**XPLM.**

## 1. Terms of the contract, written form

1.1 These General Terms and Conditions of XPLM Solution GmbH, hereinafter called "XPLM", shall be exclusively applicable for all matters of business with XPLM. No other general terms and conditions shall become part of any contract, even if XPLM does not expressly object to them.

1.2 Contracts are generally concluded upon the placement of the individual order by the customer (in writing, by fax or by email) and acceptance of the order by XPLM (in writing, by fax or by email). Contracts may be supplemented by a software use and maintenance schedule.

1.3 At the conclusion of the contract, e.g. reseller, distributors or subcontractors may be intermediaries for XPLM.

1.4 Any additions to and amendments of the contract are valid only if made in writing, unless specifically agreed otherwise in individual cases. The same shall apply if the Parties waive the written form requirement. Written form requirements are, as a matter of principle, a prerequisite for effectiveness.

## 2. Contact persons, system administrators

2.1 The Client must authorize contact persons and substitutes it has designated to make all business decisions required in connection with the execution of the contract. In case of any changes in contact persons, XPLM must be notified in writing.

2.2 In addition, the Client shall appoint a system administrator and a substitute system administrator for all technical questions in connection with the execution of the contract. Only the system administrator shall be authorized to report errors and faults.

## 3. Types of licenses

Issuance of licenses by XPLM is governed in individual agreements and if applicable in the software use and maintenance schedule. As a basic principle, the following types of licenses for the use of the software can be granted:

3.1 CAD seat license

The number auf CAD-Seat Licenses that have to be bought depends on the maximum number of CAD workstations that can be used in the customer's company. Usually this is the sum of single-user and network licenses a customer has bought from the CAD supplier. If applicable the number is increased by the number of OEM CAD licenses the customer has bought which can access a connector license (e.g. as a part of a CAM application) and the number of CAD workstations of a third party, where the software is used, too.

3.2 Workstation license

A workstation license can be installed and used on a personal computer clearly determined by it's MAC address. The number of required licenses depends on the number of workstations where the software is installed. This is independent of which employee uses the software at which time. If a customer has to replace a certain workstation, the software has to be uninstalled before it can be installed and used on a new workstation.

3.3 Named user license

A named user is defined as a certain user who clearly has been determined by is name and who solely is authorized to use the software. This is independent of the fact of whether the user is using the software at a certain time or not. The number of required licenses depends on the number of required users.

3.4 Concurrent User License

With the Concurrent User License model the maximum number of simultaneous users of the XPLM Software is defined. The software can be installed on any number of workstations, but the simultaneous use by users or background processes is limited by the number of licenses bought. For instance, a concurrent license for XPLM integrations is used if the integrated application (e.g. CAD) is started simultaneously with the XPLM interface. That is if a XPLM interface add-in or a XPLM library is used at the start of the integrated application (e.g. CAD). After the termination of the use of the integrated application, the license is automatically released.

3.5 Site license

A site license is obtained for one operating site and can be used by any employee and from any workstation at that place of business, regardless of the number of employees or workstations.

3.6 Company license

A company license is bought per company (= legal entity) and can be used from every workstation, every employee, every location and every business premises regardless of their number.

3.7 PLM seat license

The number auf PLM-Seat Licenses that have to be bought depends on the maximum number of PLM users that can be used at the same time in the customer's company.

3.8 Application server license

An application server license is exclusively valid for a certain server installation of a certain application.

3.9 Subscription license (Rental license)

A subscription or rental license is a temporary license to use the software, limited to the contractually stipulated term. A subscription license may also contain a temporary service (e.g. software maintenance), limited to the contractually stipulated term.

**4. Software and work results copyrights and rights of use**

4.1 All rights to software provided or made available by XPLM, including solution concepts, documentation, instructions, and support portal contents, and in particular copyrights and rights of use, belong solely to XPLM in the relationship between the Parties. For third-party software, the provisions in 4.12 shall apply. At the choice of XPLM it provides the Client with the software either via download or saved on a data carrier or by on-site installation.

