

# WAMAS® END USER LICENSE AGREEMENT, LATAM

## Version December 2020

### 1 Application of the General Terms and Conditions for License Agreements

#### 1.1 Scope of Application

Our general terms and conditions for license agreements shall apply to the delivery and license of WAMAS standard software (hereinafter „Standard Software“) to customers (hereinafter „Licensee“). Software of third parties which is used by the Standard Software is partially subject to special terms and conditions (see sec 5.4).

#### 1.2 Exclusivity and Defence

Only the terms and conditions of the agreement entered into by and between us and the Licensee shall apply. Any aberrant, conflicting or supplemental other terms and conditions shall – even to the extent that we have knowledge of them – not apply, unless their application has been explicitly approved in writing.

### 2 Definitions

#### 2.1 Licensee

Licensee is the contracting party, including his successor in rights, which receives a license for the Standard Software according to the terms and conditions set forth in this agreement.

#### 2.2 Licensor

Licensor is the respective company of the SSI Schäfer-Group which delivers and licenses the Standard Software to the Licensee and therefore is the contracting party of the Licensee.

#### 2.3 Standard Software

The Standard Software is the WAMAS standard software together with the standard documentation.

The Standard Software is to be distinguished from the individualising software which is created by adapting and/or configuring the WAMAS Standard Software and which is not subject to these general terms and conditions for license agreements.

### 3 Subject Matter of the Agreement

Subject matter of the agreement is the delivery of the Standard Software in accordance with the product specification and the documentation.

Illustrations in e.g. the manual, test programmes, product and project descriptions are not guaranteed characteristics. Guaranteed characteristics require our explicit and written confirmation. Provided that no other agreements were made, the Standard Software is delivered in its current version at the time of de-livery.

Upon request we will provide the technical possibilities of use as well as terms and conditions of the pro-grammes (e.g. with respect to the data base, operating system, hardware and data carrier).

A separate agreement must be concluded for any service relating to the installation, configuration of and introduction to the Standard Software. Updates and/or upgrades of the Standard Software as well as help desk-services (support) require the conclusion of a separate service agreement. These services are not included in this agreement.

### 4 Extent of the Licenses

#### 4.1 Copyrights / Licenses

The Standard Software is protected by copyright. We grant the non-exclusive, indefinite right to the customer to use the Standard Software for the purposes of his company, locally restricted to the location set forth in the offer and individually restricted to the amount of licenses acquired. The customer undertakes to purchase a license for the WAMAS Standard Software for every location (WAMAS site license), user licenses for full and basic use (WAMAS user license) and on demand licenses for additional functionalities (WAMAS add-on modules). Every license sold shall only be used for the operation of the current EDP-system at the location of the customer.

The use of WAMAS in the scope of WAMAS Non – productive license is solely allowed for the non-productive operation and must not be commercially used.

## WAMAS® END USER LICENSE AGREEMENT, LATAM Version December 2020

### 4.2 Types of Licenses

The following licenses can be acquired: (i) the WAMAS license for a location (WAMAS site license), (ii) the license for the non-productive operation (WAMAS non-productive license), (iii) the WAMAS full-use license, (iv) the WAMAS basic-use license and (v) WAMAS add-on modules to provide additional functionalities to a customer installation.

(i) WAMAS site license

A WAMAS site license is required for each productive site. A site is considered to be a warehouse or several joint buildings, consisting of any number of storage areas or storage locations.

(ii) WAMAS non-productive license

The WAMAS non-productive license includes for each warehouse location a further WAMAS site license and ten WAMAS full use licenses.

(iii) WAMAS full-use license

The WAMAS full-use license is an user license providing full functionality e.g. for administrators and control center users. WAMAS full-user can be licensed according to different licensing models (see sec. 4.2.1).

(iv) WAMAS basic-use license:

The WAMAS basic-use license provides limited functionality for various manual warehouse processes (e.g. GI caddy, packing station, picker, mobile terminal, info terminal). WAMAS basic-user can be licensed according to different licensing models (see sec. 4.2.1).

(v) WAMAS add-on modules

WAMAS add-on modules provide additional functionalities to a customer installation. The WAMAS add-on modules are not available independently but have to be always combined with a WAMAS site license.

