

## TERMS AND CONDITIONS FOR SIMULATION MODELS

## § 1 Application, Subject Matter of the Contract

- (1) These terms and conditions shall apply exclusively. Differing or contrary terms shall not apply except if expressly agreed upon in writing.
- (2) These terms and conditions shall also govern all future transactions between the parties.
- (3) The Terms & Conditions in this version apply to all agreements concluded from **01.11.2020** until a new version is published, whereby the version that was valid at the time of conclusion is always applicable, regardless of whether a new version has been published in the meantime, unless the customer is explicitly informed about the update and change of the Terms and Conditions based on the applicable legal regulations, then the new version applies.
- (4) These terms and conditions shall only apply vis á vis entrepreneurs, governmental entities, or special governmental estates within the meaning of sec. 310 para. 1 BGB (German Civil Code).
- (5) TWAICE Technologies GmbH, Joseph-Dollinger-Bogen 26, 80807 Munich, Germany (hereinafter referred to as the "Licensor") shall rent the TWAICE Simulation Models (hereinafter referred to as the "Software") to the Licensee for the agreed period, as well as the license files required for operation (hereinafter referred to as the "Licenses") and the associated application documentation (hereinafter referred to as the "Application Documentation") in English (hereinafter referred to collectively as the "Contractual Objects") under these terms and conditions.
- (6) The source code of the Software is not part of the contractual objects.
- (7) The product description valid at the time of conclusion of the contract and available to the Licensee prior to concluding the agreement shall decisively determine the quality of the Software delivered by the Licensor. The Licensor shall not be obliged to provide any software with higher specifications.
- (8) The Software requires certain hardware and software environments for proper operation, which are defined in the product description; furthermore, it will require an internet connection. This must be established once within a period of two weeks in order to verify the license. The existence of the hardware and software prerequisites defined here as well as the existence of an Internet connection is a prerequisite for the Software to be able to run.
- (9) If separate Software extensions ("add-ons") are purchased by the Licensee, these add-ons shall also be subject to these terms and conditions.
- (10) If employees of the Licensor issue warranties prior to the conclusion of the contract, these shall only be effective if they are confirmed in writing by the management of the Licensor.

## § 2 Delivery

- (1) The Software is made available to the Licensee in accordance with the provisions of these terms and conditions either on a storage device or as a password-protected installation file for download via the Internet.
- (2) Licenses are required for the operation of the Software in accordance with § 3 of these terms and conditions. The licenses are delivered as USB-Dongle (CmStick) or license file (CmActLicense) according to the stipulations of the contract.
- (3) Together with the Software, the Licensor shall deliver the application documentation in English electronically to the Licensee.

## § 3 Granting of Rights

- (1) With the contractual acquisition of licenses, the Licensor grants the Licensee the simple (non-exclusive) right to run the Software and use it for the period of time specified in the contract with the specified number of licenses. If it is not stated in the contract it is a 12 months license period. The following types of licenses can be rented by the Licensee:
  - Named User: If the contract stipulates use with named users, only one registered user per license is entitled to use the Software. Only one natural person may be assigned to a named user. The Licensee is not allowed (and this would represent a copyright infringement) to let several natural persons use the Software under one user name. The Licensee may change the registered user of a named user license twice per contract year.
  - Designated Computer: The license entitles to use the Software on a single registered computer. The Licensee must ensure that the Software only runs on the designated computer and that only one user, to whom only one

natural person is assigned, has access to the designated computer at any time. The Licensee is not allowed (and this would represent a copyright infringement) to let several natural persons use the Software on the designated computer. The Licensee may change the registered computer of a designated computer license twice per contract year. ■ Concurrent: If concurrent licenses are contractually agreed upon, the Software may be used by any natural persons who are employees of the Licensee. However, the number of concurrent users of the Software may not exceed the number of rented concurrent licenses.

