

TERMS OF USE AND MAINTENANCE OF XLSTAT PRODUCTS

ADDINSOFT, a limited company registered under the unique identification number B 429 102 767 RCS Paris - France, which is headquartered at 40, rue Damremont - 75018 PARIS - FRANCE (hereinafter called «ADDINSOFT»), is the publisher and distributor of XLSTAT Products.

The use of the XLSTAT Products and their documentation is exclusively administered by the present General Terms of Use and Maintenance (hereinafter called «GTUM»), to the exclusion of all other documents such as brochures, catalogs, documentation from ADDINSOFT, which are provided for information purposes and are indicative only. Consequently, placing an order with ADDINSOFT or its Distributors implies full and unreserved adhesion of the End User to the present General Terms of Use, and this, notwithstanding any contrary stipulation (deemed valueless and inapplicable) appearing on the End User Purchase Orders or on its general terms of purchase or on any document provided by the End User. No special or contrary conditions can prevail over the present GTUM whatever the time it may have been brought to the attention of ADDINSOFT, unless expressly accepted in writing by ADDINSOFT.

In addition to the rights and restrictions set forth herein, any other restrictions contained in the instructions of installation and use of the XLSTAT Products or update notes administering their use, which are incorporated herein.

1. DEFINITIONS.

- “ORDER” means, as appropriate, any commercial proposal emanating from ADDINSOFT or its authorized distributors accepted by the End User, or any order issued by the End User.

These financial documents are considered as annexed in the present GTUM. -

“DISTRIBUTOR” means the person or entity who supplied the ADDINSOFT Product to the End User. If it is not ADDINSOFT, the word «Distributor» refers to one of its resellers.

- “DOCUMENTATION” means paper or electronic documentation, including installation manuals and/or access to and relative use of the Products.
- “XLSTAT PRODUCT” or «Product» means the software product(s), (as executable) commercialized under the name «XLSTAT» or any other name chosen by ADDINSOFT and the Documentation relating thereto for which the End User has placed an Order via the website <https://www.xlstat.com>. The definition of XLSTAT Products include the application software as described on the hyperlink for product definition, the day of the order, other than all updates, new versions, corrections and improvements provided directly by ADDINSOFT. The XLSTAT Products are commercialized, including but not limited to this presentation, as a basic module (XLSTAT-Pro) and individual optional modules purchased by the End User according to his/her needs. XLSTAT Products are also commercialized in the form of solutions dedicated to certain professions which consist of the basic module and one or more optional individual modules.
- “END USER» means the person or entity to which the XLSTAT Product is supplied as well as his/her attendants.
- “SELL», «BUY», « ale» or «Purchase» means, with respect to the XLSTAT Products, the grant of a non-exclusive right of use, as provided herein and without transfer of ownership.

2. PURPOSE OF THE PRESENT GTUM - XLSTAT PRODUCT(S)

XLSTAT Products are tools for Data analysis and statistics. They come in several solutions notably available through the address: <https://www.xlstat.com/en/solutions/>. These GTUM are designed to administer on one hand, the terms and conditions under which ADDINSOFT provides the XLSTAT Product to the End User and, on the other hand, the conditions under which the End User accesses to and executes the XLSTAT Product. These GTUM are also intended to define the terms and

conditions under which ADDINSOFT provides assistance, warranty and maintenance related to the provision of such Products. The End User acknowledges having taken note of the commercial and technical presentation describing the XLSTAT Product made available (notably on the ADDINSOFT website), and undertakes to always respect the technical pre-requisites for accessing to and use of the Product.