4.2 The Client shall receive a simple, non-exclusive, non-sublicensable and non-transferable right of use pursuant to the provisions below, to the provisions as agreed upon individually or in the software use and maintenance schedule and to the types of licenses as agreed upon individually or in the software use and maintenance schedule, which shall be unlimited. In the case of a subscription license, the Client shall receive a simple, non-exclusive, non-sublicensable and non-transferable right of use pursuant to the provisions below, to the provisions as agreed upon individually or in the software use and maintenance schedule and to the types of licenses as agreed individually or in the software use and maintenance schedule, which shall be limited to the duration of the contract as agreed upon individually or in the software use and maintenance schedule. The granting of exclusive rights to individual client-specific software requires express written agreement.

4.3 If the performance of the contract yields copyrightable work results (e.g. software, specifications, customizing, support portal contents, or other solutions), the Client shall be granted the simple, non-exclusive right to use these for its internal business. Any further types of use or utilization shall be excluded. The Client shall not be permitted to distribute the work results. The exclusive rights remain with XPLM.

4.4 Software, including solution concepts, documentation, instructions, and support portal contents, may be used only at the Client's place of business as agreed upon in the proposal, the acceptance of the order and/or the software use and maintenance schedule and pursuant to the type of license that has been agreed upon and only for place of business purposes. Any other use requires the prior written consent of XPLM. Any other types of use or possibilities of use are prohibited, in particular any translation, processing, arrangement, decompilation, or other modifications.

4.5 The Client may conduct a change to another hard- or software environment if and as far as such a change is supported by the software provided. However, the Client may not claim such a change if the software provided does not support the other hard- or software environment. If the Client aims to conduct a change of the software provided to another hard- or software environment, the client has to inform XPLM in written form and by detailed description of the hard- and software environment that the Client aims to change to. An e-mail does not meet the requirements of written form in this regard. On the basis of this description, XPLM examines if a change to the other hard- or software environment is possible and informs the Client respectively. If such a change is possible then XPLM will deliver a respective license-key to the Client. The generating of such a license-key is free as far as this is feasible with reasonable effort. In case of older versions XPLM is entitled to invoice the effort separately in accordance with the respective valid pricelist of XPLM. Any further effort for the change of the software provided to another hard- or software environment such as customizing, parameterization, configuration, installation or other change related services has to be remunerated separately by the Client. Depending on the scope of the expected change related services such services can be made conditional on the concluding of a new contract.

4.6 Any use by affiliates of the Client shall be permitted only in accordance with the type of license pursuant to the individual agreement and beyond this only if XPLM has specifically granted such rights. The operation of a data processing center for third parties is generally not permitted unless the parties have agreed differently, e.g. in the software use and maintenance schedule.

4.7 Copies are permitted only for backup purposes. Backup copies must be identified as such and marked with a copyright notice for XPLM.

4.8 The Client is not entitled to be provided with any source codes.

4.9 The use of the software is restricted to the specific quantities as described in the individual contract or the software use and maintenance schedule by the type of license. XPLM has the right to use a license manager to check the scope of use (e.g. concurrent users, workstations, modules used) at any time. If XPLM finds out that the Client is using software, including solution concepts, documentation, instructions, and support

portal contents, beyond the agreed scope, XPLM shall have the right to bill the Client for the difference between the remuneration paid and the remuneration for the actual scope of use. XPLM reserves the right to assert further rights.

4.10 XPLM can revoke the rights of use for an important reason (e.g. payment default by or insolvency of the Client, major violation of the restrictions on use set forth in this Sec. 4 or confidentiality and data protection provisions). Generally, the Client must first be given a written warning of possible revocation. If the rights of use are revoked, the Client must return any software and copies thereof, and delete and destroy any programs and access information it has stored. The Client must then give XPLM written confirmation that all software, including any copies, has been returned, deleted, and destroyed.