- (2) Irrespective of § 3 (2), the Licensors shall grant the Licensee the simple (non-exclusive) right, against payment of the contractually agreed remuneration, to use and let the Software run for the contractually agreed time with the contractually agreed number and type of licenses (software rental).
- (3) The Licensee may only use the Software for the purpose of processing its internal business transactions and those of companies affiliated with it within the meaning of Section 15 of the German Stock Corporation Act ("Group Companies"). In particular, computing center operation or the temporary provision of the Software (e.g. as Software-as-a-Service, SaaS) for companies other than group companies or the use of the Software for the training of persons who are not employees of the Licensee or its group companies are only permitted with the prior written consent of the Licensors.
- (4) Reproductions of the Software are only permitted to the extent that this is necessary for use in accordance with these terms and conditions. The Licensee may make backup copies of the TWAICE Simulation Model to the extent necessary in accordance with the rules of technology. Backup copies on movable storage devices shall be marked as such and provided with a copyright notice ("© TWAICE Technologies GmbH").
- (5) The Licensee shall only be entitled to make changes, extensions and other modifications to the Software within the meaning of § 69 c no. 2 of the German Copyright Act (UrhG) to the extent that the law permits such modifications, extensions and other modifications. Before the Licensee eliminates errors by himself or through third parties, he will allow the Licensors three attempts to eliminate the error.
- (6) The Licensee may not decompile, disassemble or reverse engineer the software.
- (7) The publication and revision of the application documentation is not permitted. Reproduction (e.g. in the form of photocopies, printouts or making it available to own employees) is only permitted for internal company purposes.
- (8) Copyright or other property right notices within the Software may neither be removed nor changed.

## § 4 Transfer of the Contractual Objects

- (1) The Licensee is not entitled to give the contractual objects to third parties without the permission of the Licensors, especially not for selling them on or leasing them.
- (2) It is permissible for the Licensee's employees or other third parties subject to the Licensee's right of instruction to use the Software dependently within the scope of the intended use.

## § 5 Remuneration, Terms of Payment

- (1) The customer shall pay an annual rent and usage fee for the usage of the software and for granting the rights of use described in these general terms and conditions during the term of the agreement. The amount of the annual usage fee shall be determined by TWAICE's offer. The amount stated in the offer is exclusive of applicable sales tax. The usage fee shall be invoiced by TWAICE after acceptance of the offer by the customer.
- (2) If the contract is extended after 12 months, the usage fee will be invoiced after the beginning of the next 12 months.
- (3) TWAICE shall (unless otherwise agreed) invoice other services on a time and material basis in accordance with its applicable daily rates and shall invoice them monthly in arrears. Expenses and disbursements shall be invoiced additionally upon presentation of proof. Travel times shall be regarded as working hours.

Unless otherwise agreed, invoices are due for payment within 14 days of receipt by the customer. TWAICE is permitted to increase the price of the Software usage rights by up to 7% annually.

## § 6 Installation, Training, Maintenance, Parameterization

- (1) For the installation of the Software, the Licensor refers to the installation instructions within the application documentation. At the request of the Licensee, the Licensor shall undertake the installation of the Software based on a separate agreement.
- (2) The Licensor shall regularly provide the Licensee with general user instructions as well as other special instructions and information on important questions and problems in using the Software.
- (3) The Licensor shall provide brief advice in the event of defects, application problems, malfunctions or other difficulties arising in connection with procedures of the Software on work days from Monday to Friday between 9:00 a.m. and 4:00 p.m. (GMT +1), except on public holidays, at the Licensor's registered office. The Licensor accepts inquiries by e-mail sent to [support@twaiice.com](mailto:support@twaiice.com).
- (4) These terms and conditions do not govern any adaptation of the Software, the creation of a TWAICE Simulation Model for the Licensee with the underlying performance of parameterization and validation measurements or the provision of training courses by the Licensor.

## § 7 Adjustments to New Versions and Further Development of the Software

- (1) If the Licensee wishes to use the Software in a newer version of the software environment (in particular newer versions of MathWorks® MATLAB® Simulink®), the Licensor will adapt the Software to the new version of the software environment upon request. For this purpose, the Licensor shall provide the Licensee with the required newer version of the Software as an installation file.
- (2) The Licensor will continue to develop the Software; any new functions or improvements of the Software shall only be made available by the Licensor for the latest version of the Software, which may require the latest version of the software environment. The Licensee is not entitled to the introduction of new functions or improvements of the Software for older versions of the Software. For technical reasons, the Licensor cannot guarantee that new functions and improvements introduced in newer versions of the Software can also be made available for TWAICE Simulation Models created for older versions of the Software.
- (3) Insofar as individual adaptations to the Software have been made as specified by the Licensee, the Licensor shall make such adaptations in newer versions of the Software for a separate fee.
- (4) The delivery of new versions of the Software shall be carried out by providing a new installation file. The transfer of the source code is not owed. The Licensor grants the Licensee the right to use newer versions of the Software or changes to the Software in accordance with the terms and conditions on which the transfer (upgrade) of the Software is based.
- (5) The Licensee shall be responsible for installing new versions of the Software properly and in accordance with these terms and conditions. At the Licensee's request the Licensor will support the Licensee in this respect for a separate fee.
- (6) Separate add-ons to the Software offered by the Licensor do not constitute new versions of the Software within the meaning of § 7 (1) of these terms and conditions. Add-ons must therefore be purchased or rented separately by the Licensee.