Any costs for third-party hardware and software which may be necessary for the operation of WAMAS are not included in the WAMAS license fee.

#### 4.2.1 User Licensing Models

The usage of the software is granted based on the number of purchased user licenses. The user licensing models are either based on expressly named users ("Named User") or on the maximum number of connected or simultaneously operating client computers ("Concurrent User"), so that these two user licensing models exist in the software portfolio of SSI SCHAEFER:

##### Named user licenses

The software licenses are bound to an individual person. A named user license has to be purchased for every person that has an user in the system. The number of users that exist in the system must not exceed the actual number of purchased licenses. All users can use the software at the same time.

##### Concurrent user licenses

The software licenses are shared by several individual persons. The number of users that can be created in the system is unlimited, since only the concurrent usage of the software is considered. Individual persons still have user names. The software can be used by several users at the same time, provided that the number of simultaneously working concurrent users does not exceed the number of purchased licenses.

### 4.3 Termination of Right of Use

We are entitled to terminate Licensee's license(s) relating to the Standard Software in the event of a severe violation of the terms and conditions of this agreement by Licensee. In such a case, Licensee shall be obliged to delete all copies of the Standard Software, to return all data carriers and documents and to declare in writing the end of the license.

The WAMAS non-productive license can be revoked at any time and without giving reason with immediate effect by the licensor.

### 4.4 Third-Party Licenses / Third-Party Software

It is noted that the WAMAS Standard Software includes third-party licenses for which special provisions apply. The third-party-licenses used by WAMAS as well as the link to licensing provisions to be applied are published at <https://www.ssi-schaefer.com/en-de/wamas-eula>

The respective supplier holds all rights relating to product parts/software produced by a third-party as supplier. For this software we, in general, only procure the rights or grant such rights which are necessary for the use of programmes together with the Standard Software. In principle, there is no right to adapt or transfer included.

## WAMAS® END USER LICENSE AGREEMENT, LATAM Version December 2020

In connection with the use of OpenJDK we refer to the GNU General Public License, Version 2 (hereinafter "GPLv2") <https://openjdk.java.net/legal/gplv2+ce.html>; we make use of the Classpath Exception, thus the provisions of GPLv2 are only applicable to the unmodified linked libraries.

### 4.5 Restrictions of License and Title

The Licensee may use and duplicate the Standard Software including the documentation only for the purposes set forth in these terms and conditions and may not make it available to unauthorised third parties.

The license relates only to the use of the Standard Software by the Licensee himself for his own data processing.

The WAMAS non-productive license, which use is exclusive for training and testing, can be made available by the licensor free of charge for a term which must be agreed separately. The use of WAMAS in the scope of these licenses is allowed only for the non-productive operation and must not be commercially used. Decompiling and / or processing from WAMAS are not permitted. All intellectual property rights and other industrial property rights, which the licensor owns regarding WAMAS, remain his property.

The Licensee is not entitled to

- (a) use the Standard Software for data processing by third parties or the training of third parties,
- (b) lease the Standard Software or undertake any other form of transfer of the Standard Software,
- (c) translate the Standard Software from the object code to the source code (e.g. by reverse engineering, disassembling or decompilation), provided that stringent statutory provisions do not provide otherwise;
- (d) any behavior forbidden according to the Laws of the state in which the Licensee has its registered offices.

Except as expressly provided otherwise in these terms and conditions, the Licensee does not acquire any further entitlements to the Standard Software.

### 4.6 Back-Up Copies

The Licensee may operate the data back-up according to the engineering rules and may for this purpose establish the necessary back-up copies of the Standard Software. A back-up copy on a mobile data carrier must be identified as such and be provided by with a notice of copyright of the original data carrier. The user documentation may be copied onto paper for internal purposes only. The Licensee is not entitled to change or remove our notice of copyright.

### 4.7 No further Use

Even if he has technical access to other software products, Licensee may only use the software products set forth in the agreement. It is not permitted to produce unauthorised copies, to transfer the software or to develop similar software by using the Standard Software as master.