4.11 Where the Client has acquired an additional license to use development tools, XPLM shall grant a non-exclusive and non-transferable right to use these development tools pursuant to the regulations of an individual agreement, e.g. in the software use and maintenance schedule, and the type of license that has been agreed upon. The Client shall indemnify XPLM as well as XPLM's affiliates and suppliers against all claims that may arise based on the use, modification, copying, or distribution of the development tool.

4.12 For third-party software, the exclusive right of use remains with the owner. XPLM grants the Client a non-exclusive, non-transferable, perpetual right to use the third-party software. In the case of a subscription/rental license, the Client shall receive a simple, non-exclusive, non-sublicensable and non-transferable right to use the third-party software limited to the duration of the contract as agreed upon individually or in the software use and maintenance schedule. The customer has no right to rent or sublicense the software in any way, to make it available or render it in public wired or wireless or to make it available to third-parties against payment or free of charge.

## 5. Software maintenance

5.1 Software maintenance through the internet based support system of XPLM shall inherit the following services.

a) In cases of errors pertaining to error category 1 (see Section 5.3), XPLM shall start to work on fixing the error within a response time of eight hours after the error has been reported (in writing, by e-mail or phone) by the system administrator or his/her substitute. Response times only count during regular business hours (Monday to Thursday from 9 a.m. to 5 p.m., Friday from 9

a.m. to 4 p.m., not including statutory holidays in XPLM's jurisdiction). XPLM reserves the right to adjust its business hours in line with changing market requirements, in which case it shall advise the Client in advance. Errors shall be fixed via remote data transfer by delivering a corrected software version. However, if it turns out during error analysis and troubleshooting that there are no faults in the XPLM software, XPLM can bill the time expended at regular market rates (hourly rates).

b) Errors with a different priority level shall be fixed through a patch or in a new version. Patches only contain error fixes; new versions may also contain expanded functions in line with the modules activated for the Client. Patches and versions are made available to the Client for retrieval. Subject to mutual agreement between the Parties, a corrected software version may also be supplied in advance in case of serious category 2 errors without acceptable work-around. A claim for removal of minor errors does not exist.

c) The hotline for questions (by phone, fax or email) in case of software errors is available to the Client's system administrator and his/her substitute during business hours (cf. (a) above). It neither includes application questions covered during training nor consulting services for product-specific application possibilities. If necessary, XPLM can require the Client to take additional training, the cost of which shall be borne by the Client.

5.2 The Client is not obligated to install the newest available version or any patches that are made available. However, XPLM will render the services referred to in Section 5.1 only for the newest version and one version prior to that. For older versions, the Client can access the hotline only in accordance with Section 5.1 (c). Any warranty obligations (Section 10) and liability (Section 11) on the part of XPLM do not apply to errors in older versions used by the Client, if these errors have been rectified in a new version or a patch provided to the Client but the Client did not install the new version or patch. Within this framework XPLM shall – where possible – also answer questions regarding older versions. New versions can only be adopted in the order in which they were released. If the Client skips one or more versions – instead of installing the versions in sequence – this may cause additional expenditure which must be borne by the Client, and will be billed by the hour at regular market rates.

5.3 XPLM divides software errors into the following categories:

Error category 1:

Errors that lead to system stoppage, data loss, data corruption, or data inconsistencies, and which do not allow for the software to be used in a manner that is reasonable from a business perspective;

Error category 2:

Serious errors without work-around; serious errors are errors that cause a significant restriction in usability, or errors that cause significant deviations in functionality from the functionality described in the documentation, if this results in major restrictions on regular business operations;

Error category 3:

Serious errors with work-around;

Error category 4:

Other errors;

Other:

Requests (not errors).

5.4 Errors can only be rectified if they are reported immediately, and if a detailed description of the error as well as any other information, data, and documentation required in order to analyze and rectify the error are provided. Errors must be reproducible in the software. If this is not the case, XPLM can bill the Client for any additional expenditure resulting therefrom.