## § 8 The Licensee's Obligations to Cooperate and Provide Information

- (1) The Licensee will carefully store the provided contractual objects in order to exclude misuse.
- (2) The Licensee has familiarized himself with the essential functional features of the Software and bears the risk as to whether the Software meets his wishes and needs; in case of doubt, he has obtained advice from employees of the Licensor or from competent third parties prior to concluding the contract.
- (3) The Licensee is solely responsible for setting up a functional hardware and software environment for the contractual objects that is sufficiently dimensioned - also taking into account the additional space required by the contractual objects. The hardware and software environment required and necessary for the operation of the Software is defined in the application documentation.
- (4) Before using the Software, Licensee shall test the Software for freedom from defects and for usability in the existing hardware and software configuration.

- (5) The Licensee shall observe the instructions given by the Licensor for the installation and operation of the Software.
- (6) Insofar as the Licensor has further obligations beyond the provision of the contractual objects, the Licensee shall cooperate to the required extent free of charge, e.g. by providing employees, work rooms, hardware and software, data and telecommunication facilities.
- (7) The Licensee grants the Licensor access to the contractual objects for the purpose of troubleshooting and error correction, either directly and/or by means of remote data transmission. The Licensor is entitled to check whether the contractual objects are used in accordance with the provisions of these terms and conditions. For this purpose, he may demand information from the Licensee, in particular about the period and scope of use of the contractual objects.
- (8) The Licensee shall take reasonable precautions in the event that the Software does not function properly in whole or in part (e.g. through daily data backups, fault diagnosis, regular checking of data processing results).
- (9) Unless this is expressly stated by the Licensee beforehand, the Licensor may assume that all of the Licensee's data with which the Licensor may come into contact has been backed up.
- (10) The Licensee shall bear any disadvantages and additional costs resulting from a violation of these obligations.

## **§ 9 Defects of Quality and Defects of Title for Software Rental**

- (1) The Licensee is obliged to document any defects in the contractual objects in a manner that is as comprehensible as possible for the Licensor and to notify the Licensor immediately. In doing so, he shall take into account the Licensor's instructions for problem analysis within the scope of what is reasonable for him and shall forward to the Licensor all information available to him that is necessary for the elimination of the defect.
- (2) Defects shall be remedied at the Licensor's discretion by subsequent fulfillment. For this purpose, the Licensor shall, at his discretion, provide the Licensee with a new, defect-free version of the Software or remedy the defect; the defect shall also be deemed to be remedied if the Licensor shows the Licensee reasonable possibilities to avoid the effects of the defect. In the event of defects in title, the Licensor shall, at his discretion, provide the Licensee with a legally unobjectionable opportunity to use the Software or exchanged or modified equivalent components of the Software.
- (3) The Licensee's rights due to defects are excluded if the Licensee makes or has made changes to the Software without the consent of the Licensor, unless the Licensee proves that the changes do not have any unreasonable effects on the analysis and elimination of the defects. The rights of the Licensee due to defects shall remain unaffected, provided that the Licensee is entitled to make changes, in particular within the scope of exercising the right of self-elimination according to § 536a para. 2 BGB (German Civil Code), and that these changes have been carried out and documented in a professional and comprehensible manner.
- (4) If the Licensor provides services for troubleshooting or elimination of errors without being obliged to do so, he may charge for this service in accordance with his usual rates. This specifically applies if a defect cannot be proven or is not attributable to the Licensor. In addition, the additional expenditure on the part of the Licensor that arises because the Licensee has not properly fulfilled his obligations in accordance with § 8 of these terms and conditions shall be remunerated.
- (5) If third parties assert claims that prevent the Licensee from exercising the rights of use granted to him under these terms and conditions, the Licensee shall notify the Licensor immediately and comprehensively in writing and hand over the defense against such claims to the Licensor as far as possible. The Licensee shall provide the Licensor with all reasonable assistance in this regard. The Licensor shall defend against such claims at its own expense and shall indemnify the Licensee against all costs and damages associated with the defense of such claims, provided that such costs and damages are not based on the Licensee's breach of duty.

