

General Terms and Conditions of OPEN MIND Technologies AG for the Licensing of Software

Software of OPEN MIND Technologies AG, Argelsrieder Feld 5, 82234 Wessling, Germany (hereinafter: **OM**) provides software (hereinafter: **Software**) to business persons and companies in the sense of Section 14 of the German Civil Code (hereinafter: **Customer**) subject to the below stipulated general terms and conditions (hereinafter: **T&C**), unless OM and Customer have explicitly agreed otherwise in text form in the sense of Sect. 126b German Civil Code (BGB) (hereinafter: **Textform**) on a case to case basis by way of an offer and its acceptance (hereinafter: **Individual Agreement**)

1. Scope of the T&C

- a. These T&C shall apply for (i) Customers who make use of the Software for their own internal business purposes (hereinafter: **End User**) as well as (ii) Customers who act as resellers of the Software to third parties (hereinafter: **Partner**) to the extent OM and Partner did not explicitly agree otherwise with these Customers in the relevant Reseller Agreement.
- b. These T&C apply to perpetual Software licenses and to time based Software licenses.
- c. These T&C apply to the Software as initially delivered to Customer, and as well to any later "**Release**" of the Software (Major Releases, Updates or Hotfixes) that may be delivered to Customer under separate/additional Individual Agreements. In case of a "**Major Release**" OM makes available to Customer a variety of Updates and/or Upgrades. "**Hotfixes**" are limited to Updates. "**Upgrades**" are characterized by new functions or material modifications to the licensed Software, which will not be delivered by OM as part of any maintenance services, but must be licensed by Customer outside and in addition to any maintenance service under a separate Individual Agreement regarding the licensing of Upgrades.
- d. These T&C apply to any tool data (geometry and technology data) of OM's partner companies which OM makes available to the Customer in connection with and for the purpose of using the Software (e.g. feed rates and speeds for the processing of certain materials).

2. Conclusion of Individual Agreements, Term of Time Based Licenses

- a. No conflicting or other conditions, notably Customer's general terms and conditions, do apply, even in case OM has performed an Individual Agreement without expressly rejecting any such conditions.
- b. All offers of OM are non-binding, unless OM explicitly identifies the offer as binding for OM. OM may accept incoming offers issued by the Customer within two weeks following the receipt of the offer.
- c. Each offer and its acceptance must be in Textform to be valid. Also side- and supplementary agreements, specifications, warranties, representation, guarantees and assurances and any other agreements between the parties shall be valid only if made in Textform and if expressly referencing the respective Individual Agreement to which it belongs. With respect to any guarantees or assurances ("**Zusicherungen**") that may be given by OM the additional requirements of Section 3 (b) below of these T&C shall apply.
- d. In case OM offers to provide Customer various deliverables or services with different scope and separate prices (e.g. delivery of different software products, training, professional services,), each offer or agreement on one of the deliverables or services deems to be a separate and independent offer or Individual Agreement, unless explicitly stated otherwise in the offer or in the Individual Agreement. The fact that an offer or Individual Agreement identifies an overall price for several or all deliverables or services shall itself not be construed as an offer of OM or an agreement of the parties to conclude one single Individual Agreement for these deliverables or services that are part of the overall price.
- a. Individual Agreements on time based Software licenses concluded during the year have a term until December 31 of the same year, unless the Individual Agreement exceptionally provides for a different term. Individual Agreements on time based Software licenses shall be automatically extended by one year in each case, unless one of the parties notifies the other party in writing, observing a period of notice of at least three months before the respective extension takes effect, that it does not wish to extend the contract (hereinafter also referred to as "non-renewal notification"), whereby the first non-renewal notification for each of the parties is only permissible after the expiry of a minimum term of one year. The right of each party to terminate the Individual Agreement for cause in accordance with the applicable law remains unaffected.