5.5 At the discretion of XPLM, errors are removed either on site, via remote data transfer or by sending (including via e-mail) a solution to fix the error or bug. The Client shall set up remote access following the instructions provided by XPLM and ensure that it is properly maintained for the entire duration of the contract. If XPLM is not granted remote access, XPLM can bill the Client for any additional expenditure resulting therefrom.

5.6 XPLM reserves the right to carry out any maintenance service with the aid of the producer.

5.7 Unless specifically agreed otherwise, XPLM shall not provide maintenance for client-specific adaptations made by the Client or XPLM. The Client shall only receive standard updates; the Client shall be responsible for backup and migration of any customizations. XPLM shall support the Client as needed and bill the client for this support based on actual expenditure.

5.8 Software maintenance also includes the preservation of upward compatibility with third-party software tied in through interfaces supplied by XPLM. This, however, does not apply for new releases issued by the software makers, if these present one or several of the following characteristics:

- Change in the first digit of the official release number (e.g. from 2.9 to 3.0);

- Change in the software architecture;

- fundamental change in the programming interface of the third-party software;

- loss of compatibility with the previously used hardware platform;

- the software core of the third-party software is new or has been modified profoundly.

If, in the above-mentioned cases, it is technically possible to maintain or restore upward compatibility, XPLM shall provide the corresponding services at the Client's request for an additional fee. Depending on the scope and expenditure, XPLM can also require a separate contract to be concluded.

5.9 Software maintenance shall begin when the software is delivered or made available for download. The software use and maintenance schedule for software acquired by the Client shall be amended accordingly in each case, if applicable.

5.10 Where software maintenance services must be accepted by the Client, they shall be deemed accepted if the Client has not reported any errors within 10 business days after the services were carried out.

## 6. Remuneration and payment

6.1 Services are generally billed on a monthly basis.

6.2 Contrary to Section 6.1, any services provided for a limited period of time ("Subscription/Rental") and software maintenance is billed annually in advance. XPLM may move the billing date to the beginning of the calendar year.

6.3 Invoices must be paid without any deductions within 14 days of receipt of the invoice.

6.4 XPLM's prices are net prices and subject to VAT at the statutory rate in effect at the respective time.

6.5 If the Client defaults on payment, XPLM shall have the right to charge default interest at the statutory rate. XPLM reserves the right to assert further damages as a result of the default.

6.6 The Client may offset payments only against claims that are undisputed or have been established with binding legal force.

6.7 In case of extension of the software or the scope of use, the software use and maintenance schedule and software maintenance prices will also be adjusted accordingly, if applicable.

6.8 XPLM is entitled to adjust the remuneration for software maintenance once per year with effect to the beginning of the respective new calendar year by written notice with notice period of three months. The adjustment will take account of changes in economic conditions. The adjustment becomes effective if the Client does not declare contract termination with effect to the end of the respective calendar year within four weeks after receipt of the notice. Contract termination because of this reason is only permissible if a remuneration increase amounts to more than 2 % of the remuneration paid so far.

## 7. Cooperation of the Client

7.1 Due to the complexity of software systems, the Client shall be required to cooperate; this shall be an essential contractual obligation. The Client shall provide all information required for the performance of the contractually agreed services to XPLM in due time and on its own initiative, and also otherwise cooperate at no charge in the performance of the contract.

7.2 The obligation to cooperate also extends to the provision of Client data in the manner and form specified by XPLM as well as in the data format specified by XPLM.

7.3 The Client shall - where necessary for the performance of the contract - provide XPLM any documentation and other records concerning third-party products. In case of copyright-protected documents, programs, and other materials provided by third parties, the Client shall further secure the necessary use rights needed by XPLM in order to perform the services owed under the contract. The Client shall indemnify XPLM against any claims asserted by third parties against XPLM because XPLM does not have the required use rights.