### 4.8 Adding of Functions

The Licensee has the right to add new functions to the programme by using our defined development tools only. This also applies to the introduction of external functions which are supported by the programme. Please note that already minor changes may lead to considerable, unforeseeable disturbances in the functioning of the Standard Software and **other programmes**. Therefore, the Licensee is strongly warned not to undertake unauthorised changes to the Standard Software; he shall solely bear the risk.

### 4.9 Co-Copyright

In the event that results are achieved following the instructions or under the cooperation of the customer, then only we shall be entitled to all rights relating to such results. Unless mandatory laws provide otherwise customer shall transfer all his intellectual property rights to us.

### 4.10 Beginning of the License

If the customer's Standard Software is delivered following an order of Licensee then Licensee's license shall begin with the full payment of the received invoice by the Licensee.

### 4.11 Reference to Rights

The Licensee is furthermore not entitled to change or delete any reference relating to the rights, trademarks or similar rights which are set forth in the Standard Software or on the medium which carries the Standard Software.

## **WAMAS® END USER LICENSE AGREEMENT, LATAM Version December 2020**

### **4.12 License management, measurements**

Licensor is entitled to check the scope of use of the standard software by measuring, which can be done automatically and at any time by the Licensor. In addition, measurements can be carried out in the form of self-disclosure by the Licensee, which the Licensee must always provide after written request by the Licensor. In order to support the Licensee in license management and to check the plausibility of the self-disclosures, the standard software together with the associated surveying software enables the Licensor to carry out remote surveys. The software automatically measures the usage and transmits the measurement data to the Licensor.

Licensor is also entitled to carry out measurements on site at the Licensee's premises if (a) the remote measurement was refused or (b) it did not provide meaningful results and there are objective indications that the Licensee's use of the software exceeds the contractual agreement or (c) the terms of use of the third-party software used by the standard software require an on-site measurement. In this context, Licensor is entitled to carry out the on-site measurements himself or have them carried out by a third party, provided that this third party is bound by confidentiality obligations. The Licensee shall cooperate with Licensor in an appropriate manner in carrying out such measurements, in particular by providing the Licensor with remote technical access and by allowing the Licensor to inspect its systems to the extent necessary for remote and on-site measurements. The measurement can be carried out at all locations of the Licensee where the standard software is installed, used or (also remotely) accessed. Licensor shall give reasonable notice of on-site measurements.

Licensor commits himself to maintain secrecy of confidential information. Confidential information is in particular economic, business, technological and scientific internal information of the Licensee (other than public or otherwise easily accessible information), which the Licensor comes across in the course of the necessary license management (in particular measurements).

The reasonable and appropriate costs of the measurement shall only be borne by Licensee if the measurement results indicate a use not in accordance with the contract. If the Licensee incurs costs in connection with his obligation to cooperate in the measurements, he shall bear these costs himself and shall not receive any compensation and/or reimbursement from the Licensor for them, irrespective of the measurement results.

If a measurement shows that the Licensee exceeds the use of the standard software, Section 4.13 (extension of the right of use and consequences of a violation of the right of use) shall apply.

### **4.13 Extension of right of use and consequences of a violation of rights of use**

Any use of the standard software that goes beyond the provisions of these license agreement conditions (e.g. use at more workstations than agreed) requires the Licensor's prior written consent.

The Licensee is obligated to notify the Licensor in advance in writing of any change affecting his right of use or remuneration. A unilateral change is not permitted. The change requires a separate contract with the Licensor for the additional scope of use (purchase) on the basis of the current price and conditions list at the time of the change. Within the scope of the separate contract, the Licensor is not obliged to grant the licensee any agreed discounts.

If the license-exceeding use takes place without a contract, Licensor can withdraw the rights of use from the Licensee at any time. In addition, and irrespective of the withdrawal of the rights of use, the Licensee shall pay a contractual penalty (for Switzerland: contractual penalty in accordance with Art. 160 ff. OR) amounting to twice the amount due for the further use according to the current price and conditions list, irrespective of fault or damage. The right to claim damages, performance or omission is not affected by the payment of the contractual penalty. The contractual penalty shall not be set off against any claim for damages.