3. Scope of Individual Agreements

- a. The properties, specifications and quality of the Software, including without limitation any information as to the hardware and infrastructure required for the use of the Software, will conclusively be described (i) by the related OM sales documents, (ii) the Release notes and data sheets, and (iii) all other information that may be published on OM's website (hereinafter all of the foregoing (i) through (iii): **Material**), unless agreed otherwise in Textform in the Individual Agreement.
- b. Descriptions as to properties, specifications or quality of the Software in the Material shall neither be construed as an assurance of OM on certain properties ("**Eigenschaftszusicherung**") nor as a guarantee. Specific descriptions as to the properties, specifications or quality of the Software made in the Individual Agreement shall only be understood as an assurance or as a guarantee if expressly referred to with the terms "assurance" and/or "guarantee" and if confirmed in Textform by the management board of OM.
- c. The Software will be delivered in machine readable object code only. OM shall not be obliged to render any supplementary services related to the Software such as training, installation or customization services (e.g. in relation to post processors), unless specifically agreed otherwise in the Individual Agreement. For any such supplementary services agreed in the Individual Agreement OM's then current General Terms and Conditions of OM for Professional Services shall apply.
- d. In case and to the extent the Software is a proprietary product of OM or is distributed under a trade mark hold by OM (hereinafter: **OM Software**), the Software is delivered together with Material in such language version as agreed between the parties in the Individual Agreement which language version may be chosen from the language version list published on www.openmind-tech.com. Customers

not seated in one of the countries covered by the language version list published on www.openmind-tech.com will receive the English language version of Software and Material, except explicitly agreed otherwise. In relation to Software which is not proprietary to OM or not distributed under a trade mark held by OM (hereinafter: **Third Party Software**), OM shall be obliged to deliver Material only if and to the extent and in such language version as provided by the relevant third party supplying the Third Party Software to OM.

- e. OM is entitled to take adequate technical measures for the prevention of any use of Software contrary to these T&Cs or the terms and conditions of the respective Individual Agreement (hardware lock, dongles, authorization codes, digital rights management etc.), provided that the use of Software on any succeeding or replacing hardware instance of Customer shall not be unreasonably affected or impeded by such technical measures. The Software, OM may also 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 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>.
- f. Unless agreed otherwise in the Individual Agreement, OM may elect, in its reasonable discretion, to deliver the Software and/or the Material in accordance with the following: Either by delivery of a data carrier on which the Software and/or Material is stored upon, by way of e-mail, or by enabling the Customer to download the Software and/or Material from the above mentioned OM website.
- g. OM reserves the right to make technologically required changes and modifications to the Software or Material before their delivery to Customer (e.g. by delivering Releases), provided that the properties, specifications and quality set forth in the Individual Agreement continue to be met or are exceeded.
- h. Partial delivery and/or preliminary delivery are permitted, unless such delivery may not reasonably be expected from Customer.
- i. Insofar as OM makes tool data of partner companies (see Sect. 1 (d)) accessible without additional remuneration, the customer does not acquire any claim to the availability of these data or to an update of these data. OM may terminate the availability of such data at any time.

