

# End User License Agreement (EULA) Subscription

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## 1. Scope of Application

- 1.1. Licensor is COSMO CONSULT Licensing GmbH | Rütistrasse 13 | 8952 Schlieren (hereinafter "COSMO CONSULT").
- 1.2. This EULA shall apply to all standard software programs of COSMO CONSULT, including new versions (upgrade, update, service pack or hotfix), industry solutions and add-ons (hereinafter referred to as "Contract Software"), which COSMO CONSULT makes available to the Licensee for use for a limited period of time for the respective contract term ("Subscription").
- 1.3. Any conflicting general terms and conditions or conditions of purchase of the Licensee shall not apply.
- 1.4. The Contract Software together with the documentation and accompanying documents is protected by copyright. Any use not in accordance with the contract, in particular distribution, public reproduction by wire or wireless means, including making available to the public, other disclosure, editing or copying, is illegal and will be prosecuted under criminal and civil law.
- 1.5. COSMO CONSULT and the companies of the COSMO CONSULT group of companies as well as authorized dealers (hereinafter collectively referred to as "Partners") are entitled to distribute the Contract Software on the basis of this EULA.

## 2. Grant of Licence, Obligations of the Licensee, Related Undertakings, Termination

- 2.1. Temporary License
  - 2.1.1. COSMO CONSULT grants the Licensee the non-exclusive and non-transferable right, limited to the respective contract term of the Subscription, to use the Contract Software and new versions thereof for its own business purposes, beginning with the payment of the agreed remuneration to the respective partner. Depending on the agreement, this includes either
    - a) the right to access the Contract Software by way of online access; or
    - b) the installation, loading and running of the Contract Software on individual servers of the Licensee and the making of an appropriate number of backup copies.
  - 2.1.2. The Licensee is not entitled to duplicate, distribute, publicly reproduce by wire or wireless means, make publicly accessible, grant sublicenses, rent or lease the Contract Software or otherwise make it available to third parties, whether in return for payment or free of charge.
  - 2.1.3. The number and type of licences for the Contract Software are set out in the order form or contract concluded with the Partner. If a user restriction has been agreed,

sentence 1 shall include in particular the number of employees of the Licensee who are entitled to use the Contract Software ("Users").

- 2.1.4. The Licensee is entitled to new versions of the Contract Software during the term of the contract. These may include new functions as well as corrections. The Licensee acknowledges that the use of the respective current version is essential for optimal software function. COSMO CONSULT can only guarantee the general functionality of the Contract Software if the Licensee uses the current version. COSMO CONSULT points out to the Licensee that under certain circumstances individual functions may be omitted in the context of new versions. COSMO CONSULT will inform the Licensee in advance if a new version is associated with the discontinuation of individual functions or modules of the software.
- 2.1.5. The Licensee's right of use pursuant to this No. 2.1 shall end automatically upon termination of the contractual term of the Subscription without the need for any further declarations.
- 2.1.6. In all other respects, all rights to the Contract Software shall remain with COSMO CONSULT.

## 2.2. Extension of Licenses

If the Licensee wishes to use the Contract Software in excess of the agreed number and type of licenses (e.g. for a higher number of users), it shall notify the respective vendor or partner of this without delay, at least in text form, and reach a contractual agreement with the vendor or partner in this regard. Unless otherwise agreed with the respective vendor or partner, the Licensee shall be obliged to compensate COSMO CONSULT for any use of the Contract Software in excess of the originally agreed number and type of licenses in accordance with COSMO CONSULT's current price list; further claims by COSMO CONSULT shall remain unaffected.

## 2.3. Obligation of the Licensee to cooperate

As long as the Licensee uses the Contract Software, the Licensee shall be obliged to confirm to COSMO CONSULT in writing on an annual basis that the licensing is in order and to provide information about this.

## 2.4. Affiliated Companies

Affiliated Companies for the purposes of this EULA are those companies in which the Licensee has a direct or indirect interest of more than 50% or which have a direct or indirect interest of more than 50% in the Licensee, or companies which are also owned, directly or indirectly, by the same owner as Licensee with an interest of more than 50% (hereinafter "Affiliated Companies"). Affiliated Companies, like Licensee, are entitled to use the licensed Software under this EULA. This does not imply an increase in the permitted number of users. The Licensee shall ensure that its aforementioned Affiliates comply with all obligations under this EULA.

## 2.5. Extraordinary Termination

COSMO CONSULT is entitled to terminate this EULA without notice if the Licensee violates this EULA in a significant manner and fails to remedy this violation despite a warning.

## 3. Obligations upon Termination of the Contract

- 3.1. Upon termination of this EULA and/or the contractual term of the Subscription, the Licensee undertakes to surrender all copies including accompanying documents and to delete them on its systems. The complete surrender and deletion shall be confirmed to COSMO CONSULT at least in text form.
- 3.2. If the Licensee uses the Contract Software by way of online access, the respective partner is entitled to block online access to the Contract Software upon termination of this EULA and/or the contractual term of the Subscription.