3. RIGHTS GRANTED

The present GTUM defines the conditions of concession, to the End User by ADDINSOFT, of right(s) of use on the XLSTAT Product and its related Documentation as described in an Order and its corresponding invoice. Each Order shall comprise of a separate right of use, entitling the End User to use, according to the terms and conditions hereof, the XLSTAT Product referenced therein. The XLSTAT Product is, under no circumstances, sold, but its use is granted pursuant to the terms and conditions of the present GTUM. In all circumstances, the right of use is personal to the End User and cannot be transferred or lent to others; any other use of the XLSTAT Product is strictly prohibited. The use of the XLSTAT Product is thus intended to cover only the internal and professional needs of the End User, which excludes any shared service or office service. Unless otherwise specified, the delivery of the XLSTAT Product does not include its installation, configuration, adaptation, personalization, or its suitability to the needs of the End User. Subject to full payment of fees, relevant and expected in the Order, ADDINSOFT grants the End User a personal right, limited, temporary, non-transferable and non-exclusive, to install (or to have it installed by a Distributor) and to use a copy of the XLSTAT Product for an End User, in its executable form, on a post and, on a maximum of two posts of which the End User is the sole user, for the duration specified in the Order. The license of use of the XLSTAT Product may cover several posts. In this case, the maximum number of posts on which the XLSTAT Product can be installed is specifically provided for in the Order. The XLSTAT Product is deemed accepted following the delivery of the XLSTAT Product to the End User, subject to the provisions of the guarantee provided below.

4. LIMITATIONS

4.1. Restrictions.

The XLSTAT Product must be installed by the End User or by a Distributor authorized by ADDINSOFT, or by ADDINSOFT, and/or used in an environment that meets the pre-requisites of installation set by ADDINSOFT.

The End User agrees to comply with these instructions and recommendations as well as any updates available later. Any use not specified herein is prohibited and, in particular but without limitation, the End User agrees not to (nor allow any third party to) (i) install the XLSTAT Product on non-envisaged posts on the Order and/or use the XLSTAT Product for purposes other than those described in the Documentation, (ii) make other copies, reproduce, alter, adapt, translate in any way whatsoever, incorporate into another product, all or part of the XLSTAT Product or its Documentation, create derivative works from the XLSTAT Product, disassemble or practice reverse engineer, or attempt to discover the source code (deemed strictly confidential), (iii) alter in any way whatsoever the XLSTAT Product, even with the intention of correcting the errors it may contain, that option being exclusively reserved to ADDINSOFT, (iv) distribute, give or sell as a sub-license, distribute, grant, rent, lend, give lease, sell, give, or otherwise transfer for commercial purposes, even for free, all or part of the XLSTAT Product, by any means, to anyone, without the express agreement of ADDINSOFT, (v) remove, conceal or alter any proprietary notices, any label, any legal notice, such as mentioned trademarks or copyrights, affixed on or in the credits of the XLSTAT Product or the related Documentation.

ADDINSOFT expressly reserves the right to correct or order the correction of and repair or order the repair of any defect that the XLSTAT Product might contain, to the extent necessary to ensure the use of the XLSTAT Product in accordance with its Documentation and its destination. ADDINSOFT also reserves the right to adapt or order the adaptation of, modify or order the modification of, and make improvements or order the improvements of the XLSTAT Product or its Documentation or to stop its distribution, without notice and without obligation to notify anyone.

4.2. Copy.

It is prohibited by the law to make unauthorized copies of the XLSTAT Product or circumvent any copyright protection against the copy that would be included in the XLSTAT Product. Unless that copy is delivered with the XLSTAT Product, the End User is authorized to make a single backup copy (software part of the Product) which is legally authorized provided that all references to copyright or of all other right of property has been reproduced thereof. This copy will only be used for archiving purposes. Once the single backup copy is made, except as expressly provided for, the End User remains responsible for security and custody of the copy and is not allowed to make additional copies, including accompanying documents.

5. LIMITATIONS RELATED TO INTEROPERABILITY.

In accordance with the provisions of Article L.122- 6 - 1 IV of the Intellectual Property Code, the End User is not authorized to perform acts of decompilation to render the XLSTAT Product interoperable with hardware or other software before informing ADDINSOFT directly, in advance, in writing and until the information necessary to achieve interoperability are available or until ADDINSOFT makes reasonable efforts to provide for them. In any event, the End User agrees not to infringe the intellectual property rights that are attached to the XLSTAT Product and respect the legal and documented conditions of the XLSTAT Product as well as its destination before looking for or requiring any interoperability.

6. WARRANTY AND MAINTENANCE OF THE XLSTAT PRODUCT.

The XLSTAT Product, falling within a particularly complex domain of the computer technology and in the current state of knowledge, cannot be physically tested for all possible uses and no other warranty than those described below may be assumed.

Performances of Software Maintenance are carried out exclusively by ADDINSOFT, which therefore reserves the right to adapt, modify and correct its XLSTAT Product.

