

Software License Agreement for screenFOOD

This Software License Agreement ("SLA") is an agreement between **you** ("Licensee", "customer", "you"; either an individual or a legal entity) and **screenFOOD AG** ("Licensor", "screenFOOD", "the commissioned party").

1. Object of the Agreement

The object of this Agreement is the screenFOOD® Software product, which has been developed by the Licensor, and to which the Licensor holds the title, and the associated documentation, hereinafter referred to as the "Licensed Material".

The Licensor grants the Licensee the non-transferable, non-exclusive, chargeable right to use the Licensed Material on a functioning computer unit. No copies of the Licensed Material may be made without the Licensor's approval.

Any improvements, modifications and updates to the Licensed Material shall only be furnished on special request and in accordance with separate agreements. Any pre-contractual services requested by the Licensee that exceed standard commercial boundaries shall also be compensated separately (service agreement).

Any Annexes attached to this Agreement form an integral part of same.

2. Scope of Rights of Use

2.1 Intended Use

Within the meaning of this Agreement, intended use comprises

- complete or partial loading, storage, transfer, conversion, running and rendering of the Licensed Material in a machine-readable format on the designated computer system for the purpose of executing Licensed Material instructions for processing the customer's data.
- temporary creation of copies required for this purpose.
- use of the training CD-ROM (where this has been purchased in addition) in connection with the intended use of the Licensed Material.

2.2 Expanded Use

Enhanced or expanded use of the Licensed Material as compared to the specifications contained in the Annex (e.g. on one or more computer systems of greater capacity or higher performance, on additional devices, by a larger number of authorised users, at additional locations, by affiliated companies or for use of an enhanced type, scope and intensity) shall give the Licensor the right to adjust the license fee accordingly.

3. Delivery and Acceptance of Licensed Material

3.1 Delivery

The Licensed Material is supplied in its most recently valid version released for sale by the Licensor in each case. Agreed deadlines shall apply with the exception of events that lie outside the Licensor's sphere of influence.

3.2 Acceptance of Licensed Material

The Licensed Material shall be considered to have been accepted, if (a) the Licensee does not submit written complaints of defects to the Licensor within 60 days, or (b) the Licensee begins making productive use of the Software. Hidden defects and warranty excepted.

4. Remuneration/Terms of Payment

4.1 License Fee and Installation Fee

The Licensor's services shall be billed as follows:

One-time license fee and one-time installation fees for the Software upon delivery, in accordance with the current price list in the Annex. The license fees are subject to modification by the Licensor.

All payments shall be made net within 20 days of invoicing.

The payment structures outlined in the Licensor's General Terms and Conditions are not applicable for the Licensee of the Licensed Material.

4.2 Expenses and Incidental Costs

Any expenses, incidental costs, taxes and charges, which are levied upon the conclusion or performance of this Agreement, shall be exclusively charged to the Licensee.

4.3 Enhancements / Updates / System Switch

In the event of modifications, enhancements or new versions of the object of the Agreement, the Licensee is entitled to acquire the relevant Software including documentation in the form of subsequent deliveries as follows:

In the case of one-time license fees, the one-time license fee for the subsequent delivery shall be reduced in accordance with the applicable price list, provided that one of the two subsequent updates is acquired; in the case of monthly license fees (ASP), the provisions of the ASP End Customer Agreement shall apply. Should the Licensee deploy a different design in place of the previously installed system, the versions of the object of the Agreement required for this purpose shall be made available to him at a preferential price, to the extent that this is feasible for the Licensor.

Software products that are not manufactured by the Licensor are excluded from the provisions of this clause.

5. Rights to Licensed Material/Protection of Licensed Material

5.1 Ownership and Industrial Property Rights

With the exception of the right of use granted under this Agreement, all rights shall be retained by the Licensor, in particular industrial property rights, patents, intellectual property rights, copyrights, proprietary rights, service marks and trade marks. You only acquire the right to use the Software. You do not acquire any rights to the Software or the data media that contain the Software, neither expressly nor implicitly, other than those contained in the SLA. You agree not to question the validity of the copyrights and trade marks relating to the Software that belong to the Licensor or his suppliers.

The Licensee hereby declares that he has fulfilled all regulations and registration procedures required by law to hold this license. The license granted under this Agreement is dependent upon timely payment of all invoices and costs. The support service for the Software is subject to separate fees and the standardised conditions of service, which are available in writing from the Licensor and which are altered as required.

5.2 Observance of Secrecy for Licensed Material

The Licensed Material, including the source code, is a trade secret subject to strict confidentiality, and the Licensee promises not to make all or any of it accessible to third parties in any form, nor to publish it.

