

# End User License Agreement (EULA)



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## Preamble

This End User License Agreement (EULA) is an agreement between PROMESS Gesellschaft für Produktionstechnisches Messen mbH (referred to in the following as Licensor) and the end user of the software (referred to in the following as Licensee).

Licensor distributes measurement software, measurement programmes and the corresponding software modules, and transfers these products only based on the following licence terms. The parties agree that the sold software enjoys copyright protection. Licensee acquires the software sold by Licensor under the provisions of the conditions stipulated in this agreement.

## § 1 Subject of the Contract

- (1) The subject of this contract is the permanent transfer of the software named in the offer and the granting of the rights of use described in § 2.
- (2) By purchasing the software Licensee acquires ownership of the software storage medium but not of the software itself. This always remains the intellectual property of Licensor or of the relevant rights holder. As purchaser of the software Licensee only acquires the right to use the copyrighted work, i.e. to use the software. This right of use is granted by Licensee in the form of a licence.
- (3) The characteristics and functions of the licensed software result conclusively from the offer and the product description contained in it. This information is to be understood only as a description of performance and not as a guarantee. A guarantee is only given if this is expressly identified as such.

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- (4) Licensor has no claim to transfer of the source programme.
- (5) The licensed software is only licensed as an entire product. Licensee is not entitled to divide the components of the software.

## § 2 Granting of Rights

- (1) Licensee will receive a non-exclusive, unrestricted right to use the licensed software. The permitted use includes the installation of the licensed software, loading into the working memory and correct use by Licensee. Licensee may not lease or otherwise sub-license the acquired licensed software, perform it publicly (whether wired or wirelessly) or make it accessible or provide it to third parties, neither against payment nor free of charge.
- (2) Use is only permitted in the number of licenses stated in the offer. If Licensor makes the same license available again and releases it, for example for the purpose of an emergency measure, then Licensee is obliged to delete the other license and to confirm the deletion to Licensor in writing upon request. Licensee is also obliged to provide Licensor with information on request on the number of licenses he or she is running. Usage beyond these provisions is only permitted with the prior, express, written authorisation of Licensor. If the license for a software that is not bound to hardware is released again because of transfer to another hardware on the part of Licensor then a cooperation fee will be incurred for this.
- (3) Licensee may make a backup copy of the licensed software where this is necessary in order to secure future use. The service recipient undertakes to visibly mark the backup copy with the words 'backup copy' together with a copyright notice referring to Licensor.
- (4) Licensee is entitled in accordance with § 69e UrhG Copyright Act to decompile and reproduce the software if this is necessary in order to retain the interoperability of the licensed software with other programmes. However this is only permitted under the prerequisite that Licensor does not make the necessary information accessible within a reasonable time of Licensee's request.
- (5) In cases where the licensed software is delivered together with hardware from Licensor this may only be utilised in conjunction with the hardware received within the scope of delivery.
- (6) If Licensee uses the licensed software to an extent that exceeds the rights of use he or she has acquired either qualitatively or quantitatively then he or she undertakes to immediately acquire the usage rights from Licensor that are necessary for permitted use. Otherwise Licensor will immediately exercise his or her statutory rights.
- (7) Characteristics that serve to identify the programme (e.g. copyright notices, serial numbers etc.) may not be removed from the licensed software. No further amendments may be made.

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## § 3 Licence Payment

- (1) The purchase price can be found in the offer upon which this agreement is based.
- (2) All payments by Licensee are due at the latest upon delivery of the licensed software to Licensee and/or the provision for download and communication of the access data to Licensee and must be paid to Licensor onto the account in the offer within 30 days of invoicing. However the above provisions for payment are only valid if no other agreement is contained in the offer. The concrete payment agreement in the offer supersedes this provision.
- (3) If Licensee is a consumer then the interest on arrears is five percentage points above the currently valid base rate. Otherwise interest on arrears is 9 percentage points above the base rate.