4. Delivery Dates and Delay

- a. Time lines and dates mentioned in an Individual Agreement (hereinafter: **"Delivery Dates"**) are non-binding target dates or time-lines points, unless they have expressly and in Textform been agreed as a fixed Delivery Date in the Individual Agreement. In the case the parties agreed on such a fixed Delivery Date, OM shall only be considered to be in delay of delivery under the following conditions: (i) delivery is due and (ii) OM fails to deliver within a reasonable extension period as granted by Customer by Textform notice; and (iii) such delay has been caused solely by OM's default.
- b. OM's compliance with fixed Delivery Dates further requires that Customer timely and fully complies with Customer's own obligations to cooperate, to fully adhere to the terms of payment and all other obligations of Customer hereunder. Should these obligations not be met on time by Customer for any reason, the agreed Delivery Dates shall be extended accordingly. All further rights and remedies of OM are reserved.
- c. Should the non-compliance with any agreed Delivery Date be attributable to circumstances beyond OM's reasonable control including without limitation acts of God, governmental actions, war or national emergency, riot, terrorism, civil commotion, fire, explosion flood, epidemic, lock-outs, strikes or other labor disputes, power outages, failures in telecommunication links or equipment or to other unexpected circumstances such as shortage of supplies, the agreed Delivery Date shall be extended by a period equal to the delay caused by such force majeure event. In case the delivery is delayed for the above reasons or becomes impossible or cannot be reasonably expected due to such circumstances, OM may cancel the affected Individual Agreement without any further liabilities. OM will inform the Customer without delay about the occurrence of such circumstances.
- d. In the case that slight negligence of OM is causing the delay with a fixed Delivery Date, OM's liability shall be excluded with respect to damages resulting directly from the delay ("Verzugsschaden") and otherwise limited to typical damages and to an amount which, upon the date of conclusion of the respective Individual Agreement can reasonably be expected by OM as a possible damage. This liability shall however not exceed a maximum of 5% of the fees agreed for the Software. Customer may terminate the Individual Agreement, provided OM is responsible for the delay in delivery. Upon request of OM Customer shall inform OM within reasonable time whether Customer, as a result of such delay, terminates the Individual Agreement or continues to insist on the delivery of the Software. The aforementioned limitation of liability shall not apply in case OM has caused the delay with wilful misconduct, gross negligence.
- e. All performance obligations of OM are under the explicit reservation of full and timely performance and delivery by all sub suppliers that have been engaged by OM, provided that the parties did not agree otherwise in the Individual Agreement in Textform. On the basis of this reservation OM is not liable for delays resulting from incorrect, defective or delayed delivery by OM's suppliers to OM, and OM is entitled to rescind ("zurücktreten") the affected Individual Agreement in these cases.

5. Customer's Right to Use the Software

- a. In each case of perpetual and time-based licensing OM grants End User only the non-exclusive license rights as set forth in the respective EULA, unless agreed otherwise in the Individual Contract; the EULA applicable to OM Software is downloadable at www.openmind-tech.com and integral part of the installation process. In case of any perpetual Software licence grant, End User shall be granted any perpetual license rights and the right to download any perpetual license- and serial-codes for the use of the Software only subject to the full payment of the applicable license fees.
- b. Unless explicitly agreed otherwise in the Individual Agreement in Textform (e.g. for test installations), Partners non-exclusive rights to use the Software are limited to any use which is necessary for the distribution and installation of the Software as per the applicable reseller agreement.
- c. OM and/or its third party licensors shall retain all copyright and other proprietary rights in and to the Software, the Material, and any related product name, brand or trademark. Customer does not acquire any rights, express or implied, in the Software, other than those

explicitly specified in this Section 5.