7.4 The Client shall ensure that XPLM can access all premises in due time and during regular business hours, and that it can access the hard- and software on hand at the Client's premises and the system administration upon prior arrangement where this is necessary for the performance of the contractually agreed services.

7.5 The Client shall appoint, and indicate to XPLM, a contact person for the technical system components on hand at the Client's premises which are used in the performance of the contract (e.g. hardware environment, basic software, other third-party software components, databases).

7.6 The Client shall perform a data backup in regular intervals, i.e. at least once per day as well as prior to any operations performed by XPLM on existing computer systems. XPLM shall inform the Client with sufficient advance notice of any such operations.

7.7 The Client shall take all necessary precautions in order to prevent any unauthorized use of the software provided or made available, and in particular, to protect access privileges from being accessed by non-authorized users.

## 8. Delay in performance of services

8.1 Performance deadlines are binding only if they were agreed in writing and if the Client properly fulfills its cooperation obligations. If cooperation by the Client is inadequate or in other situations beyond XPLM's control, the deadlines shall be shifted by the additional time required or by the duration of the interference plus an adequate period to resume performance.

8.2 If XPLM is in default, the Client is required to first set a reasonable grace period for the performance of the service. This must be done in writing. Only after this grace period has expired without success the Client can assert further rights. If the Client intends to terminate the contract or assert damages instead of the services after the grace period has passed without success, it must state this intention in the written notice of default and grace period.

## 9. Termination

9.1 As far as rights of software use are agreed upon without time limit, the respective right of use may only be terminated for an important reason.

9.2 Software maintenance services listed in the software use and maintenance schedule or an individual contract may be terminated to the end of the year of use with notice period of three month to the end of the respective year of use by any contracting party. Without timely termination, the maintenance services are consecutively prolonged for another year of use with notice period of three months to the end of each year of use.

9.3 As far as rights of software use are agreed upon timely limited ("Subscription/Rental") software maintenance automatically ends with the expiration of the rights of software use.

9.4 As far as XPLM itself is not any more permitted to transfer the rights of software use or, as the case may be, to provide the according software maintenance, XPLM will inform to the Client respectively without delay. XPLM will then make reasonable efforts to achieve an amicable solution with the Client regarding the software use and the software maintenance. In case this does not succeed within a period of two weeks after the information of the ceased permission XPLM is entitled to terminate the provision and availability of software and software maintenance with notice period of one week.

9.5 Contracts may also always be terminated for an important reason. Before a contract can be terminated for an important reason, a written warning must be issued, indicating the reason for the intended termination and offering an adequate grace period for remediation of the reason for termination, except in cases where this would not be reasonable. Important reasons for termination include the following:

– Commencement of insolvency proceedings against the assets of one of the Parties, or dismissal thereof due to lack of assets.

– Client is in default of payment by more than four weeks;

– Changes in the contractual terms and conditions of third-party software makers, as a result of which XPLM is no longer able to perform the contractually agreed services;

9.6 Any notice of termination must be given in writing in order to be effective.

## 10. Warranty

10.1 Defects in quality and title must be reported to XPLM in writing and an adequate grace period for remediation must be given. In warranty cases, XPLM shall be entitled to a reasonable number of attempts to remedy the defect. For defects in quality, XPLM can opt to remedy the defect either by fixing the error or by supplying a debugged program version or other debugged work result. For defects in title (third-party claims), XPLM can opt to either defend itself against or satisfy such claims, or to change the contractual software or other work results such that the software or other work results can be used in accordance with the contract. A claim for removal of minor defects in quality and title does not exist.

10.2 Any Client claims for defects in quality and title shall lapse if the items supplied under of the contract were modified without the consent of XPLM and the Client fails to prove that the defect is not related thereto. This shall also apply if the Client engages third parties for modification of the software with the approval of XPLM. Furthermore, XPLM shall not be liable under warranty if the Client uses the items supplied under the contract in deviation from the contractually agreed rights of use.