It is specified that the operation of the XLSTAT Product, non-modified, properly installed and/or used on certified Platforms, non-modified and updated regularly, is guaranteed and maintained in accordance with the functional and technical features described in the Documentation, for the period specified in the following Special Terms.

It is also specified that ADDINSOFT assumes no warranty on the hardware that can be provided and/or used with the XLSTAT Product and which are administered by the possible warranties of their manufacturer, builder or others as provided for in the Special Terms.

7. EXCLUSION AND LIMITATION OF LIABILITY.

The End User is solely responsible for the processing, transmission, distribution, representation, archiving, hosting, backup, security and sustainability of information which is processed by the XLSTAT Product and performs these operations in compliance with laws and regulations. He/She is responsible, in this matter, to take all appropriate measures and implement all procedures required for this purpose, both while using the XLSTAT Product, and during assistance procedures, warranty or Maintenance. ADDINSOFT or the Distributor shall not be held responsible for loss or possible damage of any information, programs, files or databases resulting from the use of XLSTAT Product or from assistance performances, warranty and Maintenance.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE LIMITATIONS AND EXCLUSIONS OF LIABILITY IN THE PRESENT GTUM APPLY, AND THAT REGARDLESS OF THE GROUNDS OF LIABILITY. IN NO EVENT, ADDINSOFT OR THE DISTRIBUTOR IS LIABLE TOWARDS THE END USER, INCLUDING IN CASE OF CLAIM(S) BY A THIRD PARTY FOR ANY COMPLAINT OR COSTS WHATSOEVER, RELATED , NOTABLY, TO ALL INDIRECT DAMAGES BUT WITHOUT LIMITATION, ANY PROFIT LOST, EXPLOITATION LOSS, OF PROFITS, DATA, RECORDS OR CONTENTS, BUSINESS INTERRUPTION OR THE FACT THAT THE DATA, RECORDS ,

OR CONTENTS ARE RENDERED VAGUE AND RESULTING FROM THE XLSTAT PRODUCTS AND ITS DOCUMENTATION, OF ITS USE OR INABILITY TO ACCESS TO AND/OR TO USE; OF ITS MAINTENANCE OR INABILITY TO PROVIDE MAINTAINANCE, OR YET, OF A FAILURE OF THE XLSTAT PRODUCT TO OPERATE WITH ANY OTHER PROGRAMS, AND THAT, EVEN IF ADDINSOFT OR THE DISTRIBUTOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

IN NO EVENT WILL ADDINSOFT OR THE DISTRIBUTOR BE HELD RESPONSIBLE OR LIABLE FOR DAMAGES OTHER THAN PROVEN DIRECT DAMAGES HE/SHE IS NONETHELESS CHARGED FOR, IN THE FOLLOWING LIMIT. IN ANY EVENT, THE TOTAL LIABILITY OF ADDINSOFT OR THE DISTRIBUTOR WILL BE STRICTLY LIMITED AND WILL, IN NO CASE, EXCEED THE AMOUNT THAT THE END USER HAS EFFECTIVELY PAID, FOR THE SUPPLY OF THE XLSTAT PRODUCT WHICH HAS DIRECTLY GIVEN RISE TO THE DAMAGE DURING THE PERIOD OF TWELVE (12) MONTHS PRECEDING THE EVENT WHICH HAS ORIGINALLY CAUSED THE DAMAGE.

8. OWNERSHIP AND COPYRIGHT.

The XLSTAT Product is protected by laws and international treaties regarding copyright, as well as by other laws and international treaties regarding intellectual property. All copyrights and other rights, related notably to the intellectual and industrial property, to patents, to trademarks, to trade secrets, know-how, concepts and inventions, all interest, covered or not by the applicable law, concerning the XLSTAT Product as well as all copies, modifications, improvements, corrections, updates or new versions, belong and remain reserved at all times to ADDINSOFT. All intellectual property rights and other rights relating to hardware and third software components included in the XLSTAT Product which are held by their respective owners may be protected by the laws and international treaties regarding copyright and intellectual property and may be subjected to specific conditions as provided by the license texts reproduced in the document /licenses. These GTUM do not concede any rights of use of these contents without the XLSTAT Product. The End User agrees

not to directly or indirectly impair the value of intellectual property rights relating to all or part of the XLSTAT Product.

