

Dürr Software License Terms and Conditions

Status: September 20, 2017

Art. 1 Scope of application

(1) These License Terms and Conditions apply to the agreement entered into by and between us ("Dürr" or "Licensor") and the customer ("Licensee") concerning the use of standard Dürr software and programs from third-party producers (the "Software") (hereinafter referred to as "the Agreement").

(2) Any license terms and conditions of the Licensee in departure from those mentioned herein shall not become part of the contractual content, even if we do not explicitly raise an objection or if we make delivery to the Licensee in full awareness of opposing or deviating terms and conditions without reservation.

Art. 2 Deliverables and license rights

Unless otherwise agreed, we shall make the Software available to the Licensee along with documentation in electronic form either on data storage media or via download. The Licensee shall install and configure the Software itself. We are under no obligation to provide any training, support, maintenance, updates or upgrades. Such services may be contractually agreed on a separate basis.

(1) The following rights of use are granted to the Licensee:

a) Programs sourced from third-party producers

Programs from third-party producers are subject to the licensing terms and conditions of such producers. This also applies to open source licenses if a software component is subject to an open source license. Unless the obligation to provide license terms and conditions and other mandatory disclosures arises from the license in any event, we shall make terms and conditions of third-party producers available to the Licensee if requested by the latter.

b) Dürr Software

The Licensee receives the simple, non-transferable, unrestricted and non-exclusive right in terms of time and location to use the software and the relevant documentation from the time when made available. Except as otherwise agreed, the type of license is stated in the Agreement. In this context, the respective license type comprises the following scope of use:

aa) In the case of hardware-related licenses, the Licensee is entitled to install and use the software on the computer for which he or she received the license key.

bb) In the case of a user-related license, the right of use is restricted to the number of full client concurrent users specified in the Agreement, i.e. the right of use may only be exercised by the maximum number of users specified at the same time.

cc) In the case of a named user license, only the persons listed by name in the Agreement shall be entitled to simultaneous use of the Software.

dd) In the case of a group license, the Licensee may use the Software in all companies with which it is affiliated as contemplated by Sections 15 ff. of the German Stock Corporation Act (AktG) ("Group companies"). This includes the right that all Group employees may use the Software without any restriction regarding their number. It may be determined that additional location-related licenses must be purchased in the event of a sizeable increase in the number of employees.

(2) Any copyright notices and trademarks and other legal reservations, serial numbers or other features may not be deleted, altered, rendered illegible or suppressed and must always be assumed and included when making backup copies.

(3) In particular, the license to use the Software does not extend to include the right to edit, translate, lease and lend

or disseminate it, the right to playbacks (in public) and online availability to third parties outside the Licensee's organization; in addition, the license does not extend to include the right to copy the Software unless this is necessary for agreed purposes or for the creation of backup copies. The use of the Software in outsourcing, service bureau or application service provider (ASP) operation and the like is not permissible. The transfer of the rights of use to third parties is not permissible unless such third parties are business associates of the Licensee commissioned by the latter who need access to the Software in order to carry out their mandate and for operating purposes of the customer, with such use being exclusively confined to screen access and only in connection with the use by the Licensee.

(4) The Software may be made available to third parties only in a uniform manner and against indication of such use being granted in writing. The Licensee must fully and finally abandon its use of the Software and also surrender all copies to the third party or destroy them. In addition, these Licensing Terms and Conditions must also be imposed on any such third party.

(5) The Licensee is not entitled to delivery and use of the source code of the Software and the source code documentation. The Licensee is not allowed to decompile or disassemble the Software or to obtain or redevelop the source code in some other manner by reverse engineering; Section 69e of the German Copyright Act shall remain unaffected in this regard.

Art. 3 Prices and payment terms

(1) Except as otherwise contractually arranged, our prices are quoted in euros (net), exclusive of value added tax at the statutory rate applicable from time to time.

