

# Dürr Software License Terms and Conditions (Lease)

Status: April 4, 2019

## § 1 Applicability

(1) These License Terms and Conditions apply to the agreement (the "Agreement") entered into between us ("Dürr" or "Licensor" or "we") and the customer ("Licensee") concerning the time-limited assignment of Dürr standard software and programs of third-party producers (the "Software").

(2) Different terms and conditions of the Licensee are not part of the Agreement even if we do not expressly object to them and even if we make delivery to the Licensee in full knowledge of opposing or varying terms and conditions without reservation.

## § 2 Scope of Supply and Maintenance

(1) Unless otherwise agreed, we will provide to the Licensee the Software and documentation in electronic form, either on data storage media or by means of download. The Licensee will install and configure the Software. The nature of the Software is described in the documentation.

(2) The Licensee will receive updates (i.e. updates and error fixes according to the Software version).

(3) The Licensee will also receive issued Software upgrades/releases (i.e. a new version of the Software containing minor performance and functional add-ons compared to the previous version in the case of upgrades and major performance and functional add-ons in the case of releases). Such upgrades/releases are issued by us corresponding to the most up-to-date technology and are not due at predefined time intervals or as specified by the Licensee. The Licensee will install and configure the upgrades/releases of the Software.

(4) Updates are made based on the most up-to-date version of the Software, which is the software for which issued updates and upgrades/releases – if generated – have been installed.

## § 3 Rights of Use

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

### a) Third-party programs

For programs from third-party producers, the applicable license terms and conditions of said producers take precedence over these License Terms and Conditions in the event of conflicts with regard to the granting of usage rights. This also applies to open-source licenses, provided that a software component is subject to an open-source license. Unless there is the obligation in the license to transfer license terms and conditions and other mandatory information, we will provide the third-party terms and conditions to the Licensee only upon request.

### b) Dürr Software

The Licensee will be granted a non-exclusive, non-transferable single license to use the Software and documentation records for the duration of the Agreement at any location upon delivery of the same to the Licensee. Unless otherwise agreed, the type of license is defined in the Agreement. In this regard, the type of license has the following scope of use:

aa) In a hardware-related license, the Licensee is entitled to install and use the Software on the computer for which the Licensee received the license key.

bb) In a user-related license, the usage right is limited to the number of full client concurrent users indicated in the Agreement, i.e. the usage right may be exercised simultaneously by no more than the maximum number of users indicated.

cc) In a named user license, only those persons listed in the Agreement by name are entitled to use the Software simultaneously.

dd) In a group license, the Licensee can use the Software in all companies associated with the Licensee in accordance with §§ 15 ff. of the German Stock Corporation Act ("Group Companies"). This includes the right for all employees of the group companies to use the Software without limit to number. It can be stipulated that in the event the number of employees is significantly increased, the Licensee must purchase further site licenses.

(2) Copyright notices and trademarks and other legal reservations, serial numbers or other features may not be deleted, modified, rendered illegible or suppressed and must be reproduced when backup copies are prepared.

(3) The right to use the Software does not include the right to edit, translate, rent and lend, disseminate, publicly display and make the Software available online to third parties outside the company of the Licensee; furthermore, the right of use does not include the right to duplication unless it is necessary for the intended use or to produce backup copies. The use of the Software in outsourcing, service bureau, ASP operations or the like is not allowed. The usage rights may not be transferred to third parties unless the third parties are business partners of the Licensee contracted by the Licensee that require access to the Software to fulfill the order and for customer operational purposes, wherein the only use allowed is screen access within the scope of use by the Licensee.

(4) The Licensee has no claim to the transfer and use of the source code of the Software and the source code documentation. The Licensee is not allowed to decompile, disassemble or otherwise reverse engineer the source code; § 69e of the German Copyright Act remains unaffected by this.

## § 4 Prices and payment conditions

(1) Unless otherwise contractually regulated, our compensation must be paid annually in advance. Our prices are understood to be net in euros and are subject to applicable VAT.

(2) If prescribed by the tax regulations of the country in which the Licensee is headquartered, the Licensee will deduct a withholding tax amount from the agreed upon payment, pay said amount to the respective tax offices and provide to Dürr a tax certificate either received or available by law as evidence for the amount and payment of this withheld and paid tax, as well as all other documents that are required as evidence for the payment of the withholding tax by the respective tax offices or other official agencies so that Dürr can claim a reimbursement or credit for the withholding tax amount against its own tax obligations. The basis for the tax deduction at the source is the payment not including VAT. Moreover, the Licensee must make all efforts to reduce any such withholding tax deduction as much as possible or to achieve complete exemption from tax withholding. If a reduction of or exemption from tax withholding is possible according to current regulations, once the Licensee receives the documents from Dürr necessary for such a reduction or exemption the Licensee must pay either the full agreed amount or the amount reduced by said reduction or exemption.

