

# AUTOFORM SOFTWARE LICENSE AND MAINTENANCE TERMS

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- 1.1 AF hereby grants Licensee for the applicable license period specified in the applicable offer (“Initial Period” or “Renewal Period”) and in accordance with the type of license applicable to the licensed software (“Named User License” or “Floating License” as defined in each offer) a non-exclusive, non-transferable, non-sublicensable license to Use the software identified in the applicable offer, in object code form, in the version existing as of the order date, and all updates and upgrades thereto supplied by AF to Licensee (“Licensed Software”) and to Use all published documentation related to the Licensed Software, including but not limited to manuals, technical specifications and training materials, supplied by AF from time to time (“Licensed Documentation”, Licensed Software and Licensed Documentation are hereinafter collectively referred to as “Licensed Product”). The intellectual property rights contained in the Licensed Product are owned by AF’s affiliated company AutoForm Engineering GmbH, a company located in Switzerland (“AF-CH”), who also owns various patents protecting such intellectual property rights. (“AF Patents”, as listed at <https://www.autoform.com/en/legal/>). To the extent necessary for Use of the Licensed Product and solely in connection with the Licensed Product, AF, duly authorized by AF-CH, hereby grants Licensee a non-exclusive, non-transferable, non-sublicensable license to use the AF Patents for the applicable license period.

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- 1.2 Unless explicitly stated herein, no right, title, license, interest or any other proprietary rights, express, implied or otherwise, in or to the Licensed Product or modifications thereof are granted to Licensee. Licensee acknowledges and agrees that, except for content from unrelated third party contained therein, Licensed Product and all copies thereof and any corrections, derivative works or other modifications are AF’s exclusive property and constitute a valuable trade secret.

## 1.3 License Types

Depending on the type of Licensed Software module ordered by Licensee, Licensee is granted one or several Named User Licenses or Floating Licenses to which the following terms apply:

### 1.3.1 Named User License

**Named User Definition:** In accordance with the number of licenses ordered by Licensee as per applicable quote or order confirmation, AF for the applicable license period authorizes employees of Licensee, that are identified with a unique username and password, to Use the Licensed Product from a single machine at any given time (“Named User”). Each Named User may install the AutoForm Products on up to four (4) devices, provided that he/she only Uses the Software on one (1) device at a time and only within the country specified in the applicable quote or order confirmation (“Permitted Country”). To accommodate for the fact that a Named User may occasionally have to travel abroad, Use outside of the Permitted Country is permitted up to a maximum of 40 (forty) days during an applicable license term. For the avoidance of doubt, employees of companies controlling, controlled by or under common control with Licensee (“Licensee Affiliate”) cannot be considered Named Users under this Agreement. Any Licensee Affiliate needs to acquire its own licenses by entering into a separate Agreement with the applicable local AF Affiliate.

Group or shared logins and/or use of automated programs or “user agent” programs or utilities for multiple users are strictly prohibited and considered a material breach of this Agreement. Licensee is

obliged to take all necessary measures to ensure and monitor strict compliance with this provision, e.g. by ensuring that Named Users do not share or use the same username and password.

**Replacement of a Named User / Reassignment to a Named User:** Replacement of an existing Named User by a new Named User is permitted, provided that the new Named User strictly complies with all Use terms. Permanent or temporary replacement: In case of a permanent personnel change or in case of temporary leave of absence of a Named User (e.g. due to illness or end of a project), Licensee may replace a Named User instantaneously by assigning the Licensed Software to another Named User. In such case, the assigning Named User thereafter will be blocked from Using the Licensed Software during one hundred eighty-six (168) hours ("Blocking Period"), i.e. reassignment of the Licensed Software to such Named User is only possible after expiry of the Blocking Period. Further assignment to a next new Named User, however, is always possible instantaneously, again, provided that any assigning Named User after his assignment of the Licensed Software will be subject to the Blocking Period.

**Reporting:** Licensee will provide AF upon request with anonymized license server log-files.

### 1.3.2 Floating License

A Floating License entitles one User at a time to Use the Licensed Software modules specified in the respective quote or order confirmation.

## 2. Supply and Installation

### 2.1 Supply

As of the license start date specified in the applicable offer or order confirmation, AF shall provide Licensee with the Licensed Product and with a temporary license key which allows Licensee to temporary Use the Licensed Product from the start date of the Initial Period or of any successive Renewal Period until the payment date of such period (specified in the applicable offer or order confirmation), but which does not imply any right to reject the Licensed Product. Upon receipt of full payment of the license fee/s set forth in the applicable offer or order confirmation, AF shall provide Licensee with a full license key that allows Licensee to Use Licensed Product for the respective license period.