The Licensee undertakes to only use the Licensed Material on functioning computer units for his own use and undertakes not to transmit, relinquish or otherwise make accessible to third parties the Licensed Material (including documentation) without having obtained prior written authorisation from the Licensor; this undertaking also applies for an indefinite period following termination of this Agreement.

5.3 Inspection and Backup of Licensed Material

You may only use the Software for your own data processing operations. You may only make a copy of the Software product (excluding Trial Versions) for backup purposes. No other copies shall be made without prior written permission from the Licensor. If the Software employed is an upgraded version of a previous product, you may only use this upgraded product in concordance with this SLA (provided that you discontinue use of the older version). You shall not: (a) remove any product identification, copyright notices, or other notices or proprietary restrictions from the Software; (b) make the Software available for commercial time-sharing, rental, application service provider or service agency use; (c) transfer, sell, assign or otherwise convey the Software to another party without prior written permission from the Licensor; (d) translate or otherwise prepare any derivative works based on the Software; (e) disclose any information related to the Software, including diagnostic tests, screen images, printed output, or results of any performance or benchmark tests of any Software to third parties without prior written permission from the Licensor; (f) use the Software as an aid to develop or market competing products; (g) make any attempt to bypass or disable product serialization or time limit mechanisms where such mechanisms are utilized in the Software's programming. You further agree to comply fully with all laws and regulations to ensure that, should such consent be granted, neither the Software, nor any direct product thereof, is **exported**, directly or indirectly, in violation of applicable law. You also agree not to cause or permit the Software to be copied, disassembled, decompiled, divided up or otherwise reverse engineered. In order to achieve interoperability of the Licensed Material with another software program, the Licensee must conclude an additional contractual agreement with the Licensor. Any information supplied by the Licensor or obtained by you as permitted hereunder may only be used by you for the purposes described herein and may not be disclosed to any third party or used to develop any software which is substantially similar to or in competition with the Software.

The Licensee promises not to make use of the Software to commit or support the committing of criminal offences and will take the necessary measures within his sphere of responsibility to prevent any criminal use by the Licensee, his staff or auxiliary personnel or third parties.

Furthermore, it is the Licensee's responsibility to immediately notify the Licensor of any utilisation of the Software that is unlawful or contrary to the Agreement by the Licensee's staff or auxiliary personnel or by non-authorised third parties (e.g. hackers).

The Licensee hereby gives his consent for the Licensor to forward information on him (namely data on the system connection, Licensee's contact persons, etc.) to third parties where this is required to perform the services.

It is the Licensee's responsibility to protect the systems and Software in his possession, which are employed for utilisation of the service, as well as the data used for this purpose and the data obtainable/transmitted via the service (including program data), from unauthorised access, manipulation, damage and loss.

5.4 Prosecution of Actions, Handling of Legal Proceedings

The Licensor is not liable for loss or damage arising in this connection.

5.5 Safeguarding of Industrial Property Rights

The Licensee acknowledges the Licensor's/rights holder's industrial property rights, in particular the Licensor's/rights holder's copyright of the Licensed Material, and shall refrain from any attack on the existence and scope of these rights for the duration of the license conceded to him, shall take all measures according to the Licensor's instructions to defend the Licensor's/rights holder's rights to the Licensed Material and shall support the Licensor to an appropriate degree in defending said industrial property rights (in the sense of the Licensee's duty to assist).

5.6 Trial Versions

If the Software was provided to you on a no-charge basis pursuant to a trial program (a "Trial Version"), then, in addition to the other provisions and limitations, (a) the Software may be used solely for evaluation purposes for the period specified by the Licensor from the time of delivery, and if no such period has been agreed, then for a period of thirty (30) days (the "Trial Period"), and (b) the Software may not be used for any development, commercial, or production purposes. Furthermore, in the event you have acquired a Trial Version, you must purchase a full-use license (i) if you wish to use the Software after the end of the Trial Period, or (ii) if you wish to use the Software for any development, commercial, or production purpose. If at the end of the Trial Period you do not purchase a full-use license, you must destroy any and all copies of the Software and all of its component parts.

5.6 Violations / Contractual Penalty

Should the Licensee or the Licensee's staff or auxiliary personnel violate the terms of this Agreement, the Licensee shall be liable to pay the Licensor compensation of at least 50,000 Swiss francs to a maximum of ten times the amount of (a) the one-time license fee or (b) the fees levied as partial amounts over the last twelve (12) months. This contractual penalty does not, however, release the customer from any of his contractual obligations. The right to assert further damages remains unaffected.

6. Warranty/Guarantee

The functionality of the Licensed Material has been expertly tested prior to delivery.

