



## Software License Agreement

The object code of the software downloaded by the Licensee from the Website (hereinafter "**Software**") is licensed to Licensee by Kulzer under the following licensing terms.

### 1 - Definitions

- (1) "**Agreement**" shall mean these licensing terms as agreed to by the Licensee in the course of downloading the Software from the Website.
- (2) "**Kulzer**" shall mean Kulzer GmbH, Hanau, Germany, as licensor.
- (3) "**Licensee**" shall mean the entity that downloads and Activates the Software.
- (4) "**License**" shall mean the right to Use the Software according to the terms of this Agreement.
- (5) "**Party**" and/or "**Parties**" shall mean Licensee and Kulzer, or either of them.
- (6) "**Use**" shall mean installing, loading, displaying and running the Software both in its entirety and in parts.
- (7) "**Intellectual Property Rights**" shall mean any and all patent, copyright, trademark, design right, utility model, service mark, inventions, know-how or any other right or trade secret whether registered or not.
- (8) "**License Key**" shall mean a unique code supplied by Kulzer required to activate and Use the Software.
- (9) "**Website**" shall mean the website operated by Kulzer.
- (10) "**Activate**" and/or "**Activation**" shall mean the entry of the License Key in order to start using the Software after expiration of the Free-trial Period.
- (11) "**Free-trial Period**" shall be the period defined as such on the Website at the time of download of the Software and shall be calculated as of the first installation of the Software, however no longer than two (2) weeks from such download.
- (12) "**Documentation**" shall mean the program documentation available for download from the Website corresponding to the respective version of the Software, including but not limited to the respective description on the Website.
- (13) "**Term**" shall mean the term as set out in Sec. 7 hereof.
- (14) "**License Fees**" shall mean the fees payable by Licensee in consideration of the license of the Software and the rights granted by Kulzer hereunder as further defined in Sec. 5 hereof.
- (15) "**Updates**" shall mean maintenance releases, enhancements, developments, modifications, alterations and improvements for the Software which are not Upgrades.
- (16) "**Upgrades**" shall mean an incremental release and/or new version of Software that provides significant improvements (not merely corrections for defects and deficiencies) and changes the basic character or structure of Software, including, by way of example only, the inclusion of additional features and/or functionalities.

### 2 - Subject of this Agreement

- (1) Subject of this Agreement is the License of the version of the Software as downloaded from the Website and Activated by Licensee for the Term. Upgrades or Updates are not the subject of this Agreement unless Kulzer makes them available for download under the License. Other services, in particular training, maintenance and support services or installation of the Software are not owed and/or not covered by the License.
- (2) The Software is made available for the initial Free-trial Period. During the Free-trial Period, Licensee is given the possibility to familiarize with and test the Software. The



right to use the Software during the Free-Trial Period is limited to the Use of the Software and the installation for testing and evaluation purposes on one computer or electronic device. The functionality of the Software may be restricted during the Free-trial Period as defined on the Website upon its download.

- (3) Use of the Software after the initial Free-trial Period is subject to Activation.
- (4) The Software is only licensed to entrepreneurs and not to consumers. By downloading and Activating the Software, Licensee warrants that it is an entrepreneurs and not a consumer.

### **3 - Grant of Rights**

- (1) Subject to the payment of the License Fee, Kulzer hereby grants to Licensee the non-exclusive, non-transferable worldwide right to Use the Software during the Term subject to the terms of this Agreement.
- (2) The Software shall only be used for the purposes further defined in the Documentation ("Intended Use").
- (3) The rights granted to Licensee do not include the right to sub-license.
- (4) The right to copy the Software granted to Licensee hereunder is limited to the installation of the Software on one computer or electronic device which is in Licensee's immediate possession unless otherwise defined in the Documentation or the Website.. Licensee shall have the right to make copies of the Software for the loading, display, running, transfer or storage of the Software if required for the Intended Use of the Software. The rights granted shall further include the right for an authorized person to make a copy for security backup purposes which shall be labelled as "Security Backup Copy" and bear the copyright annotation of Kulzer.
- (5) The right to revise the Software is limited to the maintenance or reinstatement of the functionality of the Software as per the Documentation.
- (6) Subject to consent of Kulzer, which shall not be unreasonably withheld, the right to decompile the Software is only granted to achieve the interoperability of the Software with other programs provided that the decompilation is undertaken by Licensee or other authorized persons, the information to achieve interoperability has not otherwise been made available to Licensee and/or the other authorized persons and decompilation is limited to the parts of the Software necessary for achieving interoperability. Information obtained by decompiling the Software may not be used for any other purposes than achieving interoperability, may not be passed on to third parties unless required to achieve interoperability and may not be used for the development, manufacture or marketing of a program which is similar to the Software or for other copyright infringing activities.
- (7) No further rights to use and/or exploit the Software are granted to Licensee. Full ownership rights in the Software including all underlying Intellectual Property Rights shall remain vested in Kulzer. In particular unless explicitly stated in this Agreement, Licensee shall not be allowed to lend, lease, sell, publicly perform or otherwise make available the Software to any third party.



#### **4 - Delivery and Activation of the Software**

- (1) The Software and the Documentation is available as a download via the Website. Kulzer does not supply physical copies of the Software.
- (2) Licensee is responsible for providing the system environment in accordance with the system requirements as set forth in the Documentation.
- (3) Licensee is responsible for installing the Software. Kulzer does not offer any installation and/or configuration services unless agreed separately in writing.
- (4) In order to Activate the Software, Licensee must purchase a License Key via the Website. In the course of the activation process, Licensee must declare the installation location of its copy of the Software. In the event, the installation location is changed at a later point in time, Licensee shall inform Kulzer of the new installation location in writing.