9. DURATION AND TERMINATION.

The granting of the rights of access and/or use of the XLSTAT Product remains valid for the duration specified in the Order. In the event whereby the licence of use is subscribed for a period of 12 (twelve) months, after that period, the granting of the rights shall cease and the End User may not use the XLSTAT Product anymore, unless he/she notifies to ADDINSOFT his/her wish to continue using the license at the fees and costs in force.

Failing to renew the license of use, the granting of the rights of access and/or use shall be deemed terminated. Without prejudice to any damages they might claim, ADDINSOFT or his/her Distributor reserves the right to terminate any right of access and/or right of use, ex officio, and without judicial intervention, obligation or other liability, in case of failure by the End User under these GTUM or any other conditions related to non-repaired XLSTAT Product eight (8) days after sending a notification, notably by e-mail. As of the termination, for any reason whatsoever, the End User must immediately, in any case, (i) remove the XLSTAT Product from the posts where it was installed, or from any other computer system, storage device or file and stop using it in any way whatsoever, (ii) return to ADDINSOFT or to the Distributor all copies of the XLSTAT Product, including all copies and Documentation and (iii) certify in writing, at the request of ADDINSOFT or the Distributor, compliance with those obligations. The rights and obligations which by nature should continue after the end of the GTUM, shall always produce their effects.

10. APPLICABLE LAW AND JURISDICTION OF COURT.

These GTUM are subject to the French law, excluding the Vienna Convention on the International Sale of Goods and rules relating to conflicts of law and courts.

ANY DISPUTE RELATING TO THESE GTUM AND THEIR CONSEQUENCES, SUCH AS THEIR INTERPRETATION, PERFORMANCE OR TERMINATION IS SUBJECT TO THE COMPETENT JURISDICTION OF THE COMMERCIAL COURT IN THE RESILIENCE OF THE REGISTERED OFFICE OF ADDINSOFT WHEREBY IT IS EXPRESSLY MADE JURISDICTION, NOTWITHSTANDING MULTIPLE DEFENDANTS, GUARANTEED CALL OR INCIDENT CLAIM, INCLUDING FOR URGENT PROCEDURES OR PROCEDURES UPON REQUEST.

11. GENERAL PROVISIONS.

The failure to exercise, partial exercise, or delay in exercising the rights provided in the hereby GTUM does not constitute a waiver to the exercise of these rights, nor a waiver of any other right. Any waiver or modification of the GTUM will only be effective if it is provided in a written document. If any provision of these GTUM is deemed null, it shall be deemed unwritten but the other provisions shall retain their force and effect, unless the cancelled provision is deemed essential for ADDINSOFT, in which case, the contract will be deemed terminated as a whole. The present GTUM constitute the entire rights and obligations administering the use of the XLSTAT Product replacing any prior proposal or agreement, written or verbal.

12. PERSONAL DATA AND USE OF XLSTAT PRODUCT

12.1 Personal data

the order and/or downloading of XLSTAT Products offered by ADDINSOFT on the website <https://www.xlstat.com> require the provision by End User of the following information:

- Download of the free trial version: last name, first name, email address

- Order of a XLSTAT Product: last name, first name, email address, post address, information related to the mean of payment used.

Data are collected and processed by the company DIGITAL RIVER GmbH, responsible for the management of orders, and then transmitted after the validation of the order to ADDINSOFT, as publisher of the XLSTAT Products. Such data collection is required for the fulfillment of their obligations by ADDINSOFT and DIGITAL RIVER GmbH, including for enforcement of these GTUM. If End User refuses to provide such information, he cannot order or download the XLSTAT Products.

As orders of the XLSTAT Products are managed by Digital River GmbH, information provided for the order is collected by such company and governed by its own privacy policy (accessible through the hyperlink displayed on the order page).

Data pertaining to mean of payment used by End User is collected and processed only by the bank company in charge of the processing of the payment, under its own liability.

Personal data collected and processed by ADDINSOFT are kept by ADDINSOFT in its quality of publisher of the XLSTAT Products and service provider to End User. ADDINSOFT shall not transmit personal data to third parties, excepted for cases mentioned above. Data are saved for 5 years from the termination of the relationship between ADDINSOFT and End User, reasonable period required for the fulfillment of its obligations by ADDINSOFT. These data are saved under secure conditions, according the current technology, in accordance with the provisions stated in the “Loi Informatique et Libertés” dated from January 6th, 1978. End User is informed that data may be hosted by the company Salesforce.com EMEA Ltd., as data processor, on servers located out of European Union.