### 2.2 Installation

**2.2.1 Option License Server in the Cloud:** The server on which the licenses for the Licensed Software are installed ("License Server") is run in the cloud and is managed by AF, who shall be responsible for the proper configuration and installation. AF uses the Amazon Web Services (AWS) Cloud ("AWS Cloud") and AWS terms and conditions (<https://aws.amazon.com/agreement/>) apply, especially regarding availability of the AWS Cloud during the applicable license term. AF confirms that the AWS Cloud server is located in Europe and any personal data, that may be processed in the course of Licensee's Using the Licensed Software, shall be handled in full compliance with locally applicable data privacy laws, including EU Regulation 2016/679 (General Data Protection Regulation – GDPR). A respective GDPR compliant data processing agreement has been concluded with AWS.

**2.2.2 Option License Server on Licensee's Premises:** If Licensee installs the license keys for the Licensed Software on a server located on Licensee's premises ("Premises"), Licensee shall be responsible for the installation of the Licensed Software on the hardware platforms and operating systems ("Designated Equipment") located at Licensee's facility identified in the applicable offer or order confirmation. Upon expiration of any current license term, AF at its sole discretion may change the availability of the Licensed Software for Designated Equipments with one hundred and eighty (180) days advance written notice to Licensee. Licensee may submit to AF a written request to change the Designated Equipment. Such request shall specify both the former and the future Designated Equipment including serial number and processor type and may be accepted by AF at its sole discretion. Licensee is required to give written certification to AF that the Licensed Software is no longer Used on the former Designated Equipment. Any further Use of the Licensed Software on the former Designated Equipment by Licensee shall entitle AF to charge an additional license fee. In case the former Designated Equipment is a license server AF shall be entitled to charge license fees for each and any Floating License related to such license server. Operating the License Server as a virtual machine is explicitly prohibited. A separate license is required for each License Server. The licenses are stored in a special license file and must be saved in the installation directory. The AF license validity period is limited by contract and by technical measures.

**2.2.3 Option License Server and Licensed Software Application in the Cloud:** If Licensee requests to run the Licensed Software application in the cloud, AF grants Licensee the option to separately buy a pre-configured, non-refundable computing capacity package developed and managed by AF ("Cloud Access Solution") and operated by AWS in the AWS Cloud to run the Licensed Software that Licensee bought

under this Agreement. Licensee understands and accepts that the Licensed Software can only be Used either on Premises or in the AWS Cloud. By choosing the option to access the Licensed Software in the AWS Cloud, Licensee agrees that the Licensed Software will not simultaneously be installed and managed by Licensee on Licensee's Premises. If Licensee wants to Use the Licensed Software through the Cloud Access Solution, Licensee accepts that also the Licensed Software licenses are stored on a License Server in the AWS Cloud. Such License Server is managed by AF, who shall be responsible for the proper configuration and installation. Regarding access to the Licensed Software in the AWS Cloud, the statements as per Section 2.2.1 apply accordingly.

### **3. Maintenance and Support**

During the applicable license term, AF (directly or through a designated third party) shall provide Licensee with instructions and advice regarding the installation (only in case of License Server on Premises) and Use of the Licensed Software, and shall by means of telephone, e-mail or internet communication during AF's normal business hours assist Licensee in diagnosing errors, malfunctions and defects of the Licensed Software (excluding unexpected, inaccurate or invalid results obtained) to perform any material function specified in the Licensed Documentation, and shall use reasonable efforts to correct them or to offer work-around suggestions ("Maintenance Services"). Maintenance Services include assistance necessary in connection with, but do not include correction of third-party Licensed Products and do not include assistance necessary as a result of Licensee's not Using the Licensed Product in accordance with this Agreement or the Licensed Documentation. AF is only obliged to provide Maintenance Services for the most current Licensed Product version. Maintenance Services for any other version are provided at AF's sole discretion.