## 4. Warranty Rights

- 4.1. The functional scope of the Contract Software at the time of conclusion of the contract is conclusively described in the respective contract or order form (quality agreement). During the term of the contract, additional functions may be added or omitted within the scope of new versions (cf. No. 2.14).
- 4.2. COSMO CONSULT warrants the agreed quality in accordance with No. 4.1 and that the Licensee can use the Contract Software without infringing the rights of third parties. A defect shall be deemed to exist in the event of a deviation from the quality agreement and the associated restriction of the possibility of use.
- 4.3. The Contract Software must be inspected without delay. Any defects must be reported to COSMO CONSULT without delay and described as precisely as possible.
- 4.4. Warranty Rights of the Licensee shall initially be limited to the claim for subsequent performance in the variant of the claim for rectification of defects. The rectification shall be carried out exclusively with the next available version of the Contract Software. Three attempts to remedy a defect shall be accepted unless this is unreasonable for the Licensee. If COSMO CONSULT creates a workaround, the Licensee must accept this as a remedy if it is reasonable.
- 4.5. The supplementary performance is carried out without recognition of a legal obligation.
- 4.6. The Licensee shall only be entitled to terminate the Subscription without notice or to reduce the price if the remedy has failed.
- 4.7. In the event of a justified reduction, the Licensee is entitled to a repayment claim in the event of overpayment.

- 4.8. It is clarified that there is no right of rescission of the Licensee, since the subscription contains a continuing obligation.
- 4.9. The Licensee shall only be entitled to claim damages under the conditions and within the limits set out in No. 5.
- 4.10. The Licensee's warranty rights shall expire after one year, commencing with the date on which the relevant version of the Contract Software is made available.
- 4.11. Insofar as the Licensee has been informed of specifications for hardware and software for the use of the Contract Software, it is a prerequisite for the warranty that the Contract Software is used exclusively with hardware and software components that comply with the specifications.
- 4.12. If the Licensee itself makes a change to the Contract Software, in particular a change to the source code, or has such a change made by a third party, warranty shall be excluded unless the Licensee proves that the defect is not due to the action performed or caused by it.
- 4.13. The prerequisite for the Licensee's warranty is the reproducibility of the defect complained of.
- 4.14. If COSMO CONSULT provides services for remedy without being obligated to do so, COSMO CONSULT may demand reasonably necessary and reasonable compensation for this in accordance with COSMO CONSULT's price list, insofar as the effort was caused by the Licensee. This shall apply in particular if a defect cannot be proven or reproduced and in the case of other unjustified notices of defect. Expenditure caused by unjustified notices of defects shall be remunerated according to COSMO CONSULT's current hourly rates.
- 4.15. Any further warranty rights of the Licensee are excluded.

## 5. Limitation of Liability

- 5.1. In the event of simple or slight negligence on the part of a legal representative or vicarious agent, COSMO CONSULT's liability shall be limited to the typically foreseeable damage in the event of a breach of material contractual obligations (such obligations whose fulfilment is essential to the proper performance of the contract and on whose fulfilment the Licensee regularly relies and may rely). In all other respects, further liability on the part of COSMO CONSULT is excluded in the event of simple or slight negligence.
- 5.2. The parties agree that in the case of No. 5.1 the typically foreseeable damage per calendar year is limited to the annual remuneration at the most.
- 5.3. In deviation from No. 5.1 and 5.2, COSMO CONSULT shall be liable without limitation for damages arising from injury to life, body or health that are based on an intentional or negligent breach of duty on the part of COSMO CONSULT.

- 5.4. The strict liability without fault for defects already existing at the time of the conclusion of the contract is excluded.
- 5.5. Insofar as COSMO CONSULT's liability is limited in accordance with the above provisions, this shall also apply to any liability of its executive bodies, employees, freelancers, staff, representatives and vicarious agents.
- 5.6. All claims for damages, with the exception of those based on intent, gross negligence or No. 5.3, are subject to a limitation period of two years. The limitation period begins at the end of the year in which the claim arose. The statutory limitation period shall apply to claims for damages based on intent, gross negligence or No. 5.3.
- 5.7. In the event of data loss, COSMO CONSULT shall only be liable for reimbursement of expenses for restoring the data up to the last data backup.
- 5.8. The legal liability according to the product liability law remains unaffected.

