

EC SOFTWARE END-USER LICENSE AND MAINTENANCE AGREEMENT (EULA)

This EC Software GmbH (hereinafter referred to as "EC Software") End-User License And Maintenance Agreement (hereinafter also referred to as "EULA") is a legal agreement between an individual person or a legal entity (hereinafter referred to as "Customer") and EC Software on the use of software and accessories developed and supplied by EC Software (hereinafter referred to as "Software"). By installing or using or registering to use the Software, Customer agrees to be bound by the provisions set down in this agreement. If Customer does not agree to these terms, Customer is not permitted to use the Software.

EC Software and their suppliers are the owners of any intellectual property rights in the software supplied hereunder. EC Software permits Customer to download, install, use and otherwise benefit from the Software in strict accordance with the provisions of this agreement. The use of third-party software, materials and services such as Open Source (e.g. GPL) based software included in or accessed in connection with the software might be subject to the Terms and Conditions of the respective third parties. The third-party software, materials and services are displayed in the information screen of the respective Software or identified by EC Software on request of Customer at any time.

The Software is fitted with product activation procedures (license manager) designed to prevent unauthorized use. Any attempt to circumvent the restrictions on unauthorized use shall result in the immediate termination of this agreement and loss of any rights of use on the part of Customer. In such a case, further use of the Software is liable to copyright infringement and further legal claims.

1 Grant of License

The Software is licensed, not sold, to Customer. In accepting this agreement, Customer acknowledges that the Software remains the sole property of EC Software and/or their licensors. Nothing contained in this agreement will be construed as granting any ownership to Customer. EC Software grants Customer the following rights provided that Customer comply with all terms and conditions of this EULA:

1.1 Installation and use. Except as otherwise expressly provided in this agreement, Customer may install and use the Software according to the guidelines for the license type as described below.

2 License types

The following license types are available:

2.1 *Node-Locked ('per-seat') License:*

Under the terms of a Node-Locked ('per-seat') License, the Software is licensed for use on one computer or computing device at a time. This Node-Locked License will be bound to this computer or computing device and will only function on this computer or computing device. A Node-Locked License permits the installation on up to 2 computers, if both computers are exclusively used by the same user.

2.2 *Floating User License:*

A Floating User License of the Software may be run from different devices and by different users. Multiple running instances of the Software on the same device under the same user account do not require an additional license slot. The Software may be installed within a virtual (or otherwise emulated) hardware system so long as the use of the Software meets the terms of the license type and these virtual machines are run on hardware owned or leased by Licensee. Floating User Licenses are the only license types that can recognize virtual instances. Virtualization technology may not be used to circumvent other licensing terms and restrictions.

2.3 *Build Server License:*

License on a central computer system, shared (used) by other systems, automated processes or users. Every *Floating License* includes 1 Build Server License.

2.4 *Temporary Short Term License:*

This license restricts the use of the Software to a predefined period of time (6 months or less).

2.5 *Evaluation License:*

This license is for non-commercial purposes of the product. Licensee agrees to use any Software provided to Licensee as an Evaluation only for the period until the license expiration, only to evaluate it individually for potential purchase of a license to the Software as an end-user, to conduct no business with it, to remove it and all result files produced from any of Licensee's Computers at the end of the trial evaluation period and to comply with all other obligations and restrictions in this Agreement. Any result files may not be used to link with result files from Licensed Software, and not used in any way in User Products.

3 Reservation of Rights and Ownership

EC Software reserves all rights not expressly granted to Customer in this EULA. The Software is protected by copyright and other intellectual property laws and treaties. EC Software owns the title, copyright, and other intellectual property rights in the Software. The Software is licensed, not sold. This EULA does not grant Customer any rights to trademarks or service marks of EC Software.

4 Limitations on Use

Customer may not reverse engineer, decompile, or disassemble the Software, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation. Customer may not rent, lease, or lend the Software to third parties, or use the Software on behalf of any third party.

5 Consent of Use of Data

Customer agrees that EC Software may collect and use technical information gathered as part of the product support services provided to Customer, if any, related to the Software. Such data will not be transmitted to EC Software without Customer's prior knowledge. EC Software may use this information solely to improve their products or to provide customized services or technologies to Customer and will not disclose this information in a form that personally identifies Customer.