### **4. Duties of Licensee**

- 4.1** Licensee shall permit only properly trained, qualified and authorized employees to Use the Licensed Software in accordance with this Agreement.
- 4.2** Licensee shall provide AF with all information, documentation and technical assistance as AF may require in order to perform its duties set forth in Section 3 hereof and/or to verify compliance by Licensee with the terms and conditions of this Agreement. AF shall be released from its obligations under Section 3 if Licensee is unable or otherwise fails to provide AF with the foregoing.
- 4.3** Licensee shall not compute any simulations with the Licensed Product on behalf of competitors of AF, nor provide any competitors with results of any simulations computed with the Licensed Product.
- 4.4** All Licensed Products delivered under this Agreement are subject to local export control laws and regulations and may be subject to export or import laws and regulations of other countries, including but not limited to the Export Administration Regulations of the United States of America and its embargoed country list. Licensee acknowledges its responsibility to comply with all such laws and regulations at its sole expense.
- 4.5** Licensee may copy the Licensed Product in whole or in part for back-up purposes only and may not use such copy for any purpose other than to replace a damaged copy. All copies of the Licensed Product, in whole or in part, shall contain all of AF's restrictive and proprietary notices as they appear on the Licensed Product provided by AF.
- 4.6** Licensee agrees not to modify, reverse engineer, translate, disassemble or decompile the Licensed Product or any portion thereof except to the extent that this restriction is expressly prohibited by applicable law.
- 4.7** Licensee accepts that, to prevent unlicensed use (copyright infringement / piracy) of its products, AF may through specific software features collect data in order to identify unauthorized changes to the licensing or activation functions of the Licensed Product.
- 4.8** Licensee agrees that AF may audit Licensee's facilities, records and Use of the Licensed Product to determine Licensee's compliance with the terms and conditions of this Agreement. Such audits shall occur after prior notice during regular business hours. If such audit reveals that Licensee has underpaid any fees due or uses Licensed Product in an unauthorized manner, Licensee shall immediately pay AF any amounts due, together with interest for late payment of one (1) percent per month, but in no event exceeding the highest rate permitted by applicable law. Licensee shall also reimburse AF for all reasonable costs incurred in connection with the audit. In addition, AF expressly reserves the right to take legal action.

## **5. Fees and Other Charges**

- 5.1** As remuneration for the Use of the Licensed Product (including the underlying AF Patents) Licensee shall pay to AF the annual license fees in advance according to Section 2.1 of this Agreement and the payment terms as set forth in the applicable offer, without offset or demand therefore, for the specified period/s of time. License fees are inflation-indexed and in case of inflation may automatically be adjusted accordingly at the beginning of a Renewal Period. In addition, AF may change the license fees for any Renewal Period (e.g. price adjustment due to exchange rate fluctuations). AF will notify Licensee about the new license fees with at least thirty (30) days advance written notice prior to the end of the then-current license period.
- 5.2** Fees due in consideration of AF's performance of its duties under Section 3 hereof are included in the annual license fees and are not charged separately to Licensee. Any services provided outside the scope of AF's duties under Section 3 hereof shall be charged on a time and materials basis at AF's then current rate.
- 5.3** All applicable charges shall be due and payable to AF on the payment date of the respective period, as specified in the applicable offer. For any unpaid amounts, an interest rate for late payment of 1 percent per month but, in no case exceeding the highest rate permitted by applicable law, shall apply.

## **6. Intellectual Proprietary Rights Indemnity**

- 6.1** Licensee shall be indemnified and defended from and against all claims that the Use of the Licensed Product (including AF Patents) by Licensee during the term of this Agreement violates any third-party intellectual property right, provided that Licensee (a) promptly notifies AF of any intellectual property infringement claim; and (b) gives AF sole control of the defense and settlement of any such claim and does not admit liability; and (c) cooperates with AF in any such defense and settlement.
- 6.2** If a Licensed Product is, or in AF's opinion is likely to become, the subject of a an infringement claim, then AF, at its sole option and expense, will either (a) obtain for Licensee the right to continue using the Licensed Product under the terms of this Agreement; (b) replace the Licensed Product with a product that is substantially equivalent in function, or modify the Licensed Product so that it becomes non-infringing and substantially equivalent in function; or (c) refund to Licensee the portion of the license fee paid to AF for the Licensed Product giving rise to the infringement claim, less a charge for use by Licensee based on straight line depreciation assuming a useful life of five (5) years.
- 6.3** AF shall have no liability or indemnification obligation to the extent any infringement claim relates to Licensee's unauthorized alteration, modification, or use of the Licensed Product.
- 6.4** In the event that Licensee violates any intellectual property rights pertaining to the Licensed Product, Licensee agrees to indemnify, defend and hold harmless AF and/or AF-CH from and against all damages, losses, liabilities and expenses arising from or related to such violation. This obligation shall survive the expiration or termination of this Agreement.
- 6.5** To the extent permitted by applicable law, the provisions of this Section 6 set forth AF's exclusive obligation with respect to claims pertaining to infringement of intellectual property rights.