The CNIL declaration number of ADDINSOFT is 1968777. In accordance with “Informatique et Libertés” law, End User may require ADDINSOFT to access, correct or delete his own personal data, by mail or email to the address mentioned in the privacy policy displayed on the website <https://www.xlstat.com> (“legal information”). For more information, End User can visit the website <http://www.cnil.fr>.

12.2 Information related to the use of the software products

In order for ADDINSOFT to know the way its software products are used, combat piracy and improve their functionalities through statistical analysis, ADDINSOFT may collect the following data related to the use of XLSTAT Products: a unique identifier assigned to End User, country code of End User, type of license, type of XLSTAT Product, its date and version, the version of his operating system and of Microsoft Excel used by End User and data about the use of XLSTAT Products and ADDINSOFT's services (statistics functions used, time for operation, technical errors). Such data is linked to a unique identifier and cannot be linked to the identity of End User. ADDINSOFT does not collect data used in the Excel documents edited or used by Final User, or any other data not mentioned in this section.

By using XLSTAT Products, End User accepts to communicate such data to ADDINSOFT. End User may disable this functionality in the XLSTAT Product's options.

SPECIAL TERMS ASSISTANCE, WARRANTY AND SOFTWARE MAINTENANCE OF THE XLSTAT PRODUCTS

Article 1. PURPOSE

In addition to the GTUM, the present special terms define the conditions of assistance, warranty and software maintenance (hereinafter called "The Service") provided by ADDINSOFT or the Distributor to the End User for a regularly ordered XLSTAT Product, installed and used. The definition of terms whose first letter is capitalized is specified in the GTUM.

The DISTRIBUTOR is free to propose to the End User different conditions, more or less favorable, of which he/she has the full responsibility. These Special Terms of assistance, warranty and software maintenance of the XLSTAT Products determine, unless otherwise agreed between ADDINSOFT and the DISTRIBUTOR, the scope of the commitments subscribed to by ADDINSOFT.

Article 2. SCOPE OF THE PROVISION OF ASSISTANCE, WARRANTY AND MAINTENANCE

The Service is only valid for the initial installation site of the XLSTAT Product as noted in the Order. It is executed in a «remote» manner and includes a technical assistance (assistance) and a software maintenance (from levels 1 to 3).

A change of site is possible and valid if the End User notifies ADDINSOFT or the Distributor in writing at least ten (10) days before the change. In this case, the Service becomes exclusively valid for the new site only.

Article 3. ASSISTANCE

This service includes remote technical assistance by telephone and/or e-mail from Monday to Friday from 9am to 6pm except on public holidays and unavailability of the service of which the End User is informed in advance, ensured internally by a technical team from the DISTRIBUTOR and aiming to resolve exceptional problems as provided below.

Article 4. TECHNICAL SUPPORT AND SOFTWARE MAINTENANCE

4.1. Principle

Unless otherwise specified, assistance of Level 1 and 2 and the maintenance of Level 3 of the XLSTAT Product is provided by ADDINSOFT and/or the Distributor and involves the provision of corrections and updates to the XLSTAT Product necessary for its normal functioning and making them available for the period specified in the Order. These corrections and updates must be installed and/or authorized in a reasonable time after they are made available by the End User, except to relieve ADDINSOFT and the Distributor of all obligation or liability arising from these terms. These corrections and updates are granted licensed according to the terms of the GTUM unless operating conditions accompany them on a case by case basis. Excluded from this maintenance service, are the options that the End User has not already acquired and which will be subject to an additional order so as to be used.

4.2. Limits

ADDINSOFT reserves the possibility to discontinue maintenance of any prior Product of a version to a version being commercialized, on condition that the End User has been notified, unless otherwise agreed, at least three (3) months beforehand.

Excluded from the support services described above, are all services of integration of the XLSTAT Product in the technical environment (hardware and software) from the End User, from communication with other operating/information systems and guidance for auditing and optimizing of the use of the XLSTAT Product.