6 Separation of Components

The Software is licensed as a single product. Its component parts may not be separated for use on more than one Computer.

7 Maintenance

Only upon payment in full of the maintenance fees set forth in the Customer Purchase Order, EC Software shall provide maintenance service for the Licensed Software to Customer solely upon the terms set forth in this Section for an initial one (1) year term ("Maintenance Term") beginning on the date of the last signature of this Agreement, unless the term is otherwise set forth in the Customer Purchase Order.

5.1 Maintenance Service Provided: Error corrections, enhancements, and documentation updates ("Revisions") may be initiated from time to time by EC Software and furnished to Customer. In addition, EC Software shall use reasonable efforts to correct, in a timely manner, coding errors reported to EC Software in writing by Customer. EC Software cannot guarantee that all coding errors will be corrected or that all Revisions will be compatible with previous versions.

5.2 Eligibility: In order to continue to be eligible to receive Revisions hereunder, Customer must be current in the payment of fees and charges due EC Software under this Agreement and must have accepted and installed the Revision most recently provided by EC Software under this Agreement.

5.3 Term and Renewal: Renewals of maintenance shall be on a year to year basis at the then prevailing rate. In the event Customer chooses not to renew, or otherwise terminates maintenance of the Licensed Software, Customer shall pay the missed renewal fee for subsequent renewal. In the event EC Software chooses to discontinue maintenance of Software, EC Software agrees to notify Customer in writing thirty (30) days in advance and EC Software shall, at its discretion, elect to do any or all of the following:

- a) replace the Licensed Software with a comparable product, if one exists, subject to monetary adjustments depending upon the cost of the replacement product relative to that of the Software,
 - b) reimburse the Customer a prorata amount (discounted monthly on a straight line basis over one (1) year) of the maintenance fee already paid,
 - c) assign maintenance of Software to a third party at no cost to the Customer.
- Payment of fees for maintenance does not ensure the longevity or continuance of Software.

8 Termination

Without prejudice to any other rights, EC Software may terminate this EULA if Customer fails to comply with the terms and conditions of this EULA. In such event, Customer must destroy all copies of the Software and all of its component parts.

9 Disclaimer of Warranties

To the maximum extent permitted by applicable law, EC Software provides the Software and support services (if any) AS IS AND WITH ALL FAULTS, and hereby disclaims all other warranties and conditions, whether express, implied or statutory, including, but not limited to, any (if any) implied warranties, duties or conditions of merchantability, of fitness for a particular purpose, of reliability or availability, of accuracy or completeness of responses, of results, of workmanlike effort, of lack of viruses, and of lack of negligence, all with regard to the Software, and the provision of or failure to provide support or other services, information, software, and related content through the Software or otherwise arising out of the use of the Software. ALSO, THERE IS NO WARRANTY OR CONDITION OF TITLE, QUIET ENJOYMENT, QUIET POSSESSION, CORRESPONDENCE

TO DESCRIPTION OR NON-INFRINGEMENT WITH REGARD TO THE SOFTWARE.

10 Limitation of Liability and Remedies

Notwithstanding any damages that Customer might incur for any reason whatsoever (including, without limitation, all damages referenced herein and all direct or general damages in contract or anything else), the entire liability of EC Software under any provision of this EULA and Customers exclusive remedy hereunder (except for any remedy of repair or replacement elected by EC Software) shall be limited to the greater of the actual damages Customer incur in reasonable reliance on the Software, which may not exceed the amount actually paid by Customer for the Software. The foregoing limitations, exclusions and disclaimers (including section 9) shall apply to the maximum extent permitted by applicable law, even if any remedy fails its essential purpose.

11 Applicable Law

This EULA shall be governed by the laws of Austria, without reference to conflict of law or choice of law principles or decisions. The parties agree on Salzburg, Austria, as the exclusive place of jurisdiction.

12 Entire Agreement, Severability

This EULA (including any addendum or amendment to this EULA which is included with the Software) is the entire agreement between Customer and EC Software relating to the Software and the support services (if any) and it supersedes all prior or contemporaneous oral or written communications, proposals and representations with respect to the Software or any other subject matter covered by this EULA. If any provision of this EULA is held to be void, invalid, unenforceable or illegal, the other provisions shall continue in full force and effect.