6. Obligations of Customer

- a. End User is responsible for installing the Software and shall ensure that End User's hardware and IT infrastructure is and remains suitable for use in combination with the Software, unless OM has explicitly committed in an Individual Agreement on Professional Services to perform certain of installation obligations as per Sect. 3 (c) of these T&C.
- b. In case OM licenses postprocessors to End User or is committed to provide related customization services as per Sect. 3 (c) of these T&C (e.g. in relation to postprocessors), Customer shall provide OM with such information and data that is necessary for such license grant and customization and that has been verified and released by the respective machine manufacturer. Customer is aware that any non-verified and non-released data or information (e.g. incorrect or outdated machine data) may cause consequential damages, especially damages to property, when using the Software. After installation of an adapted post-processor, Customer must immediately check it for its basic functional capability and report any defects that occur within 10 working days after initial installation. Customer shall also carefully check and validate the results (e.g. NC codes) generated with the help of the postprocessors, also by using appropriate software validation tools (e.g. hyperMILL@VirtualMachining) or by test runs, in particular if these results are used in an application that involves risks for persons or things (e.g. machines or workpieces).
- c. If OM provides the Customer with tool data from its partner companies, the Customer will check these for their actuality, completeness and plausibility before using them together with the Software. The Customer is aware that incorrect, outdated or incomplete tool data can lead to consequential damage when using the Software.
- d. If and to the extent a (time limited or perpetual) license- or serial-code is required for using the Software, the End User shall take all necessary actions in order to obtain these codes from OM and shall enter all information relating to the End User and the distributing Partner truthful and keep such information up to date. In any following correspondence with OM, especially with respect to new orders placed by Customer, Customer will refer to all identifying data requested by OM.
- e. Customer is obliged to run regular data backups. Customer shall apply all measures reasonably required to safeguard any data relevant for his business for the case the Software does not operate as agreed following the installation of the Software.
- f. The Customer shall verify immediately following the installation of the Software that the Software operates defect-free and inform OM about any defects within 10 working days following the download of the license- and serial code latest. Customer shall notify OM about any defects becoming apparent at later stages within the aforesaid timeframe. Such notifications must be made by Customer in Textform, if available via the online portal support@openmind-tech.com. Each notification shall describe the defect in a detailed and comprehensible manner. Such description shall include especially the relevant steps taken by Customer prior to the occurrence of the defect, the manifestation of the defect and its consequences. In case Customer fails to comply with the aforesaid obligations, all Customer rights and remedies under Section 8 shall forfeit.
- g. The Customer shall reasonably support OM's remedial actions of defects that have been notified by Customer in accordance with Sect. 6 (e) above of these T&C. To the extent reasonable, Customer shall provide a remote access to his hardware and IT infrastructure. Customer may request OM to sign an industry standard non-disclosure agreement prior to providing such remote access.
- h. The Customer shall reimburse OM for all efforts that OM incurs as a result of (i) any inspection or defect rectification activities of OM caused by the Customer, provided the Customer was aware or could have been aware but was not aware due to his negligence that the Software is free from the alleged defect, or (ii) any breach of the terms of these T&C, the Individual Agreement or other agreements or special terms and conditions in place between the parties, unless the Customer is not at fault. These activities of OM will be reimbursed as per sentence 2 of Section 7 (a) of these T&C.
- i. The Customer shall validate with due care all results that are created by using the Software (e.g. the nc-codes created by the Software), which may include a validation of such results by professional software validation tools, especially if such validation is necessary or at least helpful to avoid any consequential damages to health and property.
- j. The Customer will safeguard that all and any source code, Material, license- or serial codes and any data required to enable the use of the Software under a digital right management system available with the Software will be kept in strict confidence and not disclosed to any third party, unless the EULA provides otherwise.
- k. The Customer shall refrain from any activities enabling any unauthorized use of the Software, Material and/or license- and serial-codes. Customer especially shall not attempt to decompile the Software unless mandatory applicable law provides otherwise. Customer may decompile the Software only subject to and in strict compliance with mandatory statutory law and only after OM has finally refused to render the required activities itself. Customer will inform OM immediately in case Customer becomes aware of any unauthorized use or access to the Software and/or Material.

7. Fees, Terms of Payment

- a. The license fees payable for the Software are set forth in the Individual Agreement. Any supplementary services relating to the licensed Software (e.g. Professional Services of OM) will be charged to Customer - together with related travel costs and expenses - separately on a time and material basis.
- b. All fees and prices - as may be set out in the offers and/or Individual Agreements - are in Euro and exclusive of any tax and duties.
- c. Unless agreed otherwise in Textform between the parties, OM will invoice fees for perpetual licenses following conclusion of the Individual Agreement, fees for time based licenses monthly in advance, and such invoiced amounts shall be due and payable without deduction upon receipt of the invoice.
- d. In case the Customer fails to timely pay due amounts (or parts thereof), OM may make subsequent deliveries subject to receipt of prepayments or to the provision of a security deposit, and/or shall be entitled to claim the payment of all open invoices.
- e. Subject to Section 7 (f) of these T&C all payments shall be made without deduction to the banking account identified by OM, unless the parties agreed in the Individual Agreement the applicability of the SEPA direct debit scheme. OM accepts bills or cheques only if beforehand agreed hereupon and only on account of payment. Any discount or banking charges are for Customer's account.

- f. The parties agree that during the term a SEPA direct debit scheme applies between the parties, the term to pre-notify Customer about the collection of payments are reduced to five (5) calendar days before the actual collection occurs. The notice will be made within the related invoice.
- g. Invoices will be sent electronically to the Customer by OM.
- h. Customer may make a set off against claims of OM only based on such counterclaims that are undisputed or recognized by final judgement; Customer may claim rights of retention only based on such claims. Customer may claim rights of retention only regarding such claims which are based on the same Individual Agreement.