(3) Installation of the Software is not included in the price indicated in the invoice and will be billed at our current billing rates (information about these rates is available on request). For work outside of normal working hours, surcharges will be assessed. Travel and waiting periods count as working hours.

(4) Payments must be made without any deductions to one of our designated accounts.

(5) The customer can offset payment or exercise a right of retention only if the counterclaim as such, as well as the

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value thereof, is uncontested or has been declared legally enforceable by a court of competent jurisdiction.

(6) Payments by the Licensee are due no later than 30 days after receipt of our invoice by the Licensee.

(7) The prices in the offer apply only to purchases of the full scope of the performances offered.

## § 5 Required Collaboration

(1) In the case of software for reality simulation (simulation software), the Licensee must verify the simulation results in its real system in advance in a test environment, with adherence to the applicable security-related or other pertinent regulations. In this regard, the Licensee must carry out an appropriate risk assessment on the systems and components.

(2) The Licensee will prepare its work environment for the use of the Software accordingly and cooperate free of charge in the fulfillment of the order, in particular by making employees, IT systems, data and telecommunications equipment available.

(3) The Licensee will make sure that its data processing systems and system software, respectively, have the technical capacity required for the use of our programs and developments. A new upgrade/release in particular can require that the Licensee install an improved version of its system software. In such a case, we will provide timely notification as to what prerequisites must be met and when. The Licensee must in turn notify us in advance if it intends to install a further development of the required system software and must provide a tailored test system for it.

(4) The Licensee must safeguard the Software against access by unauthorized third parties using suitable measures; in particular it must protect all copies of the software at a protected location.

## § 6 Claim to Information/License Audit

(1) The Licensee will keep proper records as to the use of the Software, in particular the entitled users and installation locations as well as the hardware and software environment used, and must provide us with information on such records on request.

(2) The Licensee agrees to allow Dürr to employ its own employees or independent third parties – who/which are obligated to maintain confidentiality – to examine the records and systems of the Licensee (including a manual examination and/or electronic methods) for purposes of confirmation that the Licensee installs and uses the Software according to the stipulations of valid licenses of Dürr. Within 30 days after a proper request, the Licensee will provide Dürr with all documents and information requested by Dürr. Dürr will bear the costs for this examination unless a material contractual violation is determined during this examination.

## § 7 Term and Notice of Termination

(1) The term is two years (base term). The term will extend by an additional 12 months (extension period) unless the Agreement is terminated in writing by a contractual partner 3 months prior to the expiration of the base term or an extension period.

(2) The lease agreement can also be terminated by either party without notice for good cause in writing. Good cause entitling the Licensor to termination is in effect when the Licensee has violated the usage rights of the Licensor in that it is using the Software beyond the extent permitted in this Agreement, and does not stop the violation within a reasonable period of time after being warned by the Licensor.

(3) Notice of termination must be given in writing. In case of a termination or when the term of the Agreement expires, the Licensee must stop using the Software and remove all installed copies of the program from its computers and must either immediately return to the Licensor any back-up copies made or destroy them at the Licensor's discretion.

## § 8 Maintenance and Guarantee

(1) The Licensor guarantees maintenance of the contractually agreed quality of the Software during the term of the Agreement and that there are no third-party rights in opposition to the contractual use of the Software. The Licensor will correct any material and legal defects in the leased goods within a reasonable time. If the defect has no or only a minor adverse effect on the functionality of the Software, Dürr is entitled to remedy the defect by delivering a new version or an update as part of Dürr's version and update planning program. The same applies to defects of third-party programs if these defects do not impair functionality or impair it only to a minor extent.

(2) The Licensee must notify the Licensor in writing of Software defects immediately upon discovering them. If there are material defects, a description of the time of occurrence of the defects and the immediate circumstances must be provided.

(3) However, in cases where the Software is combined with external software by the Licensee, Dürr will accept no liability for defects in relation to the compatibility of such external software with the Software, nor will it accept liability for defects that relate to non-contractually agreed use or improper operation of the Software by the Licensee or if the Licensee is not using the required system configuration, in particular infrastructure, hardware, operating system and database.

(4) Any maintenance carried out due to such conditions is performed independent of any exercised guarantee claims from the lease relationship existing between the parties, which remain unaffected.

## § 9 Liability

(1) Even in the case of damage due to violations during contract negotiations for any legal reason (in particular damage not directly related to the work provided) we are subject to unlimited liability only for the following reasons:

- intent,
- gross negligence,
- culpable injury to life, body or health,
- defects that we have fraudulently concealed,
- violation of guarantees assumed by Dürr relating to the quality and/or durability of goods,
- cases of statutory liability (such as damages under the German Product Liability Act).