The following are also excluded from the Services mentioned:

- the development of specific computer programs,
- additions or modifications to existing programs not required by a change in regulations in force,
- the training of staff of the End User,
- the backup, storage, hosting and data recovery from the End User,
- incidents due to the misuse of the XLSTAT Product by the End User,
- incidents due to modifications in the XLSTAT Product without the authorization of ADDINSOFT,

- incidents due to a malfunction or a lack of certification from the post(s) on which the XLSTAT Product is installed,
- incidents due to failure or interruption of telecommunication networks and/or the electrical grid,
- the intervention on the site of the End User.

Given the highly technical aspect of the XLSTAT Product and the limitations of the state of the technique, ADDINSOFT cannot guarantee operation without incident nor uninterrupted operation of the Product, nor that its intervention will allow to resolve the incident met or that after his/her intervention, the incident met will not appear again or that other problems will not be generated because of this same intervention.

4.3. Updates

Throughout the duration provided for upon the Order, the End User has the right to download and install the latest version of XLSTAT.

Article 5. LIMITATIONS AND EXCLUSIONS

ADDINSOFT or the DISTRIBUTOR does not guarantee the continuous operation of and error-free XLSTAT Products.

Any transaction not falling within the scope of the service may be provided by ADDINSOFT upon agreement by both parties, and subject to additional charges and fees in force at the date of intervention. Any assistance, warranty and maintenance other than those described above is excluded, and in particular, the suitability of the XLSTAT Product for all needs and requirements of the End User and falling within its sole discretion, cannot be guaranteed. The XLSTAT Product IS PROVIDED “AS IT IS” IN VIEW OF ITS QUALITY, ITS OPERATION AND ITS PERFORMANCE. The End User has received all necessary information from ADDINSOFT or the Distributor allowing him/her familiarity with the XLSTAT Product and has assessed its suitability for his/her needs before ordering. He/She acknowledges and accepts that it is impossible to guarantee (i)

that the XLSTAT Product will suit all combinations that the End User may choose, (ii) that it works in any operating environment, and (iii) that it will be usable without interruption or error, nor that all errors will be corrected or repaired.

ADDINSOFT or the DISTRIBUTOR will not be held responsible for (i) defects and/or alterations of the XLSTAT Product and for consequences that may result from improper use of the XLSTAT Product by the End User; (ii) an inadequate intervention on the XLSTAT Product ; and/or (iii) the use or assembly of the XLSTAT Product with a component or a third, incompatible or non-certified (especially if the failure comes from a dysfunction whatsoever of a/several post(s) of the End User).

ADDINSOFT excludes all obligation, express or implicit, relative to the XLSTAT Product in terms notably, but without limitation of use, performances or results, merchantability, satisfactory quality, adequacy for a particular purpose, or non-infringement. ADDINSOFT is bound to a general obligation of means for all the services it provides under the present terms.

The End User must have the skills, the hardware and software required to use the Internet and recognizes that the characteristics and constraints of the Internet do not guarantee the availability and integrity of data transmissions.

The End User warrants ADDINSOFT or the Distributor at first claim against any disturbance of law or fact and any prejudice resulting from his/her use of the XLSTAT Product.

Article 6. DURATION

The Service is provided to the End User for the duration specified in the Order. At the end of that period, the Service shall terminate [and the End User, if under an annual licence, shall not be able to use the XLSTAT Product anymore. In the case of a licence specified as «permanent», the End User shall be able to use only the last and/or update version realized by ADDINSOFT during the period of validity of the Service].

Article 7. PRICE AND PAYMENT

1. Unless otherwise agreed between ADDINSOFT or the Distributor and the End User, the service is free for twelve (12) months after the initial Order of a license, or the order of an annual license. It then becomes payable for periods of one year.
2. The price and terms of payment related to the Service are provided for in the Order and are fixed for its duration.
3. No reduction in the number of licenses may take place before the expiry date of the Order.
4. At the expiration of the Service, ADDINSOFT reserves the right to revise its prices and shall notify the End User of this review in writing, at least one (1) month prior to renewal. If the End User refuses this review, he/she may refuse the renewal of the Service without compensation, at its expiry date.

Article 8. GENERAL CONDITIONS

The present terms are integral parts of the GTUM. The End User hereby declares having read and accepted them.