## § 4 Warranty

- (1) Licensor grants a warranty for the agreed quality of the licensed software and that Licensee may use the licensed software without violating third party rights. The proper warranty is not applicable to defects based on the fact that the licensed software that is delivered by Licensor is used in a hardware and/or software environment that fails to satisfy the requirements stated in the offer and for which the licensed software is not expressly released.
- (2) If Licensee is an entrepreneur then he or she is obliged to inspect the software immediately upon receipt for obvious defects and to report any existing defects to Licensor immediately. Otherwise a warranty for the above defects is expressly excluded. This is also valid accordingly if this kind of defect becomes apparent later. § 377 of the Commercial Code (HGB) is applicable.
- (3) If Licensee is an entrepreneur then Licensor is initially entitled to provide supplementary performance in the event of a material defect, with his or her own choice of either subsequent improvement or replacement delivery to resolve the defect. In the event of replacement delivery Licensee will also accept a new software version except if this causes unreasonable prejudice. In the event of a defect of title Licensor will provide Licensee (at the choice of Licensor) with a legally proper opportunity to use the licensed software or will modify the licensed software so that the violation of third party rights no longer occurs.
- (4) Licensor is entitled to provide the above performance at the facilities of Licensee. Licensor also satisfies the obligation to provide subsequent improvement if he or she provides updates on his or her homepage for download by Licensee that have an automatic installation routine and if he or she offers Licensee telephone support in the event of installation problems as part of the warranty (subsequent performance).

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- (5) The right of withdrawal of Licensee in the event of two failures of the subsequent improvement / replacement delivery and the right to reduce the purchase price remain unaffected. There is no right of withdrawal in the event of insignificant defects. Where Licensee claims compensation or the reimbursement of wasted expenditure from Licensor he or she will be liable in accordance with § 5 of this contract.
- (6) Warranty claims based on material defects lapse after two years except in the case of compensation claims. The warranty period is one year if no private consumer is involved in the business transaction. The statute of limitations begins with the delivery of the relevant hardware in the case of the sale of hardware and with the delivery of the licensed software in the case of sale on a data carriers. In the case of sale by download from the Internet the statute of limitations begins after communication and release of the access data for Licensor's download area. With regard to compensation claims and claims for the reimbursement of wasted expenditure the special provision in § 5 of this contract is applicable.
- (7) If a support contract exists between the parties then the deadline for the resolution of faults is regulated by this support contract, particularly by the timeframes stated in it.

## § 5 Liability

- (1) Licensor is liable without limitation in the event of intent or gross negligence for damage to life, limb or health in accordance with the provisions in the Product Liability Law (ProdHaftG) and within the scope of a guarantee that he or she assumes.
- (2) In the event of violation of a cardinal obligation (an obligation that is essential for achievement of the contract purpose) then the liability of Licensor is limited to the damage that is foreseeable and typical for the type of the relevant business.
- (3) Licensor has no further liability.
- (4) The above limitation of liability refers to the personal liability of the employees, representatives and organs of Licensor.
- (5) Licensor retains the right to plea contributory negligence. Licensee is notified in particular that he or she must check, as part of his or her duty of care and before using the software for the first time, whether the installation of the software could lead to particular interferences with software that has already been installed and also to back up data prior to initial installation and during ongoing operations, and to take all reasonable additional backup measures in the event of a suspected software fault.

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## § 6 Backup Measures

- (1) Licensee undertakes to secure the licensed software and the access data from access by unauthorised third parties. He or she will take suitable measures for this purpose. He or she undertakes in particular to store all copies of the licensed software and the above-mentioned access data at a place that is protected from access by unauthorised third parties.
- (2) Licensee undertakes to enable Licensor to check, upon request, that the use of the software is in accordance with the contract, in particular with regard to observance of the scope of use in the contract. In the course of these checks Licensee undertakes to provide Licensor with information, allow access to the relevant documents for this purpose and to allow a review of the hardware and software environment that is in place. Licensor is permitted to carry out the review at the premises of Licensee during the normal working hours. Licensor may also have third parties that are under obligations of confidentiality carry out the inspection in the above manner. Licensor will disturb the business operations of Licensee as little as possible with his or her activities in the facilities of Licensee.

