

End User Licence Agreement for WinMOD® Software

Important note

This software license agreement (henceforth referred to as EULA) is an agreement between the licensee (as a registered user in his/her own name or as a registered representative in the name of a company) and the licensor. The following provisions regulate the use of the software irrespective whether it is provided on a data medium or via downloading from a computer network. The EULA also regulates the use of preliminary versions of the software for test purposes.

By installing or copying the SOFTWARE – or handling or using it in other ways – the licensee declares to be bound by the provisions of this EULA. Should the licensee not agree to the provisions of this EULA he/she is not authorised to use or copy the SOFTWARE. Furthermore the licensee undertakes to contact without delay the licensor in order to learn from the same how he/she is to return the unused product(s) pursuant to the instructions for returning products to the licensor and for receiving in return a refund of the purchase price.

SOFTWARE PRODUCT LICENCE

Definitions

Licensor:	Ingenieurbüro Mewes & Partner GmbH Neuendorfstraße 15 16761 Hennigsdorf
SOFTWARE:	The term "software" comprises the computer software together with all media, printed matter, user documentation, electronic instructions and any other documents concerning the product. All updated and upgrades from the initial product are also included in the term "software".
COMPUTER:	The term "Computer" refers in this EULA to an individual "computer system".

2. SCOPE

This software licence is applicable for the WinMOD® system software, WinMOD® add-ons, WinMOD® configurations and WinMOD® program libraries.

3. RIGHTS COVERED BY THE LICENCE

On the condition that the licensee observes all provisions of this EULA the licensor grants the licensee the following rights:

3.1 Installation and use

Licences bound to a particular item of equipment may at any one time only be installed and operated on a single COMPUTER. For this purpose the licensee receives within the scope of the licence a licence code (unlocking key or "dongle"), which allows the operation of the SOFTWARE in accordance with the contract and licence and to the agreed extent.

Licences not bound to a particular item of equipment (dongles) may be installed on any number of COMPUTERS but, by means of a dongle, only on one COMPUTER at any one time and only be operated by one user. For this purpose the licensee receives within the framework of the licence a licence dongle (USB stick with a dongle program) that allows the operation of the SOFTWARE in accordance with the contract and licence and to the agreed extent.

3.2 Transfers

This licence may not be shared, nor transferred to several COMPUTERS nor be used at the same time on several COMPUTERS. The SOFTWARE may only be used on one COMPUTER, as prescribed in this EULA. The licensee is authorised to transfer permanently all rights arising from this EULA, provided he/she does not keep any copy of the SOFTWARE.

Insofar as the SOFTWARE is an update, each transfer must include all earlier versions of the SOFTWARE. Fur-

thermore the transfer must include the dongle. The transfer may not take place indirectly, for example via a third party acting on a commission basis. Before the transfer takes place the end user, i.e. the person receiving the SOFTWARE, must agree to all provisions of the EULA.

3.3 Mandatory activation of the software

The rights granted within the scope of this EULA may only be made use of if the SOFTWARE is activated within 14 days of the installation. The licensed copy is to be activated according to the instructions shown in the set-up sequence.

If the SOFTWARE is not activated within 14 days all parts of it are to be de-installed and all backup copies are to be destroyed. The original data media and all documentation supplied with this as well as all peripheral equipment are to be returned to the licensor.

3.4 Backup copy

The licensee is authorised to produce a single backup copy of the SOFTWARE.

The licensee is authorised to use a backup copy solely for archiving purposes and for a renewed installation of the software on the COMPUTER. The licensee is not authorised to produce any other copies of the SOFTWARE or of the printed matter accompanying the SOFTWARE unless this is explicitly authorised in this EULA or by any laws or regulations applicable for the location concerned.

4. RETENTION OF RIGHTS AND COPYRIGHT

The licensor retains all rights that are not explicitly granted to the licensee in this EULA. The software is protected by copyright laws and other laws or conventions concerning intellectual property. The licensor retains title to the software, copyright and any other industrial property rights. The software is being licensed and not sold.

5. LIMITATIONS WITH RESPECT TO REVERSE ENGINEERING, DECOMPILATION AND DISASSEMBLING

The licensee is not authorised to reverse engineer, decompile or disassemble the SOFTWARE, unless applicable law permits this irrespective of this limitation, but even then only to the extent permitted.