## § 10 Liability for Software Rental

- (1) TWAICE shall be liable without limitation in accordance with the statutory provisions for damages resulting from injury to life, limb or health as well as for intent, gross negligence and in accordance with the Product Liability Act. Otherwise, the licensor's liability shall be limited in accordance with these general terms and conditions.
- (2) In cases of simple negligence, TWAICE shall only be liable if essential contractual obligations ("cardinal obligations"), which are essential for the proper execution of the contract and on whose fulfilment the customer may rely, are breached and then limited to the objectively foreseeable damage typical of the contract. Otherwise his liability for ordinary negligence shall be excluded. TWAICE shall not be liable in the event of simple negligence on the part of its vicarious agents, unless it is a matter of violation of essential contractual obligations.
- (3) TWAICE's liability under clause 10 (2) under these general terms and conditions shall be limited in total to an amount equal to 50% of the annual user fee paid by customer. Except in the cases mentioned in section 10 (1), TWAICE's liability for indirect damages, consequential damages and loss of profit shall be excluded.
- (4) The limitations of liability set forth in this clause 10 shall apply to all claims for damages and reimbursement of expenses in connection with the supplies and services provided by TWAICE under these general terms and conditions, irrespective of the legal basis.

## § 11 Other services of TWAICE

- (1) Insofar as the customer commissions TWAICE with additional services in connection with the Software that go beyond the so-called handover process (e.g. "Customer Support") and/or makes use of TWAICE's analytical services, the content and scope of these services shall be agreed separately between the parties (if applicable, in the offer).
- (2) Unless expressly agreed otherwise, such services shall be treated as services and not as work services.

## § 12 Term of Contract, Termination of the Software Rental

- (1) The rent begins at the time the Software is provided on a storage device or made available for download (and notification of the provision).
- (2) Unless otherwise agreed in text form, the contract shall have a term of 12 months and thereafter shall be automatically renewed in each case for a further period of 12 months unless either party gives termination notice at least three months prior to the end of the current contractual period. The rights of use are limited to the contractual period and end upon termination of the contract.
- (3) The right of each party to extraordinary termination for good cause remains unaffected.
- (4) A termination or extension of the contract requires text form to be effective.

## § 13 Legal Consequences of the Termination of the Contract

- (1) Upon termination of the contractual relationship, the Licensee shall cease using the Software and remove all installed copies of the Software from his computers and/or the network. Any copies and/or backup copies of the Software that may have been made shall be completely and permanently deleted.
- (2) Any use of the Software after termination of the contractual relationship is not permitted.

## § 14 Confidentiality and Data Protection

- (1) The contracting parties undertake to treat all knowledge of confidential information and company secrets of the other contracting party obtained in the course of the initiation and execution of the contract as confidential for an unlimited period of time and to use it only for the purposes of implementing the contract. The Licensor's trade secrets also include the subject matter of the contract and the services rendered under these terms and conditions.

- (2) The Licensee shall only make the subject matters of the contract accessible to employees and other third parties to the extent that this is necessary for the exercise of the rights of use granted to him. He shall instruct all persons to whom he grants access to contractual objects about the rights of the Licensor to the subject matters of the contract and the obligation to maintain the confidentiality.
- (3) The obligation of confidentiality does not cover information and documents that are generally known and accessible at the time of disclosure or that were already known to the receiving contractual party at the time of disclosure or that have been legitimately made accessible to it by third parties.
- (4) The Licensor shall comply with the regulations on data protection, especially if he is granted access to the Licensee's operation or hardware and software. The Licensor shall ensure that his vicarious agents also comply with these provisions, in particular the Licensor shall oblige them to maintain confidentiality before commencing their work.
- (5) Battery measurement data generated and processed by TWAICE during calibration of the software may also be used by TWAICE after the end of the term of the contract. These are technical data, not relating to an identified or identifiable natural person.
- (6) TWAICE commits itself to identify, verify, protect and/or (data) secure storage of used customer property.
- (7) TWAICE commits itself to inform the customer in case of possible damage of the property by TWAICE employees, and to communicate the further procedure with the damaged property to the customer.

## **§ 15 Final Provisions**

- (1) Collateral agreements and amendments to these general terms and conditions must be made in writing. This also applies to a waiver of this requirement of written form.
- (2) Insofar as the written form is stipulated in this agreement for declarations, a declaration in text form is sufficient.
- (3) Customer may not assign to any third party any of its rights under this agreement in whole or in part without the prior written consent of TWAICE.
- (4) German law shall apply to the exclusion of conflict of laws provisions and the UN Convention on Contracts for the international sale of goods. Exclusive place of jurisdiction is Munich.
- (5) Should any provision of these general terms and conditions be or become invalid, the legal validity of the remaining provisions shall remain unaffected. In place of the invalid provision, the effective and enforceable provision that comes closest to the legal and economic intention of the parties shall be deemed to have been agreed with retroactive effect. The same shall apply in the event of a contractual gap.