

ilmCon GmbH End-User License Agreement (EULA)

Version 1.0. Published 26. March, 2019

IMPORTANT - This End-User License Agreement (EULA) is a legal agreement between you (either an individual or a single legal entity) (licence holder) and ilmCon GmbH to use the software. This EULA applies after the licence holder has received the software from ilmCon or from any other party. The licence holder agrees to be bound by the terms of this EULA by installing, copying, downloading or otherwise using the software. If the licence holder does not agree to the terms of this EULA, you may not install, copy, download or otherwise use the software.

Defintions

ilmCon means ilmCon GmbH, a company having principal place of business at Arnstädter Straße 50, 99096 Erfurt, Germany.

Authorized User means either the licence holder, an employee of the licence holder or a person who is employed by the same employer as licence holder and who accesses and uses software under a user license obtained by the licence holder.

Commercial License means a license to use the software obtained or renewed by the licence holder by paying fees.

Fees mean all fees and expenses payable by the licence holder to ilmCon in acquiring the user license and, as applicable, any Maintenance or increase of the number of authorized users.

Maintenance means provision by ilmCon to the licence holder of the software updates made generally available by ilmCon from time to time.

Maintenance Expiration Date means the last day when ilmCon is obliged to provide maintenance and support to the licence holder pursuant to the applicable commitments on the website at the time that the licence holder downloaded the applicable software or, if applicable, at the time the licence holder paid fees for extended maintenance.

Non-Commercial License means a free license provided by ilmCon under the terms and conditions applicable to that free license as specified on the website at the time the licence holder obtained the license.

Release Date means a date published by ilmCon GmbH as the date of a public release of a particular

version of a software product.

Software means a computer software product developed and distributed by ilmCon either on the Website or through resellers.

Support means consultations provided to the licence holders by ilmCon in response to the licence holder requests related to problems with using the software.

User License means a license granted under this EULA to the licensee to permit an authorized user to use the software downloaded by the licence holder.

Website means the ilmCon website currently found at <https://www.ilmcon.de>

1. Grant of License

1.1 Commercial License

Upon acceptance of the EULA by the licence holder and the payment in full of any fees required to be paid at the inception of the user license, ilmCon grants the licence holder and his/her/its authorized users the perpetual right to use specific versions of the software, subject to the General License Terms in section 1.3 and subject to the following:

1.1.1 Usage of Specific Versions The licensee may install any versions of the software that have their release date prior to the maintenance expiration date.

1.1.2 Single-Server License If the software is installed on server hardware, the licence holder may install the software only on a single server for each license transaction, unless otherwise specified on the Website.

1.1.3 User Limit The licence holder must ensure that the number of authorized users accessing and using the software concurrently never exceeds the number of user licenses for which the applicable fees have been paid to ilmCon or a reseller. The licence holder may purchase additional user licenses at any time on payment of the appropriate fees to ilmCon or a reseller.

1.1.4 Renewal To have uninterrupted access to new software versions and support, the licence holder must continue to pay in full all applicable fees to ilmCon or a reseller by their due date. Failure to pay fees will result in the immediate termination of the licence holders right to receive maintenance and support with respect to the software for which the fees have not been paid.

1.1.5 Support ilmCon will provide support services for software during the period for which the licence holder paid the applicable fee. Support terms and policy is published on the Website and is subject to change from time to time.

1.2 Non-Commercial License

Upon acceptance of the EULA by the licence holder, ilmCon grants the licence holder the right to use the software, subject to the General License Terms in section section 1.3 and subject to the following:

1.2.1 The licence holder may install, use and permit unlimited number of authorized users to use any version of software on multiple computers.

1.2.2 If the license has an expiration date (as indicated, at the time that the licence holder downloads the software), the licence holder and authorized users must stop using the software after the expiration date or continue using the software under another license from ilmCon or a reseller.

1.3 General License Terms

1.3.1 The licence holder, subject to the limits in section 1.1.3, allows authorized users to access the software installed on the licence holder's server from an unlimited number of computers.

1.3.2 The licence holder is allowed to make backup copies of the software.

1.3.3 The licence holder must not, whether through negligent act or omission, or without the prior written consent of ilmCon sell, sublicense, redistribute (except distributing to authorized users), reproduce, transmit, circulate, disseminate, translate software or reduce the software to or from any electronic medium or in machine readable form; decompile, reverse engineer, disassemble, modify, adapt, create derivative works from, or otherwise attempt to derive any portion of the software.

1.3.4 If the license is locked to a specific server, the licence holder must not install software on a different server.

1.3.5 All rights granted to the licence holder by this license are worldwide, non-exclusive, non-transferable, non-sub-licensable and limited as provided herein and on the website.

1.3.6 Except as otherwise agreed in written form by ilmCon, the licence holder must only install the software and make the software available for use on hardware systems owned, leased or controlled by the licence holder.

2. Representation and Warranties

2.1 Due Authority Each party represents and warrants that it has the legal power and authority to enter into this EULA, and that this EULA and each license transaction is entered into by an employee or agent of the licence holder with all necessary authority to bind such party to the terms and conditions of this EULA.