(2) If the regulations under tax law of the country in which the Licensee is domiciled prescribe this, the Licensee shall deduct withholding tax from the agreed remuneration, transfer such tax to the competent fiscal authorities on behalf of Dürr and make a corresponding tax certificate received or obtainable according to applicable law available to Dürr as evidence of the extent and payment of such withheld and remitted tax as well as all other records requested as evidence of payment of withholding tax on the part of the relevant fiscal or other public authorities so that Dürr can claim a refund or set-off of the amount of withholding tax against its own obligations under tax law. In this regard, the basis for withholding tax is remuneration exclusive of value added tax. Moreover, the Licensee shall make every effort to ensure that the amount of such withholding tax deduction is reduced as far as possible or to achieve a total exemption from withholding tax if possible. If, according to the applicable regulations, a reduction of, or exemption from, withholding tax is possible, then the Licensee shall be liable from the time at which it receives the records from Dürr necessary for such reduction or exemption to pay only the remuneration lowered by the reduced amount or the full remuneration agreed, respectively.

(3) Quotations for costs are binding in written form only.

(4) The installation of the Software is not included in the price reflected on the invoice and is settled at the current remuneration rates applicable from time to time that can be requested from us. Work performed outside normal working times is subject to surcharges. Travel and waiting times are treated as working time.

(5) Payments are to be made to one of our accounts without any deduction whatsoever.

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(6) Customers may only exercise set-off or a right of retention only as regards counterclaims that are uncontested in terms of their grounds and extent or against finally adjudicated counterclaims.

(7) Payments by customers are due and payable on receipt of our invoice. Customers are in delay with payment 10 days after receipt of the invoice, without a further reminder being necessary.

(8) Prices stated in the offer only apply if the full package of services on offer is ordered.

Art. 4 Duties of cooperation, inspection and raising complaints

(1) In the case of software for near-reality simulation (simulation software), the Licensee is obliged to verify the simulation results in advance on its real system in a test environment, taking account of the regulations of relevance to security and other relevant regulations. In this regard, the Licensee is required to independently carry out an appropriate hazard assessment of the plants and components.

(2) The Licensee shall appropriately prepare its work environment for deployment of the Software and shall cooperate gratuitously in fulfilling the order, in particular by making employees, IT systems, data and telecommunications systems available.

(3) Claims for defects presuppose that the Licensee duly met its obligations of inspection and raising complaints pursuant to Section 377 of the German Commercial Code (HGB).

Art. 5 Entitlement to information / license audit

The Licensee shall duly keep a track record of Software use, in particular of the authorized users and installation sites as well as the hardware and software environment, and shall provide us with the relevant information upon request.

The Licensee hereby agrees to Dürr being entitled to commission own employees or independent third parties, each of whom is committed to secrecy, with the review (including a manual audit and/or electronic methods) of recordings, systems and plant & equipment of the Licensee for the purpose of confirming that the installation and use of the Software by the Licensee is in conformity with the provisions concerning valid licenses from Dürr. The Licensee shall make all records and information requested by Dürr available within 30 days following receipt of a corresponding request. Dürr shall assume the costs of such review unless the latter reveals a substantial contractual violation.

Art. 6 Claims by Licensee in the event of legal defects

(1) We undertake to make the Software (including the documentation) available free of any rights of third parties that would militate against the use of the Software in contractual conformity.

(2) In the event that third parties assert such rights, Dürr shall defend the Software against the rights asserted by third parties. The Licensee shall notify Dürr of the assertion of such rights by third parties without delay and confer all powers of attorney and authorizations on Dürr that are necessary to defend the Software against the rights asserted by third parties.

(3) In the event of any legal defects, Dürr shall be entitled, at its discretion,

a) to adopt suitable measures to remedy the rights of third parties impairing the contractually sound use of the Software or to prevent the assertion of such rights, or

b) to modify or replace the Software in such a manner as to prevent any rights of third parties no longer being violated if and to the extent that this does not impair the warranted functionality of the Software.

If Dürr does not succeed in accomplishing this within a reasonable period to be stipulated by the Licensee, then the latter shall be entitled to assert claims for defects according to the following para. 4 and pursuant to Art. 7 paras. 4 to 8.