The Licensor warrants that for a period of 60 days from delivery: the enclosed media (if any) are free of defects in materials and workmanship under normal use, and the unmodified Software will substantially perform the functions described in the documentation prepared by the Licensor when operated on the designated computer and system. If the Licensee reports an error in the Software in writing within the 60 day period, the Licensor shall, at its option, rectify the error by means of an update, provide you with a reasonable procedure to circumvent the error, or, upon return of the Software to the authorised dealer, refund the license fees you have already paid. In the last of these cases, the Licensor will replace any defective media without charge if it is returned to the Licensor within the 60 day period. These are your sole and exclusive remedies in the event of a breach of warranty.

Furthermore, you acknowledge that if the Software is a Trial Version, the Licensor has no obligation to provide you with any kind of support.

The Licensor does not warrant that the Licensed Material can be employed in an uninterrupted and error-free manner in all the combinations desired by the Licensee, in accordance with all the Licensee's notions, and with any required data, EDP systems and programs, nor that all Software errors will be rectified, nor that the possibility of other program errors arising as a result of error rectification is excluded.

The Licensor grants no warranty for non-functioning Software in the event of incorrect installation of components provided by third parties. For third-party Licensed Material supplied by the Licensor, the Licensor shall merely pass on the warranty of the Licensor concerned to the appropriate extent; no further guarantee or warranty on the part of the Licensor shall be considered to apply. In particular, the Licensor cannot accept any responsibility for the availability, contents, quality, compatibility with Licensed Material and usability of third party supplies and services.

In any case, the Licensor reserves the right to cease software support, and to change the prices, characteristics, exact specifications, capabilities, functions, the release of data, general availability or other properties of the Software.

The Licensor is entirely released from its warranty obligations in the event that the defect can be traced back to circumstances outside its sphere of responsibility.

Outside the scope of the Licensor's warranty obligations described above, the Software is supplied "as is". The Licensor and its auxiliary personnel hereby reject all other express or tacit warranties in regard to the Software, including any warranty of merchantable quality or normal use, non-violation of the Agreement and/or fitness for a specific purpose. As the end Licensee, you accept the entire risk arising through the use or the performance of the Software.

This warranty is exclusive and in lieu of any and all other warranty provisions such as those of merchantability or fitness for a particular purpose.

7. Warranty of Title

7.1 Contents

The Licensor declares that it has developed the Licensed Material itself and that it is entitled to claim the corresponding industrial property rights, in particular copyright. The Licensor declares that it is entitled to grant a license for the Licensed Material and that this does not infringe any existing third-party property rights.

7.2 Cancellation

The Licensor is released from the above obligations if a claim relating to industrial property rights rests upon the fact that the Licensee changed the Licensed Material, used it together with other programs or data or used it under conditions of use and operation other than those defined in the Annex.

Should the Licensee or users affiliated with the Licensee make use of third-party offers and services using the Software, they shall themselves be responsible for observing the applicable provisions of use in each case and may be made directly liable in the event of loss or damage.

8. Liability

8.14 For Direct Damage

The Licensor shall only be liable for direct damage caused in connection with performing this Agreement if this damage was demonstrably a result of gross negligence or intent.

In cases of ordinary negligence, no liability shall apply on the part of the Licensor.

The Licensor is released from its obligation to pay damages if it is able to demonstrate that the damages asserted are evidently not traceable to circumstances that fall within its sphere of responsibility.

The Licensor shall not be liable for incorrect handling of the Software by the customer. Data recovery will be charged separately and **at the agreed hourly rate**.

The Licensee can be held liable for all loss or damage caused to the Licensor or third parties through the use of the Software by the Licensee or by users affiliated to the Licensee.

8.2 Indirect Damage and Consequential Damage

The Licensor and its auxiliary personnel are not liable for any indirect, incidentally arising, actual or consequential loss or damage, nor for loss or damage due to lost profits, loss of income, data or data processing, which was caused by a Licensee or third party, apart from within the scope of legal proceedings under contract law or action for tort, even if it was informed of the possibility of such loss or damage.

8.3 Prevention of Performance

The Licensor shall not be liable if it was prevented from executing timely or proper performance of services under this Agreement for reasons outside its sphere of responsibility.

8.4 Aggregate Limit for Damages / Limitations of Liability

The liability of the Licensor and its auxiliary personnel shall under no circumstances exceed the license fees paid by the Licensee.

Unless otherwise agreed in writing, any liability is limited to a fifth of the amount (a) of the license fees already paid, or (b) of the fees levied for this license in partial amounts over the last twelve (12) months.

9. Duration and Termination of the Agreement

9.1 Commencement

This SLA is a legally binding agreement between the Licensee and screenFOOD as the Licensor, which gives the right to use the Software in return for payment of the license fee, commencing as of acceptance of this Agreement through installation of the Software.