2.2 Ownership; No Infringement ilmCon represents and warrants to the licence holder that ilmCon is the owner or licensee of all intellectual property rights in and to the software. ilmCon warrants that the software does not infringe on any intellectual property rights. ilmCon reserves the right to replace any software that is infringing with equivalent non-infringing software within 90 days of learning of such infringement, in which case ilmCon shall not be deemed to have breached or been in default under this agreement on account of

such infringement.

2.3 Third-party Software The software includes code and libraries licensed to ilmCon by third parties, including open source software. The list of all third-party libraries included with the software and their respective licenses is maintained by ilmCon and available to the licence holder upon request.

2.4 No Illicit Code ilmCon shall employ techniques consistent with the highest industry standards to ensure that the software contains no Illicit Code. For purposes herein, “Illicit Code” will mean any key, node, lock, time-out, back door, trap door, trojan Horse or other similar type means for enabling self-help, disabling program codes or other functions, whether implemented by electronic, mechanical or other means, which restricts the use or may restrict the use or access to any portion of any software or data or information created by or accessed using such software.

2.5 In the event the software, in ilmCon’s opinion, is likely to become or thus already become the subject of a claim of infringement of a third party’s intellectual property rights, ilmCon may at its own option and its sole discretion: (i) obtain for the licence holder the right to continue to exercise its rights in respect of the software as per terms of this agreement, (ii) modify or replace the (alleged) infringing material to make it non-infringing, or (iii) terminate this agreement with immediate effect.

2.6 The licence holder will indemnify and hold ilmCon harmless against all costs, expenses, losses and claims made against ilmCon as a result of any infringement of a third parties intellectual property rights arising from the licence holder or its authorized users modification to the software or combination of the software with third party products.

3. Ownership and Reservation of Rights

3.1 ilmCon reserves all rights not expressly granted to the licence holder in this EULA.

3.2 The software and all copies thereof are protected by copyright and other intellectual property laws and treaties.

3.3 ilmCon or its licensors own the title, copyright and other intellectual property rights in the software.

3.4 The software is licensed, not sold and the licence holder does not acquire any rights of ownership in the software.

4. Termination

This EULA between ilmCon and the licence holder is terminated in the following cases:

4.1 In case of a license with an expiration date (as indicated on the website at the time that the licence holder downloads the software), on expiration date.

4.2 Without prejudice to any other rights and in addition to any other termination rights in this EULA, ilmCon

may terminate this EULA if the licence holder fails to comply with the terms and conditions of this EULA.

4.3 The decommissioning of the software (including, but not limited to, installing another version of the software, without a valid licence) by the licence holder will have, as a consequence, the termination of this EULA with respect to the decommissioned software.

4.4 Immediately upon termination of a license granted under this EULA, the licence holder must at its own cost cease permitting access to and ensure that all Authorized Users immediately cease all use of the software.

5. Exclusion of warranties and limitation of liability

5.1 To the maximum extent permitted by applicable law in the jurisdiction in which the software is supplied, ilmCon and its third party suppliers provide the software AS IS AND WITH ALL FAULTS, and except otherwise expressly contained in the EULA, hereby disclaim all other warranties and conditions, whether expressed, implied or statutory.

5.2 To the maximum extent permitted by applicable law, in no event shall ilmCon or its third party suppliers be liable for any special, incidental, punitive, indirect or consequential damages whatsoever arising out of or in any way related to the use of or inability to use the software, the provision of or failure to provide any services, information, software and related content arising out of the use of the software or otherwise under or in connection with any provision of this EULA, even in the event of the fault, tort (including negligence), misrepresentation, strict liability, breach of contract or breach of warranty of ilmCon or any third party supplier and even if ilmCon or any third party supplier has been advised of the possibility of such damages.

6. Data Collection

ilmCon may collect, through software or Website, various information related to the licence holder usage of the software and further aggregate and analyze it in order to improve ilmCon's products and services. The collection, storage and analysis of such data is done in accordance with privacy policy, published on the website and updated from time to time. For more information please read our privacy policy.

7. Communication

7.1 By providing an e-mail address and/or phone number in relation to downloading, evaluating, purchasing or otherwise registering your interest in the software, the licence holder consents to receiving e-mail messages and/or phone calls on behalf of ilmCon.

7.2 E-mail messages from ilmCon may be important notifications about the software, newsletters, surveys, information about services offered by ilmCon and its partners and replies and follow-ups on the prior conversations with the licence holder.

7.3 Phone calls from ilmCon are limited to important notifications related to the software and to licensing matters, such as evaluation, license expiration or renewal.

7.4 Licence holders may opt out from receiving e-mail or phone communications at any time by notifying ilmCon.

8. Amendment and severability

8.1 ilmCon may update the text of this EULA from time to time without notice and publish it on the website. Every published edition of the EULA shall have a distinct version number and publication date at the beginning of the document. Regardless of such updates, the version of the EULA that was the most recent at the time that the licence holder entered into this EULA shall remain in effect until terminated.

8.2 If any provision of this EULA is held to be void, invalid, unenforceable or illegal, the other provisions shall continue in full force and effect.

9.Contact

Any questions or communications in relation to this agreement should be sent to:

ilmCon GmbH
Arnstädter Straße 50
99096 Erfurt
info@ilmcon.de