(4) If the legal defect is based on the deficiency of a third-party program, the claims for defects shall initially be restricted to assignment of the claims for defects to which Dürr is entitled against the provider of the third-party program. Dürr shall make the information and records available that are necessary for the Licensee to assert the claims assigned against the producer of the third-party program. If a legal action by the Licensee against the producer of the third-party program likewise fails, then the Licensee shall directly be entitled to claims for defects against Dürr.

(5) Claims by the Licensee shall be ruled out if the Licensee is found to have violated copyright or, if such violation of copyright was caused by special parameters laid down by the Licensee, by an application not foreseeable by Dürr or by the fact that the Software was unilaterally modified by the Licensee and/or deployed together with software not supplied by Dürr.

Art. 7 Claims by Licensee for material defects

(1) Dürr is under an obligation to supply the Software (including the documentation) in its agreed condition. However, in the event that the Software is used by the Licensee in combination with third-party software, Dürr shall neither assume any liability for defects as regards the compatibility of such third-party software with Dürr's Software nor any liability if the defects are attributable to any use not in contractual conformity or based on incorrect operation of the Software by the Licensee. Moreover, Dürr shall assume no liability for defects in the event that the Licensee does not use the assumed system configuration, in particular with regard to infrastructure, hardware, operating system and database.

(2) If the Software reflects reproducible material defects, then the Licensee can assert claims for defects against Dürr as set out in the following paragraphs. If the defect does not impair the Software's functionality substantially or not at all, to the exclusion of further claims for defects Dürr shall be entitled to remedy the defect by supplying a new version or an update within the scope of its version and update planning program. The same shall apply to defects of third-party programs if such defects do not substantially impair the functionality or not at all.

(3) If the Software shows reproducible material defects, then the Licensee may, at its own discretion, opt for a subsequent remediation or the supply of a replacement.

(4) If the Licensee sets Dürr a further grace period after failed remediation following the first request, or if two remediation attempts or the supply of a replacement should fail, then the Licensee may rescind the Agreement or appropriately reduce the remuneration.

(5) Dürr may refuse specific subsequent performance until the Licensee has paid the agreed remuneration less a

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portion that corresponds to the economic significance of the defect in question.

(6) Section 6 paras. 4 to 5 apply by analogy to reproducible material defects.

(7) All claims regarding complaints must be lodged with a readily understandable description of error symptoms in writing and, if possible, accompanied by written records to be prepared, hardcopies or other documents that serve to illustrate the defects in question.

(8) Claims by the Licensee on account of defects in the Software shall become statute-barred one year after delivery or after the link was made available for download, unless we are strictly liable to an unlimited degree according to statutory regulations or the liability rules and regulations agreed by and between the parties.

Art. 8 Liability

(1) We shall be liable, also in the event of violations in the course of contractual negotiations, irrespective of the legal grounds involved (in particular, also to compensation for loss or damage not occurring to the subject matter supplied as such) without limitation, only in the following cases:

- intent,
- gross negligence,
- culpable injury to life, limb and health,
- defects that we deceitfully failed to disclose,
- any violation of warranties assumed by Dürr for quality, properties and/or durability,
- cases of strict statutory liability (e.g. claims for damages in accordance with the Product Liability Act).

(2) Any damage caused by Dürr through simple negligence shall be compensated only if the violation of a major obligation is involved, the fulfillment of which only facilitates the due and proper execution of the Agreement in any case and that the Licensee is regularly allowed to rely on (cardinal obligations). In this case, Dürr's liability is additionally limited to the extent of damage that Dürr typically had to expect in view of the facts and circumstances known to Dürr at such point in time and the nature of the contractual arrangements made.

(3) Whilst Dürr have taken reasonable steps to exercise its duty of care in our industry segment, software and other programming services cannot be provided absolutely free errors.

(4) The Licensee shall carry out appropriate and regular data backups, particularly in the form of backups available at any time for data restoration purposes. We shall be liable for the loss of data and its restoration only if such a loss would not have been avoidable by appropriate data backup measures being taken on the part of the Licensee. The Licensee shall bear the burden of proof for such data backup measures being carried out on a regular basis. Liability for data loss or damage for which we are to blame is confined to the effort and expense that would have been necessary to restore the data from the data material backed up if the Licensee had done so.