8. Limited Warranty for Defects as to the Quality ("Sachmängelhaftung")

- a. OM solely warrants that the Software upon its delivery materially complies with the properties, specifications and quality as explicitly agreed in the Individual Agreement or set forth in the Material. Any insignificant deviation of the Software from the agreed properties, specifications and quality shall not be considered as a defect. In addition OM shall have no liabilities towards Customer for non-reproducible defects or for defects not caused by/with OM's default, specifically not for any tool data provided by its partner companies.
- b. Provided the Customer has notified a defect in accordance with Section 6 (e) above and provided the Customer may raise warranty claims as per the terms set out herein based on such defect, the Customer may at first claim subsequent performance by either - in OM's sole discretion - the provision of a defect free Software or the rectification of the defect including the provision of an available Release, subject to OM's Terms and Conditions on Maintenance Services. OM will provide Customer with these terms and conditions upon Customer's request, if no Individual Agreement on OM's maintenance service is in place between the parties. Only in case the subsequent performance as per the terms applicable for OM's maintenance service fails at least twice, Customer may claim - subject to all relevant requirements of statutory applicable law - the reduction of the fees paid or payable for the defective Software, rescind ("zurücktreten") from the affected Individual Agreement regarding perpetual licenses, terminate the affected Individual Agreement regarding time based licenses and/or claim damages or the reimbursement of expenses subject to the limitations in Section 10 of these T&C. Customer shall inform OM within reasonable term (as a general rule within 14 calendar days) of the choice taken in relation to the claims available as per these T&Cs.
- c. In case of a perpetual Software license all claims of Customer resulting from a defect shall be time barred twelve months following the date of the invoice as per Section 7 (c) or - in case OM renders the implementation of the Software as per Section 3 (c) above - following the completion of the implementation. Longer statutory periods shall remain unaffected with respect to Customer's claim to recourse as per Section 478 of the German Civil Code (BGB), claims as per Section 438 para.1 no. 2 German Civil Code (BGB), in cases of wilful misconduct, gross negligence, fraudulent concealment of a defect ("arglistiges Verschweigen"), bodily harm or death.
- d. Potential guarantees or warranties provided by the respective manufacturer of any Third Party Software remain unaffected from the above and will be granted in addition to and independent of the limited warranty described in this Section 8.

9. Limited Warranty for Infringement („Rechtsmängelhaftung“)

- a. OM warrants that the Software upon its delivery does not infringe third party intellectual property rights existing or acknowledged in the European Union or the European Economic Area. OM's warranty obligations for the infringement of third party intellectual property rights by OM Software are subject to the following conditions and limitations:
 - (i) Warranty claims of Customer require that all of the following conditions are met:
 - Customer has used the OM Software in strict compliance with the Individual Agreement and these T&C, and
 - Customer has used the OM Software only within the European Union or the European Economic Area, and
 - Customer has informed OM without undue delay about the alleged infringement of third party property rights, and
 - OM has caused the infringement by wilful misconduct or gross negligence.
 - (ii) Provided the conditions under (i) are met, OM will either, in its sole discretion, (i) obtain a right for Customer to use the OM Software, or (ii) modify the OM Software to remedy the infringement, or (iii) return the OM Software and reimburse Customer the paid license fees (under deduction of a reasonable amount for the prior use) in case options (i) or (ii) cannot be achieved with reasonable effort. OM will reasonably consider Customer's interests when electing one of the aforesaid options.
- b. Warranty claims of Customer resulting from the infringement of third party intellectual property rights by Third Party Software shall be limited to those remedies that are successfully realized by OM by taking recourse against its own suppliers respectively the manufacturer of the Third Party Software, unless OM was aware (or could have been aware by applying reasonable care) of the infringement upon the conclusion of the Individual Agreement. In the latter case Section 9 (a) (i) and (ii) of these T&C shall apply accordingly.
- c. In case of a perpetual Software license all claims of the Customer resulting from the infringement of third party intellectual property rights are time barred as per Section 8 (c) accordingly. Any statutory liability of OM for the infringement of third party intellectual property rights exceeding the liability set out in this Section 9 (a) and (b) is explicitly excluded.
- d. Potential guarantees or warranties provided by the respective manufacturer of any Third Party Software regarding the non-infringement of third party intellectual property rights remain unaffected from the above and will be granted in addition to and independent of the limited warranty described in this Section 9.

