

hyperMILL CAD/CAM - End User License Agreement (EULA) of OPEN MIND Technologies AG

hyperMILL CAD/CAM Software of OPEN MIND Technologies AG, Argelsrieder Feld 5, 82234 Wessling, Germany (hereinafter: **OM**) will be provided to End Customer by licensors (either OM or its partner) licensing Software to End Customer (hereinafter „**Licensor**“) under the terms and conditions of this End User License Agreement (hereinafter „**EULA**“) either time-based or on perpetual basis, unless the parties agree from time to time otherwise on the basis of an offer and its acceptance each of which are made in text form (§126b German Civil Code/BGB) (hereinafter: „**Individual Agreement**“).

1. Scope of the EULA

- a. This EULA applies to hyperMILL CAD/CAM software developed by OM itself and to software which is distributed under trademarks held by OM (hereinafter: „**Software**“ or „**OM-Software**“). Licensor reserves its right to introduce and offer deviating licensing terms for any software that does not qualify as „OM-Software“ (hereinafter: „**Third-Party-Software**“).
- b. This EULA does not apply to the hyperMILL PYTHON Toolkit. Different terms of use apply to this software.
- c. This EULA applies to Software initially delivered to End Customer and to any future „**Releases**“ of Software (Major Release, Updates or Hotfixes) delivered by Licensor to End Customer under an Individual Agreement (as part of warranty or maintenance). In case of a „**Major Release**“ Licensor makes available a variety of Updates and/or Upgrades; „**Upgrades**“ are characterized by new functions or material modifications to the licensed Software which are not offered by Licensor as part of any maintenance services, but must be licensed outside and in addition to any maintenance service under a separate Individual Agreement.
- d. This EULA applies to all material accompanying the Software (documentation and OM-dongle).
- e. The Software and the accompanying documentation are protected by copyrights and contain confidential information or will be provided together with confidential information of OM (e.g. license and serial codes of the Software). No rights exceeding those explicitly set out herein are granted to End Customer with respect to the Software and/or documentation, unless otherwise explicitly agreed in the Individual Agreement. End Customer commits towards Licensor to use the Software in strict compliance with the conditions of this EULA and to refrain from any use of the Software which is not explicitly permitted by the EULA and/or the applicable Individual Agreement.

2. Licensor's Retention Right

- a. End Customer acknowledges that each usage right set out in Sections 3 and 4 of this EULA is being granted by OM only subject to the condition that the End Customer has paid to Licensor the agreed license fees for the Software, i.e. in case of a perpetual license the one-time payable license fee and in case of a time-based license the monthly fees agreed in the Individual Agreement. Any End Customer's use of Software before such payment may be withdrawn by Licensor at any time. Such withdrawal remains effective until full payment has been effected.
- b. To secure the aforesaid retention right of Licensor, End Customer will obtain a temporary license- or serial-code together with the Software, even in case End Customer has been granted a perpetual license (in general limited to a three months period). In case a perpetual license has been granted to End Customer, such End Customer will receive a perpetual license- or serial-code for the use of the Software subject to the restrictions set forth in Sections 3 and 4 of this EULA only upon full payment of the one-time payable license fee.
- c. The Licensor may at any time - especially as part of maintenance – replace the license- or serial-code based system with similar measures reasonably required for securing Licensor's payment claims, especially by introducing a digital rights managements system.

3. OM-License Types

- a. If End Customer in an Individual Agreement is granted a single software license (hereinafter: „**Seat-License**“), End Customer - following payment of the license fees - obtains the right to install the Software on several computers and to use the Software in accordance with the restrictions set forth this EULA, provided that always only one copy of the Software is used at the same time on a computer to which the OM-Dongle is connected.
- b. If End Customer in an Individual Agreement is granted a software network-license (hereinafter „**Floating-Network-License**“), End Customer - following payment of the license fees - receives the right to install the Software on a server and to use the Software on each computer connected via the network to the licensed server subject to the restrictions set forth in this EULA, provided that the Software is solely used at the same time by no more than such number of users that End-Customer has paid the license fees for and that are authorized by the network-compatible OM-dongle.
- c. The following time zone restriction applies to both the Seat-License and the Floating-Network-License: Use (including any form of remote use) is limited to the time zone in which the End Customer has its (administrative) headquarters. If the End Customer is located in a country (in the sense of a nation state) that extends over several time zones, the country in question is licensed, regardless of the number of time zones involved.
- d. Both Seat License and Floating Network License are granted to the End Customer named in the Individual Agreement. Companies, entities affiliated with the End Customer are only entitled to use the Software under a Seat- or Floating-Network-License if and for as long as the End Customer holds 100% of the shares in them and these companies, entities are located in the time zone for which the End Customer has acquired his license (letter c), unless the Individual Agreement expressly provides otherwise. End Customer is fully liable for any use of the Software by such affiliated companies, entities.

