



## General Contractual Terms and Conditions of the MÜCAD Software Licence (at 10/2019)

### 1. General Information/ Validity/ Terms/ Contractual Period

1.1 These General Contractual Terms and Conditions of the MÜCAD Software Licence apply to MÜCAD software, as well as any additional modules and software (subsequently referred to overall as "MÜCAD"), which are marketed by Jakob Müller AG Frick (subsequently referred to as "Licensor or JMF") to customers ("Licensees").

1.2 MÜCAD software (subsequently referred to as "Product or Software") constitutes Software for the creation of patterns and programming in connection with looms developed by JMF. The Product is marketed by JMF, which by means of updates and bug fixes maintains it at a state of the art level. Modifications constitute further Product developments, which may result in alterations to its appearance and program and operating sequences. Such modifications include bug fixes, which constitute Product alterations for the correction of production defects and in particular malfunctions; updates through which the Product is further developed without as a rule involving a special, additional use or further functions; and upgrades that constitute Product changes linked chiefly to supplementary benefits and functions.

1.3 A licensing agreement (contract) subject to these General Terms and Conditions shall be seen as concluded between the Licensee and JMF upon receipt of the written confirmation of the Licensor that it accepts the Software order (order confirmation).

1.4 The contractual period of the usufruct rights to the Software and its scope as ordered, in particular the version of the MÜCAD and any additional Software, shall result from the order confirmation or the quotation.

1.5 These General Terms and Conditions shall be binding when in the quotation or the order confirmation they are declared to be applicable. Other conditions of the Licensee shall only be valid to the extent that they receive the express written consent of the Licensor.

### 2. Contractual Object/ Transferred Software/ Dongles/ Payment

2.1 This contract regulates for a limited period the allocation of usufruct rights to MÜCAD Software and any additional modules in accordance with the order confirmation.

2.2 JMF shall provide the Licensee with the MÜCAD Software for downloading. JMF shall provide the Licensee with access data for logging into the protected area.

2.3 The Licensee shall receive a copy protection dongle from JMF for the use of the Software.

2.4 Payment for the utilisation of the Software and the costs of delivery and dispatch of a copy protection dongle and/or data carrier shall result from the order confirmation or invoice.

### 3. Usufruct Rights

3.1 With the allocated valid licence and the completion of the entire payment, the Licensor shall allocate a simple right to the use of the MÜCAD Software to the ordered extent (licence) for a period limited to the duration of the contract. The licence shall be non-transferrable and cannot be sublicensed. The Product may only be utilised in connection with the licence and within its duration.

3.2 Unless otherwise agreed (e.g. in the order confirmation or established by JMF in the invoice), the licence shall be allocated for only one workstation. Software use is solely permitted and possible with the copy protection dongle provided by JMF. The licence is only granted subject to the precondition that the aforementioned protection mechanism will not be deactivated or circumvented.

3.3 Unless otherwise stipulated by law, the Licensee shall not be entitled to make copies (unless required for the creation of a backup copy, error searches or the replacement of defective data carriers), or process the Software. In particular, in this respect the Licensee shall not be entitled to disassemble, decompile, decode, modify or reverse

engineer the Software. Should an infringement occur, JMF shall be entitled to revoke the usufruct right.

### 4. Helpdesk

4.1 JMF provides a telephone helpline service, which is available during standard office hours. The Helpdesk is open from 8.00 a.m. to 12 noon and from 1.30 to 5.30 p.m. (CET/ CEST).

4.2 The Helpdesk is also accessible via e-mail (address according to the JMF homepage).

### 5. Further Product Development

5.1 The Licensee acknowledges that JMF is entitled at any time to further develop the Product in line with market requirements. Further development may result in changes to the Product's appearance, the program and operational procedures. JMF will undertake bug fixes and updates independently and without prior announcement.

5.2 Upgrades are not included in the licence.

### 6. Use From Abroad

6.1 The Licensee acknowledges that under certain circumstances the use of the Product from abroad may infringe foreign legal statutes. It is the task of the Licensee to obtain information in this regard.