9.2 Duration

Unless a fixed period is agreed in supplements/amendments to this Agreement, this Agreement shall be considered to have been concluded for an indefinite period.

9.3 Termination by the Licensee

The Licensee may terminate this Agreement or an individual Annex at any time by giving due notice, namely by communicating said termination at least three months prior to the end of a quarter. In the case of one-time license fees, there shall be no entitlement to reimbursement; in the case of recurring fees, these shall remain due until the date of termination. ASP, support and maintenance agreements must be terminated separately.

Termination without notice is possible for compelling reasons, which make it unreasonable to hold to the Agreement. Adjustment of license fees, hourly rates, etc. does not represent a compelling reason for terminating this Agreement without notice.

9.4 Termination by the Licensor

Except for the adjustment of license fees, hourly rates, etc., the Licensor may only terminate this Agreement prematurely if the Licensee has violated the Agreement, or in the event of unauthorised use of services in connection with criminal offences or for any other compelling reason, which makes it unreasonable to hold to the Agreement.

10. Further Provisions

10.1 Support and Maintenance

No support or maintenance are included in the purchase of the Software. However, these may be agreed in writing in the form of a further agreement.

10.2 ASP (Application Service Providing)

The ASP Licensee, who leases the Software, additionally agrees to abide by the "ASP End Customer Agreement" in addition to this Software License Agreement.

10.3 Licensor's General Terms and Conditions (GTC)

The Licensor's General Terms and Conditions form part of this SLA and are attached in the Annex. In the absence of any other agreement, the payment structures tied into the SLA shall apply.

10.4 Data Protection

The parties are subject to data protection acts under Federal law, as well as the regulations on data security, their implementing ordinances and corresponding statutory provisions. All data and communications metadata are additionally subject to trade secret privileges. In addition, the Licensee is subject to an obligation to maintain secrecy (with regard to know-how etc.) even after termination of the Agreement.

The parties shall treat all matters that relate to the Agreement and that are neither public knowledge nor generally accessible (namely know-how information) as confidential. Both parties undertake to ensure that all staff and auxiliary personnel carefully observe the above points, even after the contractual relationship has come to an end. Should one of the parties fail to adhere to the provisions on secrecy or data protection, said party shall be required to pay the other party the sum of 50,000 Swiss francs as a contractual penalty. This does not affect the right to assert further damages.

These provisions are to be adhered to even before the Agreement comes into force and must continue to be observed to the stipulated extent even after the Agreement has been terminated. At its discretion, the Licensor shall undertake and fund the necessary data carrier, software, EDP, business and natural peril insurance policies.

11. Final Provisions

11.1 Written Form

All Annexes and subsequent amendments must be made in writing and must refer to the relevant Agreement. Any modifications to the Agreement shall only be valid if made in writing.

11.2 Partial Invalidity

Should individual provisions or parts of this Agreement prove to be void or invalid, this shall not affect the validity of the remaining parts of the Agreement. In such an event, the parties shall adjust the Agreement in such a way that the intended purpose behind the void or invalid provision is achieved to the greatest extent possible.

11.3 Assignment/Transfer

This Agreement and any individual rights and obligations it entails shall not be assigned or transferred to third parties unless prior written permission has been obtained from the other party.

The parties hereby undertake to transfer all rights and obligations under this Agreement to any legal successor that may be permitted under this Agreement.

11.4 Offsetting

Offsetting of claims on the part of the Licensee with debts owed to the Licensor under this Agreement requires the prior written agreement of both parties.

11.5 Information for the Licensee

After careful inspection of the terms of the Software License Agreement, the Licensee hereby expresses full agreement with same. By installing the Software, the Licensee expressly agrees to adhere to the terms of this Agreement. If you do not accept the terms of the Agreement, you are not permitted to install the Software.

The term "Software" as used in this SLA designates the computer software, which is contained in the software package or files, and to which this SLA is attached, the data media associated therewith, all printed documentation, all and any materials and any "online" or electronic documentation, which is provided by the Licensor in relation to such software.

By opening up the devices, by downloading or displaying the agreement on the screen "online" or by installing and/or using the Software, the Licensee accepts that he is bound to the terms of this Agreement.

If you do not accept the terms of this SLA: (a) you are not permitted to make any use of the Software; (b) if you have received actual copies of the Software from screenFOOD, you must return the Software that has not yet been installed and all associated items (as described above) immediately, within ten (10) days of receiving the goods; (c) you must immediately delete/destroy all copies of the Software on your system and anything that has been downloaded/opened and any associated component parts.

11.6 Applicable Law and Place of Jurisdiction

This Agreement is subject to Swiss law.

The City of Lucerne has been agreed as the place of jurisdiction.

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Annex: - Current screenFOOD® price list