## **7. Warranty**

- 7.1** The Licensed Software is delivered with the following sole and limited warranty: during the applicable license term, the Licensed Software shall perform substantially in accordance with the Licensed Documentation. As Licensee's exclusive remedy for a breach of this warranty, and provided that Licensee is in full compliance with its obligations under this agreement, AF shall at its own discretion either correct or replace the affected Licensed Software.
- 7.2** Licensee acknowledges that the Licensed Software uses state-of-the-art mathematical and physical algorithms that are not necessarily proven accurate or valid and that except for the express warranty set forth in Section 7.1 and to the fullest extent permitted by the applicable law, the Licensed Product is provided on an "as is" basis without any warranty, express or implied, including, but not limited to, the implied warranty of merchantability or the implied warranty of fitness of the Licensed Product for a particular purpose.
- 7.3** Licensee shall in any event be solely responsible for the selection, suitability and efficiency of the Licensed Product for its intended purposes and planned use and assumes all risks arising from or related to such use and to the fullest extent permitted by applicable law waives all claims against AF associated therewith.

## **8. Limitations of Liability**

- 8.1** To the fullest extent permitted by applicable law, AF shall only be liable for any damages caused in connection the Licensed Product or with this Agreement, whether contractual or in tort, if and to the extent they are the direct result of willful misconduct or gross negligence on the part of AF.
- 8.2** To the fullest extent permitted by applicable law, and with the exception of Licensee's obligations under Sections 4.3, 4.6, 9.1, and 9.3 of this Agreement, neither AF nor Licensee shall be liable to the other party for any indirect, incidental, consequential, punitive, reliance or special damages, including without limitation, damages for lost profits, claims of third parties, pecuniary advantage, savings or revenues of any kind or increased cost of operations.
- 8.3** To the extent that a party's liability is excluded or limited, the same also applies to its employees, representatives, affiliates and any other persons AF employs in the performance of contractual obligations under this agreement.

## **9. Confidentiality**

- 9.1** Licensee acknowledges that the Licensed Product and any information related to it is considered AF Confidential Information and may not be disclosed in whole or in part to anyone, except to those of Licensee's employees involved in the execution of this Agreement who are required to have the information in order for Licensee to Use the Licensed Product hereunder and who are bound by confidentiality terms at least as stringent as the ones stated herein. Upon termination of this Agreement, Licensee will delete all Confidential Information received.
- 9.2** Confidential Information shall not include information that (a) is or becomes public without violation of this Agreement; or (b) was known by Licensee prior to AF's disclosure of such information to Licensee as evidenced by written records; or (c) is disclosed to Licensee without any obligation of confidentiality by a third party lawfully in possession of such information.
- 9.3** Injunctive Relief: Licensee acknowledges that violation or threatened violation of its confidentiality obligations would cause AF or any Affiliate substantial and irreparable harm, which in addition to any other available remedies would entitle AF or an Affiliate to seek injunctive relief.

## **10. Term and Termination**

This Agreement comes into force as of the respective order date of the respective Software Product and remains in force during the whole applicable license period unless terminated by any party in the event of a material breach by the other party that is incurable or that is not cured within thirty (30) days after receipt of written notice of such breach.

In case of termination, all amounts accrued shall become immediately due and payable and any license granted hereunder shall automatically terminate. Licensee shall immediately stop Using the Licensed Product and destroy all copies, including partial copies of Licensed Product, and give written certification of such destruction to AF or, upon AF's respective request return the Licensed Product. In case of termination for cause by Licensee, AF shall refund to Licensee fees that were paid in advance for the respective license period on a linearly pro-rated basis. In all other cases, any amounts paid by Licensee under this Agreement will remain with AF.

## **11. General Provisions**

- 11.1** Any provision of this Agreement held to be invalid, illegal or unenforceable by a court of competent jurisdiction shall be deemed severed from this Agreement and shall not affect the validity and enforceability of the remaining clauses. The parties agree to promptly attempt to reach an agreement on a substitute clause.
- 11.2** Data Protection: Licensee agrees that AF stores and uses all data and information required for or resulting from the business relationship between the parties (including but not limited to contractual documents and information about Licensee and Licensee's auxiliary persons) as necessary for due performance of AF's obligations under this Agreement. Such data may be stored and used in and outside Licensee's country of incorporation and it may be disclosed to affiliated companies of AF for providing services, fulfilment of legal requirements or for AF internal audit and/or supervisory requirements; this in compliance with AF's applicable Privacy Policy as available under <https://www.autoform.com/en/legal/> and with applicable data protection law, including but not limited to Art. 4 no. 1 GDPR.

- 11.3** Any provisions which by their nature may be reasonably inferred to have been intended to survive termination shall survive as enforceable rights and obligations.
- 11.4** This Agreement is the entire agreement between the parties relating to the subject matter hereof and supersedes all prior understandings, writings, proposals, representations or communications, oral or written, of either party.
- 11.5** This Agreement is governed by **Mexican law**, without regard to conflicts of law principles.