(2) Damage caused by Dürr due to simple negligence will be compensated only if the violation involves a material obligation whose fulfillment is absolutely required in order to enable the proper execution of the Agreement, and if the Licensee regularly relies on fulfillment of said obligation (cardinal obligations). In this case, the scope of Dürr's liability is further limited to damage that Dürr would typically be expected to anticipate, considering the circumstances known to Dürr at the time of signing of the Agreement and in light of the character of contractual agreements.

(3) In the process, it must be kept in mind that we are responsible for exercising that degree of care which is

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common in the industry, and cannot provide software and other programming services completely without errors.

(4) The Licensee will perform appropriate and regular data security measures, in particular in the form of backups that are available and restorable at all times. For loss of data and recovery thereof, we are liable only if the Licensee's appropriate data security measures could not have prevented the loss. The Licensee must provide proof of these regularly executed data security measures. The liability for data losses or damage caused by us is limited to the extent that would be required from a proper data security system set up by the Licensee in order to restore the data from the secured data material.

(5) Compensation for property damage is based on the general principles of good faith, and is limited to cases where there is a disproportion between the order value and the loss amount.

(6) Further liability – irrespective of the legal grounds – is excluded, in particular liability in relation to compensation for damage to items that do not form part of our scope of supply. Strict liability of the Licensor for initial defects in the Software is excluded.

(7) The above liability exclusions and limitations also cover employees, representatives, bodies and agents of Dürr, as well as other third parties employed by Dürr for the purposes of contract fulfillment.

## § 10 Confidentiality and Data Protection

(1) The contractual parties agree to maintain confidentiality about confidential information exchanged in connection with this Agreement for an unlimited time, and neither to exploit this information or have the information exploited within the company – including all associated companies, subsidiaries, branches, consultants, employees and all similar persons, companies or other natural or legal persons – nor to use the information itself in any way or have a third party use it. Confidential information is made accessible internally only to employees who require the same to fulfill their obligations and who are in turn obligated to maintain its confidentiality.

With regard to this Agreement, information that is deemed to be confidential includes – by way of example, but not limited to – any and all software, including source code, all company secrets, all information and all data or other unpublished or confidential information regarding products, processes, know-how, design, formulas, algorithms, drafts, developments, research, computer programs or parts of computer programs (including source code), interfaces, databases and other copyrighted works or any other information regarding the business activity of the parties and employees, consultants, licensees or other persons associated therewith that is made known in the context of this Agreement and identified or that is shared and identified in any way as confidential in written, electronic, physical or oral form.

(2) The above obligation of confidentiality does not exist if and to the extent that the information in question can be proved to have already been made public or published or to have been made generally accessible, or to have become publicly known for reasons for which the recipient cannot be held accountable, or to have been made legally public by a third party after disclosure to the recipient and without restriction with respect to confidentiality or use.

## § 11 Export Control Regulations

(1) Our fulfillment of the Agreement for software that is monitored under state export regulations is subject to our being issued the required authorizations.

(2) The Licensee must follow the pertinent national and international legal regulations with regard to the control of the (re-)exporting of the goods and services regulated in this Agreement. In particular, the Licensee will neither export or re-export, nor forward or transfer, the object under license or components thereof – if so entitled according to this Agreement – without adhering to the respectively applicable legal regulations for the same.

(3) If such is required to fulfill the export control regulations, the Licensee will immediately provide all information as to recipients, whereabouts and purpose of use of the licensed object or individual components thereof upon request by Dürr.

## § 12 Final Clauses

(1) If the customer's headquarters are within the Federal Republic of Germany, the court of jurisdiction is the court of our corporate headquarters. However, we reserve the right to file suit in the customer's court of jurisdiction.

(2) If the customer has its headquarters outside the Federal Republic of Germany, then disputes shall be settled at the International Chamber of Commerce in Paris according to the ICC rules of arbitration. The ruling is final. It must be heard and decided by three arbitrators. Our insurer may get involved with this process as normally allowed by law. We reserve the right to file suit at a lawful court of jurisdiction.

(3) The laws of the Federal Republic of Germany apply, excluding all conflict-of-law standards and the UN Convention on Contracts for the International Sale of Goods (CISG).

(4) The written form can be replaced by a fax, but not the electronic form according to § 126a of the BGB [*German Civil Code*] or the text form according to § 126b of the BGB.

(5) If individual provisions of these License Terms and Conditions or of agreements concluded based on these License Terms and Conditions are or become ineffective in full or in part, the remaining provisions of the contract will be unaffected.