10.3 The limitation period for defects in quality and title shall be 12 months, except in case of willful intent. It shall always commence the first time a service is provided by XPLM. If deliveries and services require acceptance, the limitation period shall commence with their acceptance.

10.4 For self-contained portions of the system, which the Client can use separately, the limitation period for defects in quality and title shall commence after the acceptance thereof, provided that such deliveries and services are subject to acceptance.

10.5 The claims for defects in quality and title apply equally to third-party software. The limitation period for defects in quality and title for third-party software shall be 12 months. The provisions of paragraph 10.3 and 10.4 shall apply for the commencement of the limitation period.

10.6 Representations in test programs, product descriptions, and similar items do not constitute warranted properties or guarantees. Both require express written confirmation by XPLM.

## 11. Liability

11.1 XPLM shall be liable only if any damage

– is caused by culpable breach of an essential contractual obligation, the fulfillment of which is a prerequisite for the proper performance of this contract and on the fulfillment of which the Client may rely regularly (essential obligation);

– is based on injury to life, body or health; or

– is caused by gross negligence or willful intent.

11.2 If XPLM is liable for the breach of an essential obligation for any reason other than gross negligence, willful intent, or injury to life, body or health, its liability shall be limited in amount to the damage that could typically be expected at the time when the contract is entered into, based on the circumstances known at that time and which was therefore foreseeable.

11.3 XPLM shall be liable for data losses (except in case of willful intent) only if the Client has performed system checks and data backups in regular intervals (at least once a day) and limited to the reasonable recovery costs.

11.4 XPLM's liability under the product liability act and independent guarantee undertakings shall not be affected by the foregoing.

## 12. Transfer of rights and obligations; subcontractors

12.1 XPLM has the right to transfer contractual rights and obligations to third parties. Such transfer shall become effective vis-à-vis the Client when the Client is notified thereof.

12.2 XPLM has the right to either perform contractual services itself or to hire subcontractors to render all or part of the contractual services.

## 13. Confidentiality and data protection

13.1 The Client shall implement suitable measures to ensure that unauthorized third parties do not have access to the software provided under the contract or other documents.

13.2 The Parties agree to keep confidential all information, documents, and data of which they gain knowledge in the performance of the contractual deliveries and services and to not make such information, documents, and data available to any third parties outside of the scope of the contract. The Client shall implement suitable measures to ensure that unauthorized third parties do not have access to the software provided under the contract or other documents belonging to XPLM. The Parties shall instruct their employees who are involved in the implementation of the project about the confidentiality obligation. However, XPLM shall always be entitled to utilize any knowhow gained in the performance of the contract in its future business activities.

13.3 XPLM and the Client shall observe data protection laws and regulations. The Client shall implement adequate safety measures to ensure that XPLM cannot accidentally access databases and systems not required for the performance of the contract and troubleshooting. The Client shall further procure, on its own initiative, any consents from its employees, business partners, and other relevant third parties required for access to personal data by XPLM in connection with the performance of the contract, including troubleshooting, in particular with a view to access (via remote data transfer or on site) to the respective databases. The Client shall indemnify XPLM against any third-party claims based on lacking or inadequate consents.

## 14. Arbitration, Place of jurisdiction and applicable law

14.1 In case of any difference that cannot be settled amicably, the arbitration board of the "Deutsche Gesellschaft für Recht und Informatik e.V." (Schöne Aussicht 30, 61348 Bad Homburg) shall be appealed to. Nevertheless, any contractual party is free to take legal action at the competent court.

14.2 If the Client is a business person, a public-law entity, or a public-law special fund, the place of jurisdiction for all disputes concerning the contractual relationship shall be Dresden. The legal relationship between the Parties shall be subject to German law, at the exclusion of the UN Convention on Contracts for the International Sale of Goods.

## 15. Severability clause

In case that any of the provisions of these general terms and conditions or, if applicable, of the software use and maintenance schedule should become invalid or unenforceable, the remaining provisions remain hereby unaffected.