### **4.14 Obligation of Confidentiality**

Licensee shall not without the prior written approval of Licensor disclose any provisions of this agreement, unless such disclosure is necessary for effecting and enforcing the provisions of this agreement, or due to legal proceedings or statutory provisions. Without our prior written approval the Licensee shall not be entitled to disclose the results of comparing benchmark-tests or other evaluations of the Standard Software to third parties. Other information which is exchanged between the parties shall only be treated as confidential if such information has been identified as confidential. We are obliged to treat all confidential information received from the Licensee in a confidential manner and will use such information only to the extent necessary to fulfil this agreement.

The Licensee shall be obliged to keep confidential from third parties all confidential information relating to the subject matter of this agreement, in particular information relating to the source code and development documentation as well as the contents of the agreement entered into with the Licensee. Any employees, etc. with access to the subject matter of this agreement shall be informed in writing of this copyright and obligation of confidentiality and be obliged to comply therewith.

## **WAMAS® END USER LICENSE AGREEMENT, LATAM Version December 2020**

The Licensee shall store the subject matter of this agreement, in particular the source code received, carefully in order to prevent any abuse.

### **4.15 Copyrights**

The Standard Software is protected by copyright. The Licensee shall be obliged to keep all copyright notices on the Standard Software and the relating documentation, in accordance with the Laws of the state, in which the Licensee has its registered offices.

## **5 Involvement of the Licensee**

### **5.1 Working Environment**

The Licensee shall provide a working environment for the software (e.g. hardware and operating system) according to our guidelines. He shall observe the guidelines set forth in the user documentation.

### **5.2 Obligation to Co-operate and Data Remote Transmission**

The Licensee shall support us free of charge when fulfilling this agreement by providing employees, work space, hard- and software, data and telecommunication facilities. He shall grant us or one of our associated companies direct access or remote access to the hard- and software. In this context we will respect the interests of Licensee, in particular data protection. Licensee shall be responsible for any negative consequences (e.g. our increased costs resulting therefrom) in the event that easy access by means of telecommunication facilities is not possible or not permitted.

### **5.3 Contact Person with Power of Decision**

The Licensee shall name a contact person who is entitled to take the necessary decisions or effect such decisions without delay. The contact person shall care for a good co-operation between the Licensee and Licensor.

### **5.4 Obligation to Test prior to Operational Use**

Prior to commencing with the operational use of the Standard Software, the Licensee shall test the Standard Software thoroughly that it is free of defects and or with respect to its use in the concrete situation.

### **5.5 Licensee's Precautionary Obligation**

The Licensee shall take all precautionary steps for the event that the Standard Software does not operate properly (in whole or in part), e.g. by data back-ups, analysis of disruption, periodic reviews of the results, etc.

### **5.6 Licensee's obligation to cooperate in measurements pursuant to Section 4.12**

The Licensee undertakes to provide the Licensee with information on the scope of use of the standard software as defined in Section 4.12 always upon Licensor's written request.

In the case of measurements, the Licensee undertakes at its own expense (see Section 4.12) to cooperate with Licensor in an appropriate manner in carrying out measurements, in particular by enabling us to have remote technical access and by allowing us to inspect its systems to the necessary extent during remote measurements and on-site measurements.

### **5.7 Storage and processing of non-personal machine data**

The standard software records non-personal machine data on the modalities of use of Licensor's software and the equipment supplied by Licensor - or by companies affiliated with Licensor. Licensor is entitled to store and process this non-personal machine data - even beyond the term of this license agreement - in anonymized form for the purpose of designing, developing and improving the quality of Licensor's products in line with requirements and for scientific purposes. If and insofar as the machine data collected are or will be subject to special legal protection at present or in the future, Licensor shall be entitled to all rights in this respect (including processing and transmission) exclusively, irrevocably and without restriction in terms of time, space and content.

## **6 Delivery, Time of Delivery and Performance**

### **6.1 Delivery**

Following the conclusion of this agreement the delivery of the Standard Software shall be effected in such a manner that the Licensee is given either an invoice containing the specification of the acquired types of software the number of licenses or a special license certificate. Upon request Licensee shall receive the Standard Software and documentation stored on a data carrier.