## § 7 Confidentiality

- (1) The parties undertake to maintain confidentiality/secretcy.
- (2) Confidential information is all information and documents of the other contractual partner that is marked as confidential or that must be considered confidential based on the relevant circumstances. This is valid in particular for information on the operational procedures, business relationships, know-how, etc. of the other contractual party. This obligation excludes information of which the recipient was already aware when this contract was agreed or that he or she became aware of from a third party after the contract was agreed, without this violating a confidentiality agreement, statutory provisions or any official requirements. Confidential information that must be disclosed because of statutory obligations or by order of a court or an authority is also excluded. Where permissible and possible the recipient who is obliged to disclose will inform the other contractual party prior to disclosure and give that party the opportunity to counteract the disclosure. The parties undertake to only give those advisors access to the confidential information who are either subject to professional secrecy or who have signed up to the confidentiality obligation in this contract. The contractual parties will only disclose confidential information to those employees who need it in order to carry out their contractual obligations and only to the extent that the above employees must be aware of in order to execute this contract. They will obligate their employees to maintain confidentiality in the time following their departure from the company where this is permissible in labour law.
- (3) The parties agree to maintain silence regarding all confidential information.

## **§ 8 Start and End of the Rights of the Licensee**

- (1) The ownership of delivered property and the rights in accordance with this agreement are only transferred to the customer upon full payment of the purchase price. Prior to this he or she only has a provisional right of use under the law on obligations that is revocable in accordance with section 2.
- (2) Licensor can revoke the rights in § 1 and § 2 of this agreement for important reasons or can withdraw from the contract. An important reason is given if Licensee fails to pay the due remuneration or continues to violate the obligations in a considerable manner as defined in this agreement despite a written warning or if an application is made to initiate insolvency proceedings on the assets of Licensee.
- (3) If the right of use in § 2 in connection with § 1 of this agreement does not occur or ends then Licensor can demand from Licensee the return of the ceded objects and the deletion or destruction of all copies and written assurance that this has been carried out.

## **§ 9 Other Agreements**

- (1) Licensee may only assign claims against Licensor to third parties with Licensor's written agreement.
- (2) Licensee may only offset in the case of indisputable or legally determined demands.
- (3) Amendments and additions to this agreement must be made in writing. This is also valid for the amendment or cancellation of the requirement for written form. Electronic documents in text form do not fulfil this form requirement.
- (4) All annexes to this agreement that are also named in it are a binding part of the contract.
- (5) Where the software is subject to (re-)export restrictions Licensee must observe these provisions for onward disposal / other export.
- (6) The law of the Federal Republic of Germany excluding the United Nations Convention on Contracts for the International Sale of Goods (CSIG) and international law (in particular the German Conflict of Laws legislation) is applicable to this contract.
- (7) The exclusive court of jurisdiction for all disputes arising from this agreement and its annexes is the headquarters of Licensor in Berlin where both contractual parties are merchants or legal persons of public law or if they have no general court of jurisdiction in Germany.

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- (8) If individual provisions in this agreement are invalid then this will not affect the validity of the remaining provisions. In this event the contractual parties will strive to find an effective regulation to replace the ineffective regulation that corresponds most closely to the economic significance of the ineffective clause and that ensures the feasibility of the agreement in the spirit of what was intended by both sides. The same is valid in the event that the parties have failed to recognise a loophole at the time of signing this agreement or if such a loophole is recognised or occurs at a later time. The parties are then obliged to make a written addition to the contract in the spirit of the above objective.

Status: July 2022