6. NO RENTING OUT OR COMMERCIAL HOSTING

The licensee is not authorised to rent, lease or lend the SOFTWARE or a backup copy of the same to another user nor to make the SOFTWARE available within the framework of commercial hosting services.

7. SEPARATING COMPONENTS

The SOFTWARE is being licensed as a uniform product. The licensee is not authorised to split up the SOFTWARE for use on more than one computer.

8. BRANDS

This EULA does not grant the licensee any rights in connection with product or service brands of the manufacturer/licensor.

9. PRODUCT SUPPORT

SOFTWARE support will be carried out by the licensor. Should you have any questions concerning this EULA or wish to contact the licensor for any other reason please use the address given in the documentation.

10. LINKS TO THIRD PARTY SITES

It is possible that, when using the SOFTWARE, the licensee gains access to linked sites provided by third parties. The licensor has no control over third party sites. The licensor is responsible neither for the content of third party sites, nor for any links included in third-party sites, nor for changes or updates to third-party sites.

11. ADDITIONAL SOFTWARE/SERVICES

This EULA is also applicable for extensions, updates, add-on components, product support or components of Internet-based software services that the licensee might take delivery of from the licensor after he/she has taken delivery of the original copy of the software unless the licensee accepts any updated provisions or another contract has priority. In case no other provisions are specified for the additional components and the additional components are placed at the disposal of the licensee by the licensor, the licensee is granted the licence by the licensor according to the provisions of this EULA.

12. UPDATES

Insofar as the software is designated as an update, the licensee must have the corresponding licence for a product designated by the licensor as suitable for the update ("suitable product") to be able to use the SOFTWARE. SOFTWARE designated as an update replaces and/or extends (and deactivates possibly during the updating of a software product) the suitable product. Once the update has been carried out the licensee is no longer authorised to use the original SOFTWARE (provided nothing is stated to the contrary). The licensee may use the resulting, updated products only in compliance with the provisions of this EULA. If the SOFTWARE is the update of a component of a software package for which the licensee has been granted a licence for a uniform product the SOFTWARE may only be used as part of this uniform product package and be integrated into the package and may not be used separately on more than one computer.

13. SOFTWARE NOT INTENDED FOR RESALE

SOFTWARE that is not intended to be resold or is designated as "NFR" (not for resale) may not be sold or be assigned to other users for a consideration or be used for purposes other than demonstration, testing and evaluation.

14. SOFTWARE AS A SCHOOL VERSION

In order to use SOFTWARE that is designated as "school version" or "AE" (academic edition) the licensee must be "an authorised user in a recognised educational institution". Using the SOFTWARE commercially in connection with this is prohibited. Please address questions regarding this authorisation to the licensor.

15. EXPORT RESTRICTIONS

The licensee acknowledges that the SOFTWARE is subject to German export law. Accordingly the licensee agrees to observe all international and national laws applicable for the software. The export of software can in certain circumstances require approval. In such a case the licensee undertakes on his/her own responsibility to obtain the required export approval.

16. EVIDENCE FOR THE END USER THAT A LICENCE HAS BEEN GRANTED

If the licensee has acquired the software on apparatus or a CD or other media, a licensed copy of the SOFTWARE is accompanied by an original dongle.

17. NOTICE OF TERMINATION

Irrespective of any other rights the licensor is authorised to give notice of terminating this EULA insofar as the licensee contravenes the provisions of this EULA. In such a case the licensee undertakes to destroy all copies of the SOFTWARE and its components and to return the licence dongle to the licensor.

18. COMPLETE CONTRACT; SEVERABILITY CLAUSE

This EULA (including all amendments or agreed extensions to this EULA that are included in the scope of the SOFTWARE provided) is the complete contract between the licensee and the licensor with respect to the SOFTWARE and (insofar as these are also to be provided) support and other services. It has priority over all oral or written notifications, proposals and assurances with respect to the SOFTWARE or any other object of this EULA issued/made previously or at the same time. Should a provision of this EULA be declared to be null and void, invalid, unenforceable or unlawful the remaining provisions will continue to be completely valid.