10. Limited Liability of OM, Limitation of Customer Claims

- a. Unless provided otherwise by Section 4 (d) of these T&C for late or non-delivery, OM will be liable to the Customer only in case of OM's fault ("Verschulden") and to the extent as explicitly set out by this Section 10.
- b. OM's liability – irrespective of its legal ground – shall be unlimited in case of intent and gross negligence, in case of injuries to life, body or health, pursuant to the terms of the applicable Product Liability Act, or under a guarantee explicitly granted by OM.
- c. OM's liability for slight negligence is excluded except for those damages resulting from a slight negligent breach of cardinal duties (i.e. duties which enable the performance of the Individual Agreement and are precondition of the performance of the Individual Agreement

and which the Customer may therefore rely upon) shall be limited to such damage which was typical for this kind of business and foreseeable upon the execution of the Individual Agreement.

- d. The liability for loss of profit, unrealized savings, loss of production and other consequential damages is excluded. The Parties agree per damaging event and per contractual year on a cap of 10 % of the net value of the affected Individual Agreement. The parties may agree on an exceeding liability against payment of additional fees in the Individual Agreement. The liability as per Section 10 (b) remains unaffected from this Section.
- e. OM's liability resulting from a guarantee only in case such liability was explicitly included in the guarantee. Any liability resulting from a guarantee is limited in cases of slight negligence as per Section 10 (c).
- f. The liability for loss of data or information is limited to the effort required to restore such data or information if Customer would have applied reasonable backups. In case of slight negligence of OM such liability only applies in case the Customer has made such backup immediately prior to the damaging event.
- g. All claims of Customer for damages shall be time-barred after 12 months (beginning to run pursuant to the applicable statutory limitation provisions), except for cases where OM's liability is based on wilful misconduct, gross negligence, death or bodily harm.
- h. The provisions of Sections 10 (a) through (g) shall apply accordingly for any reimbursement or compensation claims ("Aufwendungsersatzansprüche") of Customer against OM.

11. General Provisions

- a. All legal relations between the parties and their conclusion shall be governed by and construed in accordance with the laws of Germany, without recourse to its conflict of Laws provisions. The provisions of the United Nations Convention on the Sale of Goods (CISG) are not applicable.
- b. In case a provision of these T&C or the Individual Agreement is or becomes invalid or unenforceable, the effectiveness of the remaining provisions shall not be affected. The parties shall replace the invalid or unenforceable provision by such valid and enforceable provision as comes closest to the parties' intention at the time of the conclusion of the Individual Agreement.
- c. The performance of an Individual Agreement by OM is subject to the proviso that there are no obstacles due to national or international regulations of foreign trade law, embargoes and/or other sanctions. If such an obstacle becomes apparent to OM, OM shall immediately inform Customer in Textform. If the obstacle cannot be removed with reasonable effort for both parties within four weeks after knowledge, each party shall be entitled to terminate the affected Individual Agreement in writing.
- d. Customer shall observe the import and export regulations to be applied for the receipt and use of deliverables received from OM as well as the data generated by the Software on his own responsibility, in particular those of the USA, and shall conduct the relevant legal or official proceedings on his own responsibility, unless otherwise expressly agreed in the Individual Agreement.
- e. Alterations or modifications of the Individual Agreement shall only be valid if agreed upon in Textform. The same shall apply for any alteration of this paragraph.
- f. The Individual Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all previous communications, representations, understanding and agreements, either oral or written, between the parties with respect to such subject matter hereof.
- g. Exclusive legal venue for all disputes arising in connection with or as a result of these T&C and/or the Individual Agreement shall, for Customer, be the courts competent for the seat of OM. OM may, at its sole discretion, choose to bring proceedings at another venue permitted by applicable laws, provided Customer is a business person, a legal entity under public law ("juristische Person des öffentlichen Rechts") or a public law special funds ("öffentlich-rechtliches Sondervermögen").