement of the battery cells provided by the Licensee for this purpose and use the measurement results to create the Batemo Cell. The general conditions are defined in § 1 and in the service description. A defect in the legal sense shall only be deemed to exist if Batemo Cell does not have the contractually agreed quality for failure to comply with the framework conditions defined therein.
- (2) Any defects which may occur must be documented by the Licensee in a manner which is as comprehensible as possible for the Licensor and the Licensee must notify the Licensor immediately upon their discovery.
- (3) In the event of material defects, the Licensor shall initially provide warranty through subsequent fulfillment. For this purpose, the Licensor shall, at his discretion, either provide the Licensee with a new, defect-free version of the Software or remedy the defect; remedy of the defect shall also be deemed to be fulfilled if the Licensor shows the Licensee reasonable possibilities to avoid the effects of the defect. In the case of defects of title, the Licensor shall initially provide warranty by means of subsequent fulfillment. For this purpose, the Licensor shall, at his discretion, provide the Licensee with a legally unobjectionable possibility of using the delivered services or exchanged or modified equivalent services.

(4) If the subsequent fulfillment fails, the Licensee is entitled to set a reasonable period of grace to remedy the defect. If the rectification also fails within the grace period, the Licensee may withdraw from the contract or reduce the remuneration, unless the defect is insignificant. The Licensor shall pay damages or compensation for futile expenditure due to a defect within the limits set out in § 7 of these terms and conditions.

(5) If the Licensor performs services in the search for defects or their removal 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.

(6) If third parties assert claims that prevent the Licensee from exercising the rights of use granted to him by the contract, the Licensee shall inform the Licensor immediately in writing and comprehensively and hand over the defense against such claims to the Licensor as far as possible. The Licensor is obliged to defend the claims at his own expense and to indemnify the Licensee from all costs and damages associated with the defense of claims, unless they are based on the Licensee's breach of duty.

(7) The limitation period for all warranty claims is one year and begins with the acceptance. In the event of intent or gross negligence on the part of the Licensor, fraudulent concealment of the defect, personal injury, fraudulent intent and guarantees, the statutory limitation periods shall apply, as do claims under the Product Liability Act.

## **§ 7 Liability**

(1) In all cases of contractual and non-contractual liability, 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 within limitations to compensate 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 fulfillment 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 § 7 (1) do not apply to the liability for personal injury and to the liability according to the Product Liability Law.

(3) § 6 (7) of these terms and conditions apply accordingly to the period of limitation, with the proviso that the statutory period of limitation applies to claims under § 7 (1) a) and § 7 (2). The limitation period pursuant to the first sentence shall commence at the time specified in § 199 (1) BGB. It shall commence at the latest upon expiry of the maximum periods specified in § 199 (3) and (4) BGB.

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

## **§ 8 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 contractual terms and conditions be or become invalid or unenforceable in whole or in part, the validity of the remaining provisions of these contractual terms and conditions shall not be affected thereby. The same applies in the event that these terms and conditions contain a regulation gap.