### **6.2 Force Majeure**

We are not responsible for disturbances which result from strikes, lock-outs, governmental interventions, fire and other circumstances not caused through our fault. In the event that the performance of this agreement is impeded or made impossible

## **WAMAS® END USER LICENSE AGREEMENT, LATAM Version December 2020**

by cases of force majeure we are entitled by written notice to postpone the date of delivery and, following a postponement of more than 3 months, we are entitled to rescind this agreement entirely by written notice. Cases of force majeure shall be all unexpected events or such events - even if they were foreseeable - outside our or Licensee's influence and the effects of which on the fulfilment of the agreement cannot be prevented by reasonable efforts. These cases include, inter alia, war, natural disasters, labour disputes, et al.

### **6.3 Extension of Time in the Event of Disturbances**

In the event that we are awaiting the involvement of or information from the Licensee, or we are otherwise constrained from fulfilling the agreement through no fault of our own, then the delivery and performance periods shall be extended by the duration of disturbance together with a reasonable start-up time following the end of the disturbance. We will inform the Licensee of any disturbance.

## **7 Liability and Warranty**

### **7.1 Limitation of Liability**

We shall be liable for damages in the event of wilful misconduct and gross negligence, except in cases of personal injuries. Any liability for consequential damages and financial losses, lost profit and for damages resulting from third party claims against the Licensee as well as any liability for loss of data shall be in any case excluded.

### **7.2 Liability Cap and Statute of Limitations**

Our liability under this agreement shall in all cases be limited to the amount of fees paid for the licenses. Any claims for damages against us, irrespective of their legal reason, shall become statute barred in accordance with the Civil Code in force.

### **7.3 Warranty**

We make Licensee aware that according to the best available technology it is not possible to produce software – the Standard Software – in such a manner that it operates free of fault in all applications and combinations. Subject matter of this agreement is therefore only software which is generally viable in accordance with the specification of services and the documentation. We assume no warranty that the Standard Software conforms to Licensee's requirements. However, we assume the warranty to the Standard Software application in accordance with the standard services and the documentation, as well as provide complementary technical services relating to the proper operation of the program.

All warranty claims shall be excluded in the event of unauthorised changes or adaptations of the Standard Software, unless the Licensee is able to prove that the unauthorised changes and adaptations have no influence on the functionality of the Standard Software.

### **7.4 Exclusion of warranty and liability for WAMAS non-productive Licenses**

The right of warranty, support and software updating (new WAMAS releases and bug-fixes) or compensation as well as any other liability (to the extent permitted by law) is expressly excluded for these licenses.

### **7.5 Defect Location**

We will assist the Licensee in the search for defects and the cause of defects. We will charge the Licensee for these services in the event that the defect is not demonstrably our fault, according to the Laws of the state, in which the Licensee has its registered offices.

### **7.6 Right of Correction / Replacement**

Primarily we will warrant by way of correction / replacement. Correction will be effected by fault clearance, by providing a new programme version or by us demonstrating reasonable possibilities of avoiding the effects of defects. The Licensee shall assist us. The Licensee shall accept a new programme version, unless this leads to unreasonable difficulties in adapting and resetting for the Licensee. The Licensee shall only be entitled to rescission of the agreement or price reduction insofar as and to the extent that the correction of the defect, despite a grace period granted in writing with 3 attempts to clear the faults, has not been successful. The Licensee shall not be entitled to any reimbursement of costs incurred in connection with the clearance of defects by Licensee or a third party (substitute performance).

## **8 Obligation to Examine and Notify Non-Conformity**

### **8.1 Immediate Examination and Notice**

The Licensee shall examine all our deliveries and services for any non-conformity within a reasonable period and give notice of any defects within a period of one week following the receipt.

## **WAMAS® END USER LICENSE AGREEMENT, LATAM Version December 2020**

### **8.2 Written Form**

The notice shall be rendered in writing with a precise description of the problem. Only the contact person (according to the provisions foreseen on the clause 5.3 of this agreement) and the management shall be entitled to give notice of non-conformity.