19. GUARANTEE

19.1 Insofar as the licensee is a merchant and the subject of the contract is a business transaction, the licensee must inspect the software immediately upon receipt. Any defects are to be reported without delay to the licensor

19.2 If no defects are reported the goods are considered to be approved except in the case that the defect is hidden and therefore could not be ascertained by an inspection. Should a hidden defect of this nature be revealed, it must be reported immediately after it has been discovered. If this does not happen, the goods are considered to have been approved in spite of the defect. This obligation to report defects does not exist if the licensor has fraudulently concealed the defect.

19.3 Defects are not considered to be such if the licensee or a third party has modified the software without the prior written agreement of the licensor and the defect emerges after this modification has been carried out. Furthermore the defect is not considered to be such if the software has been installed on hardware or an operating system that does not fulfil the requirements specified in the proposal leading to the contract or in the product descriptions.

19.4 If a defect is apparent, the licensor has the choice of either correcting the defect or replacing the software (supplementary performance).

19.5 Supplementary performance is considered to have been ineffective if the licensor has undertaken three unsuccessful attempts at supplementary performance. In the case of a failure of the supplementary performance the licensee is authorised to withdraw from the contract. Insofar as the licensor is culpable, the licensee is authorised to claim damages.

19.6 The statute of limitations for claims regarding defects applies after one year. The year commences with the licensee's reception of the software.

19.7 The licensee can only make claims based on the assurance of a guarantee by the licensor if this assurance was confirmed in writing by the licensor or its legal representative.

19.8 The SOFTWARE was developed and offered to the market as software for general purposes and not for special requirements of a user. The licensee acknowledges that no software is completely free of defects. The licensee acknowledges that the guarantee included in this document is the only guarantee granted by the manufacturer with respect to the SOFTWARE. Guarantee rights are not affected by this regulation.

19.9 Legal rights remain unaffected – the guarantee is not restricted to a particular geographical area and does not affect legal rights.

20. LIMITATION OF LIABILITY

20.1 Die WinMOD system software with all its components and extensions has been developed for simulation and test purposes. An application for machines and plant is carried out at the risk of the licensee and excludes all liability towards the licensor insofar as nothing to the contrary is stated in the regulations 20.2 to 20.6.

20.2 The following regulations are applicable for compensation or replacement of costs producing no benefit, for what ever legal cause including impermissible acts:

20.3 The licensor is liable for intent, gross negligence and any other claims in accordance with the product liability laws according to statutory regulations. If the software was acquired in Germany the manufacturer is liable in the case of harm to life and limb or impairment of health in accordance with the statutory regulations.

20.4 The licensor is not liable for negligence other than gross negligence. If the software was acquired in Germany the manufacturer is liable for negligence other than gross negligence if the manufacturer infringed a significant contractual obligation. In these cases the liability of the manufacturer is limited to typical and predictable damage. In all other cases including impermissible acts, the manufacturer is liable in Germany as well, but not for negligence other than gross negligence.

20.5 Otherwise, liability for restoring customer data is limited to the amount of the costs required to restore the data if it has been regularly saved in the manner specified by the supplier or a supplier providing third-party software, or can be reconstructed in any other manner from machine-readable data at a reasonable cost.

20.6 Insofar as this is permissible by the applicable laws, the licensor is not liable for direct, indirect or consequential damage, including but without limitation to lost profits, unrealised cost reductions, data loss or increased costs of the licensee or any other financial loss arising from or in connection with the purchase, acquisition of usage rights, the use or failure of the SOFTWARE or disruptions to the operation of the SOFTWARE. The aforementioned limitation of liability is also applicable if the licensor was informed of the possibility of such damage. The licensor is liable for loss and damage only insofar as these arise from intent or gross negligence on its part. This limitation of liability is applicable for all claims for damage, irrespective of their legal cause, including but without limitation to contractual or pre-contractual claims or claims similar to contract-based claims, or claims arising from impermissible acts. This limitation of liability applies also for all officers and other employees of the licensor and all representatives and vicarious agents of the licensor involved in the development, marketing or delivery of the software.

20.7 It is the obligation of the licensee alone to ensure that he/she and his/her employees are in possession of the required knowledge for installing and using the software in an orderly manner. The licensor is not liable for problems and defects arising from inadequate knowledge of the users of the software.

21. APPLICABLE LAW / PLACE OF JURISDICTION

This EULA shall be governed by the laws of the Federal Republic of Germany. Insofar as this is legally permissible, the courts of the municipality in which the registered office of the licensor is located, shall have exclusive jurisdiction.

Hennigsdorf, May 2009