## 6. Confidentiality

- 6.1. Trade secrets means information,
  - which is not generally known or readily accessible, either as a whole or in the precise arrangement and composition of its components, to persons in the circles which normally handle that type of information and is therefore of economic value,
  - which is the subject of confidentiality measures appropriate in the circumstances by its rightful holder, and
  - where there is a legitimate interest in maintaining confidentiality.
- 6.2. Confidential information is all information and business secrets, as well as knowledge and results obtained and apparent therefrom (whether in writing, electronically, orally, digitally embodied or in any other form), which are disclosed, communicated or otherwise made available by one party to the other party in connection with the performance of the contractual services. Confidential information shall be deemed to include in particular:
  - Business and sales data, tender documents, organisational information, processes, know-how, calculation methods, company concepts, business strategies and business models, business plans, planning data;
  - Software including pre-development, source codes, project methodology, artificial intelligence applications, algorithms;
  - Customer data, employee data, supplier data;
  - any information of the discloser which is subject to technical and organisational secrecy measures and which is marked as confidential or is to be regarded

as confidential according to the nature of the information, the circumstances or on the basis of a reasonable commercial judgement.

- 6.3. The parties are obliged to maintain strict confidentiality of all confidential information during and also after termination of this contract, whereby the confidential information is to be protected against unauthorised access by third parties by means of appropriate confidentiality measures. Neither party may reproduce or publish the same, at least in text form, or otherwise disclose it to third parties or otherwise use or exploit it for non-contractual purposes without the prior consent of the other party.
- 6.4. Information shall not be considered to be confidential if it was known to the public at the time it came to the knowledge of one party, or if it comes to the knowledge of the public after that time without the intervention of that party, or if that party has received the information from a third party not subject to an obligation of confidentiality, or if that party has acquired the information independently and without using the confidential information of the other party.
- 6.5. Each party shall be released from the obligation of confidentiality if and to the extent that information about confidential information is requested from that party by an authority, a court or another governmental body. This party is obliged to inform the other party without delay and to inform the other party of the body from which information was requested and to what extent.
- 6.6. The party obliged to provide information shall endeavour to keep the scope of the information to be disclosed as small as possible and, if possible, obtain an assurance that the information disclosed will be treated confidentially. The party obliged to provide information shall make reasonable efforts to give the other party the opportunity to defend itself against this request for information.
- 6.7. Upon termination of the EULA, the parties shall, upon written request of the other party, mutually return or destroy any existing documents containing confidential information.

## 7. Processing of the Contract Software; Establishment of Interoperability

- 7.1. The processing, modification, decompilation, disassembly and reassembly of the Contract Software by the Licensee is not permitted unless COSMO CONSULT has given its prior consent at least in text form or the Licensee is entitled to do so in accordance with the following provisions.
  - 7.1.1. COSMO CONSULT's consent is not required if the reproduction of the code or the translation of the code form is indispensable in order to obtain the information necessary to establish the interoperability of an independently created computer program with other programs, provided that the following conditions are cumulatively fulfilled:



- COSMO CONSULT has not established interoperability despite two written requests from the Licensee:
- the acts are performed by Licensee or by another person authorized to use a copy of the Licensed Software or on Licensee's behalf by a person authorized to do so;
- the information necessary to achieve interoperability has not yet been made readily available to the persons referred to in point 5.1.1;
- the actions are limited to those parts of the original contract software that are necessary to achieve interoperability.

7.1.2. Information obtained in the course of actions pursuant to No. 7.1.1 may not be

- used for purposes other than to achieve interoperability of the independently created programme;
- be disclosed to third parties, unless this is necessary for the interoperability of the independently created programme;
- used for the development, production or marketing of a program substantially similar in expression or for any other act infringing copyright.

7.2. Should the Licensee otherwise wish to make changes, modifications, edits or adaptations to the Contract Software, the respective Partner shall offer these on the basis of a separate order or a separate contract.

7.3. Unless otherwise agreed, COSMO CONSULT shall be entitled to all further developments of the Contract Software. COSMO CONSULT shall be entitled to adopt such further developments together with documentation and to use and exploit them for an unlimited period of time, irrevocably, worldwide and freely transferable to third parties in source and object code for all types of use and exploitation including unknown types of use. This includes, in particular, the right to reproduce, distribute, perform or transmit it by wire or wireless means in any manner whatsoever, to make it available for use by third parties and to exploit it extensively in any conceivable manner, as well as the right to edit, develop, modify, decompile and otherwise transform it in any manner whatsoever at its own discretion and to use and exploit the performance results created thereby in the same manner. The Licensee shall be granted a non-exclusive right of use, if and insofar as this has been agreed in the order or the separate contract.

## 8. Final Provisions

8.1. All amendments and supplements to this EULA must at least be in text form in order to be effective. Verbal collateral agreements do not exist.

8.2. If any provision of this EULA is or becomes invalid, the remaining provisions of this EULA shall remain valid. The parties agree to replace the invalid provision with a

valid provision that best reflects the economic purpose of the parties. The same shall apply in the event of a gap in this EULA.

- 8.3. This EULA shall be governed exclusively by German law to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).
- 8.4. The place of jurisdiction for all legal disputes arising from and in connection with this EULA is, to the extent permissible, the registered office of COSMO CONSULT.