## **9 Copyrights of Third Parties**

### **9.1 License and Right of Rescission**

We represent and warrant that the transfer of rights according to no. 5 does not violate any third party rights. Otherwise, Licensee shall, following a grace period granted in writing under threat of termination, be entitled to rescind this agreement, unless we are able to provide Licensee with a legally proper license for the Standard Software according to contract.

### **9.2 Defense against Third Party Claims**

We will at our own expense avert claims which third parties enforce against the Licensee due to breach of copyrights resulting from our deliveries and services to the extent that such claims are not based on Licensee's actions. The Licensee has no right to recognize such claims. He authorizes us to assume the conflict (at court or out of court) with the third party on our own. The Licensee undertakes to immediately inform us in writing and in full of any third party's asserted claims.

### **9.3 Violation of Property Rights**

In the event that a court rules that the Standard Software violates property rights of third parties, we are entitled to make changes at our own expense in order to rectify the violation of property rights or to acquire the respective rights. If these measures do not lead to the intended solution and the violation of property rights are established by a court decision, we will reimburse the Licensee for the fees paid (subject to a deduction for the commercial appreciation) for the loss of License. We are free from this obligation if the property claim demands that the licensed Standard Software be changed by the Licensee, or that its use is carried out under other conditions than the specified terms of use. The Licensee shall have no claims exceeding these terms against us.

## **10 Transfer of Rights**

We are entitled to use the services of a third party, in particular of our associated companies, in order to fulfil our duties under this agreement. We may transfer all and individual rights under this agreement as well as the entire agreement to associated companies; the Licensee herewith approves of this. Without our explicit prior written approval Licensee may not transfer this agreement, assign claims or grant sub-licenses, and the like.

## **11 Customs Duties, Fees and Other Encumbrances**

All fees, dues and taxes as well as customs duties relating to the conclusion of a software license or service agreement subject to these terms shall be exclusively borne by the Licensee.

## **12 Price, Payment, Reservations**

### **12.1 Price**

The price for a license of the Standard Software is negotiated and agreed upon on an individual basis in the respective agreement. Our price is net of any taxes, deductions and free of any administrative charges that eventually may exist. The prices for the WAMAS licenses include transport and packaging.

### **12.2 Payment Date**

Licenses: 100 percent upon conclusion of the agreement.

Our invoices must be settled no later than 30 days following the invoicing without any deductions and free of charges, unless individual payment conditions have been agreed upon. Trade discounts are not granted.

### **12.3 Interest**

Any fees overdue are subject to an interest of 9%. If any fees are unpaid after 90 days after the due date for payment, Licensor may at its option suspend or terminate the license granted to Licensee.

### **12.4 Offset and Retention**

The Licensee may only offset with undisputed claims or with claims recognized by final court decision. He may not – to the extent permitted by law – assign claims to third parties. The Licensee may not retain payments due to an incomplete full delivery, warranty claims and claim defects.



## **WAMAS® END USER LICENSE AGREEMENT, LATAM Version December 2020**

### **13 Final Provisions**

#### **13.1 Applicable Law / Place of Jurisdiction**

The Laws of the state, in which the Licensee has its registered offices shall apply to this agreement and all relating matters. Place of jurisdiction shall be the respective competent court the Laws of the state determine, in which the Licensee has its registered offices. The parties agree that the provisions of the UN Convention of Contracts for the International Sale of Goods shall not apply.

#### **13.2 Invalidity of Oral Side Agreements**

All agreement between the Parties must be made in writing, oral agreements are invalid. Any amendments and supplements to the agreements must also be made in writing.

#### **13.3 Partial Invalidity - Contradictions**

Should individual provisions of this Agreement become invalid, then the validity of the other provisions shall not be affected. Contradicting parts shall be interpreted according to the understanding of the entire agreement.

#### **13.4 Waiver**

Any waiver of a party relating to claims based on a failure or violation of contract shall not be deemed a waiver for further claims resulting from other failures or violations of contract or consequential damages.

#### **13.5 Imposition**

Licensee undertakes to subject all his employees and auxiliary persons to all obligations under this agreement and to ensure that all rights of the licensor relating to the software (e.g. copyrights including the right to copyright notice) shall be respected by the employees and auxiliary persons.