4. License Restrictions

- a. End Customer may create a back-up copy of the Software for both OM-license types specified in Section 3, provided that the back-up copies will not be installed or used, except and to the extent necessary to restore a single copy of the Software after the occurrence of a defect or a damage.
- b. For none of the OM-license types mentioned in Section 3 End Customer shall be permitted
 - to provide the Software or any serial- or license-codes to third parties, unless explicitly permitted otherwise under lit. c below;
 - to modify the Software, to integrate the Software to another program, to merge the Software with other programs, to reverse engineer, decompile or disassemble the Software or otherwise attempt to discover the source code, or to try to delete Third-Party-Software integrated to the Software, unless mandatory statutory copyright law provides otherwise and this decompilation is indispensable to achieve interoperability to another software-program and End Customer has first requested OM to provide the information necessary to achieve interoperability, but OM has not made such information available (OM reserves the right to impose reasonable conditions and to request a reasonable fee before providing such Information);
 - to lease or otherwise make the Software available to third parties; and/or
 - to provide services, time-share or subscription services, which are based on the Software or which otherwise use the Software, to third parties.
- c. End Customer may transfer Seat-Licenses and Floating-Network -Licenses that are licensed on a perpetual basis to any third party solely in case any and all of the following conditions are met:
 - (i) with respect to Floating-Network -Licenses, such transfer must apply for the license in full (this means individual seat-licenses cannot be separated from a Network-Site-License); Seat-Licenses can be transferred individually;
 - (ii) only in case of non-existence or following the termination of an Individual Agreement on maintenance services for End Customer;
 - (iii) End Customer does not retain a copy of the Software and hands over the complete Software (including all Releases, Upgrades, accompanying documentation, license and serial codes) to the respective acquirer, and
 - (iv) the acquirer of the transferred Software confirms in writing to the Licensor or a partner identified by OM to comply with the EULA. Neither OM nor other Licensors are obliged to offer the acquirer maintenance services.Time-based licenses are non-transferable.

5. General Provisions

- a. End Customer shall neither disclose nor provide license- or serial-codes of the Software and/or accompanying documentation to any third party, unless all of the conditions of Section 4 (c) are met.
- b. The Software may include a compliance intelligence mechanism for security and reporting purposes ("Security Mechanism") that automatically collects and transmits data regarding the installation and use of the Software to Licensor and the manufacturer of the Security Mechanism for purposes of verifying End Customer's compliance with the terms of the applicable EULA, identifying unauthorized use and users, and otherwise protecting and enforcing intellectual property rights. Data processed through the security mechanism may include, but is not limited to, user, device and network identification information, location and organizational domain information and software usage information. For more information about the processing of personal data through the Security Mechanism, please see our privacy policy at <https://www.openmind-tech.com/de/footer/datenschutz.html>.
- c. End Customer may copy accompanying documentation subject to OM's prior written consent. End Customer shall not change or delete any copyright or trade mark notice from the Software or any accompanying documentation.
- d. In case of a defect of the supplied OM-dongle, End Customer may request a replacement by Licensor against provision of a new replacing dongle. Within the warranty period or within the term of an Individual Agreement on maintenance services the replacement will be made free of charge. Following expiration of the warranty period or outside an Individual Agreement on maintenance services the replacement will be made against payment of a lump sum of Euro 250 plus shipping costs. In case the End-Customer has lost the dongle (not the software itself) or in case a damaged license- or serial-code prevents End-Customer from using the Software, then End-Customer will receive any replacement only if he pays the above lump sum plus shipping costs and signs a written declaration to cease and desist from any further use of the replaced dongle and license- and serial-code subject to a reasonable contractual penalty, in order to avoid the payment of the then current full license fee for the Software.
- e. In case End Customer has obtained the Software code more than once (e.g. on CD, download or under maintenance), only one of the received copies may be used in accordance with the respective OM-license type.

THE ADDITIONAL CONDITIONS (e.g. as to warranty, applicable law, jurisdiction) APPLICABLE BETWEEN THE PARTIES ARE SET OUT IN THE INDIVIDUAL AGREEMENT BETWEEN END CUSTOMER AND THE RELEVANT LICENSOR. THIS EULA FORMS AN INTEGRAL PART OF SUCH INDIVIDUAL AGREEMENT. END CUSTOMER ACCEPTS THE EULA BY INSTALLING THE SOFTWARE.