(5) Compensation for - pecuniary loss is excluded by the general principles regarding *bona fides*, such as in cases of disproportionateness between the extent of the order value and the extent of loss or damage.

(6) Any further liability – for whatever legal grounds – in particular, also for compensation for loss or damage that did not occur under this Agreement, shall be excluded.

(7) We shall not be liable for the consequences of defects that do not give rise to any claims for defects pursuant to Art. 7 para. 1.

(8) The above-mentioned disclaimers and restrictions also apply in favor of the employees, representatives, management bodies and vicarious agents of Dürr as well as in favor of other third parties commissioned by Dürr for contractual performance.

Art. 9 Confidentiality and data protection

(1) The contracting parties undertake, with respect to confidential information exchanged within the scope of this Agreement, to treat such confidential information in strict secrecy for an unlimited period and not to allow or arrange for such information to be used within their own organization, including all affiliates, subsidiaries, branches, consultants, employees and all similar persons, enterprises or other natural or legal persons or used by themselves or by third parties in any other conceivable manner. Confidential information is made accessible internally only to those employees who need it to perform their obligations and who, in turn, are committed to secrecy.

Within the scope of this Agreement, confidential information shall in particular be deemed to be – for example, but not exhaustively – any software including the source code, any trade secret, any information and all data or other not publicly accessible or confidential information regarding products, processes, know-how, design, formulas, algorithms, drafts, developments, research, computer programs or parts thereof (including the source code), interfaces, databases as well as other works protected under copyright law or any other piece of information in connection with business activities of the parties and their employees, consultants, licensees or other persons associated with such party who are announced as part of this Agreement or disclosed in some other manner as confidentially designated in written, electronic, physically embodied or oral form.

(2) The aforesaid duty of confidentiality shall not apply if and to the extent that the relevant information is proved to already have been in the public domain at the time of its dissemination, i.e. published or generally accessible or which became known after its transmission without any fault of the recipient or made known after its transmission to the recipient by a third party in a lawful manner without any restriction concerning confidentiality or use.

Art. 10 Export control regulations

(1) Our performance under the Agreement as regards such software not covered by state export regulations is subject to the provision that we are issued with the necessary permits.

(2) The Licensee is under an obligation to observe the relevant national and international statutory provisions concerning the control of (re)exports of the merchandise and services governed by this Agreement. In this regard, in particular the Licensee shall neither export or re-export nor forward or transfer the licensed item or components thereof – if authorized to do so according to this Agreement – without being in compliance with the statutory provisions applicable to this end from time to time.

(3) If this is necessary to comply with the export control regulations, at Dürr's request the Licensee shall make all information available without delay on the recipient, whereabouts and purpose of use of the licensed item and its individual components.

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Art. 11 Final provisions

(1) If the customer is domiciled within the Federal Republic of Germany, then the place of jurisdiction shall be that of our corporate headquarters. We reserve the right to sue the customer at the latter's statutory place of jurisdiction.

(2) If the customer is domiciled outside the Federal Republic of Germany, arbitration proceedings will be held before the International Chamber of Commerce in Paris according to the ICC arbitration court rules. The decision is final. A ruling is to be handed down and justified by three judges. The cooperation of our insurer in accordance with the options available in the ordinary course of justice is possible. We reserve the right to bring an action before a statutory place of jurisdiction.

(3) The laws of the Federal Republic of Germany shall be applicable, to the exclusion of all collision standards under private international law and the United Nations Convention on Contracts for the International Sale of Goods (CISG).

(4) The requirement as to written form may be substituted by facsimile but not by electronic format pursuant to Section 126a of the German Civil Code (BGB) or text form in accordance with Section 126b BGB.

(5) Should any individual provisions of these licensing terms and conditions or contracts entered into on the basis of these licensing terms and conditions be or become invalid, either wholly or in part, this shall not affect the remaining provisions thereof.