6.2 In particular, the Licensee is instructed that the import and export limitations upon the coding algorithms may apply and that these might be infringed if the Product is employed abroad. The Licensee shall adhere to all applicable export and import control regulations (especially those of relevance appertaining to Switzerland, the EU, the USA and any other respective affected nations).

6.3 To the extent legally permitted, JMF liability in this connection is excluded. Contractual fulfilment on the part of JMF shall be subject to the proviso that this is not subject to any obstacles owing to national and international, legal regulations governing exports and imports, or is prevented by any other legal statutes.

### 7. Warranty

7.1 A defect shall exist when the Software fails to possess the contractually agreed characteristics, or is subject to the rights of third parties, which prevent the exercise of the allotted usufruct rights. Unless agreed separately in writing, product descriptions of the Software do not constitute a guarantee or warranty with respect to its characteristics.

7.2 JMF neither guarantees that the Software or parts thereof will function without interruption or defect-free, nor that Software maintenance by JMF will result in defect-free Software. In particular, JMF does not guarantee that the Software will run in all of the combinations with data, computer systems and Software desired by the Licensee. Therefore, no warranty is accepted for the standard Software faults, which either have no, or only an insignificant, effect upon the usability of the Software.

7.3 Upon their discovery, the Licensee shall be obliged to provide JMF with written notice of any defects in the Software without delay. In the case of material defects, this shall include a description of the time of the occurrence of the defect and the related circumstances.

7.4 For the duration of the contract, JMF will provide the following maintenance services for the rented Software in order to retain its contractually agreed condition:

- All program updates and new versions of the purchased Software that occur in the course of the contractual period will be made available to the Licensee for downloading.

- In addition, the Licensee shall be entitled to use the JMF helpdesk. Should Software defects arise, the Helpdesk will endeavour to find a solution. Disruptions to the program sequence are understood as constituting Software defects that are applicable for affecting the use of the Software in the operations of the Licensee to an extent that is more than insignificant. Should the Licensee report such a defect,



## General Contractual Terms and Conditions of the MÜCAD Software Licence (at 10/2019)

JMF will make every effort to rectify it as quickly as possible within the framework of the means and resources at its disposal.

7.5 JMF shall be liable for Product defects, which already exist upon its delivery only when JMF is responsible. To the extent that it is legally permissible, further JMF liability for initial Product defects is excluded.

### **8. Exclusion of Liability**

8.1 JMF shall be exempt from liability for damages that result for the Licensee as a result of its failure to fulfil contractual obligations to a third party.

8.2 JMF shall only be liable for indirect and subsequent damages such as the lost profits and claims of third parties to the extent that liability is prescribed by law. The exclusion of liability shall not apply when (i) according to current law, liability cannot be limited or excluded, (ii) in the case of wilful intent or gross negligence, (iii) in cases where simple negligence causes damage to health, or injury to life and limb (iv) in the case of fraudulent concealment or non-adherence to an agreed warranty.

### **9. Contract termination, erasure obligation**

9.1 The contractual period of the usufruct rights shall terminate automatically with the passage of time. Any employment of the Software following the expiry of the contract is not permitted.

9.2 Following the termination of the contract, the Software downloads and all copies thereof shall be erased entirely.

### **10. Partial invalidity**

If individual clauses of these General Contractual Terms and Conditions or of other contractual documents that are used in the same be or become null and void, legally ineffective, or unenforceable, this shall have no effect upon the validity of the remaining General Contractual Terms and Conditions or other contractual documents. The void or ineffective clauses shall be replaced by legally permitted terms that serve the economic purpose of the invalid clauses as closely as possible.

### **11. Applicable Law and Competent Court**

11.1 This contract shall be subject to Swiss law to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods from 11 April 1980.

11.2 The venue for all legal disputes arising from this contract shall be Frick. JMF shall have the right to take legal action against the Licensee at his judicial seat.