#### **5 - License Fees**

- (1) The License Fees owed by Licensee to Kulzer including potential due times of monthly or yearly installments are defined on the Website. License Fees are due from date of Activation of the Software.
- (2) License Fees shall be due in advance on the third day of each time interval as per this Section 5.(1).
- (3) The payment method shall be selected by Licensee upon proposal of Kulzer in the Activation process via the Website.
- (4) In the event that Licensee does not pay the License Fees on the respective due date, Licensee shall be automatically in default. Default interest shall be nine (9) percentage points over the standard interest rate of the European Central Bank. Kulzer reserves the right to claim additional damages in case of default.

#### **6 - Obligations of Licensee**

- (1) Licensee undertakes to take appropriate measures to ensure that the Software is not accessible to unauthorized third parties, in particular to store any copies of the Software in a secure environment.
- (2) Licensee undertakes to allow Kulzer or an agent of Kulzer to audit whether Licensee's use of the Software is consistent with the rights granted to Licensee herein upon request by Kulzer and provided there is a legitimate interest therein and to give full co-operation to Kulzer or its agent carrying out such audit.
- (3) Licensee shall indemnify and hold Kulzer harmless for any damage resulting from a breach of this Agreement by Licensee.

#### **7 - Term and Termination**

- (1) The term of Use of the Activated Software shall commence upon Activation and run for the period indicated on the Website at the time of Purchase.
- (2) Either Party shall be entitled to terminate this Agreement by giving three (3) months notice of termination prior to the end of the Term. In the event that this Agreement is not terminated, the Term shall renew for consecutive one-year periods.
- (3) The right of termination for cause shall remain unaffected. A reason for termination for cause by Kulzer shall be given in particular if Licensee uses the Software in excess of the rights granted to Licensee under this Agreement.



- (4) Any notice of termination must be given in writing.
- (5) In the event of termination or expiration of the Term for whatever reason, the rights granted to Licensee hereunder shall automatically lapse and revert back to Kulzer. In this event Licensee shall immediately stop the Use of the Software and delete any copies including backup copies of the Software.

## **8 - Warranty**

- (1) Licensee has the possibility to familiarize with the Software during the Free-trial Period. Licensee is solely responsible for providing the system environment in accordance with the system requirements set forth in the Documentation. In particular, Kulzer is not responsible to issue updates or upgrades in the event that Licensee's system environment changes and as a result does not correspond to the system requirements set forth in the Documentation.
- (2) The Software shall be substantially in accordance with the Documentation downloadable via the Website at the time of Activation and shall be free from third party rights which prevent the Use of the Software in accordance with this Agreement. Rights in case of defects shall be excluded in the case of minor or immaterial deviations from the agreed or assumed characteristics or in the case of just slight impairment of use. Product descriptions shall not be deemed guaranteed unless separately agreed in writing.
- (3) Defects of the Software shall be cured by Kulzer in due time so that Licensee is able to use the Software during the Term. Kulzer shall be free to decide in which way a defect is cured, for example by providing patches, workarounds, updates or other forms of error correction.
- (4) The Software shall be free from third party rights, which prevent the Use in accordance with the contract. If third parties are entitled to such rights and they pursue these, then Kulzer shall do everything in its power, in order to defend the Software at its own expense against the third party rights claimed. Licensee shall inform Kulzer in writing without delay of the claiming of such rights by third parties and shall give Kulzer all powers of attorney and authorizations which are necessary in order to defend the Software against the third party rights claimed. To the extent that there are defects in title, Kulzer is (a) entitled at its option to either (i) take legitimate measures to remove the third party rights, which impair the contractual use of the Software, or (ii) remedy the enforcement of such claims, or (iii) change or replace the Software in such a manner, that it no longer infringes the rights of third parties, provided and to the extent that this does not substantially impair the warranted functionality of the software, and (b) under an obligation to reimburse Licensee for its necessary refundable costs incurred in the enforcement of legal claims.
- (5) Licensee shall report to Kulzer any defects of the Software immediately upon occurrence and in writing with a comprehensible description of the error symptoms, as far as possible evidenced by written recordings, hard copies or other documents demonstrating the defects.
- (6) Any claims for damages are subject to the limitations set forth under Sec. 9.
- (7) Amendments or additions to the Software which Licensee carries out itself or through third parties, shall cause Licensee's rights in case of defects to be cancelled, unless Licensee proves that the amendment or addition did not cause the defect. Kulzer shall also not be responsible for defects, which are caused by improper use or improper operation or the use of unsuitable means of operation by Licensee.
- (8) Kulzer may refuse to remedy defects or deliver replacements, until Licensee has paid the agreed fees to Kulzer, less an amount which corresponds to the economic value of the defect.



## **9 - Liability**

- (1) Kulzer is liable for losses (a) caused intentionally or with gross negligence; (b) in case of death and/or personal injury and/or damage to health; (c) in the event of product liability claims; and (d) within the scope of a guarantee granted by Kulzer.
- (2) For simple negligent breach of a duty that is essential for the attainment of the goal of this Agreement, the liability of Kulzer is limited to the damages that are predictable and typical for the type of business in question.
- (3) There is no liability of Kulzer in excess of that provided for in this Agreement.
- (4) The preceding liability holds by default also for legal representatives such as vicarious agents of Kulzer.
- (5) Kulzer shall only be liable in cases of loss of data up to the amount of typical recovery costs which would have arisen had Licensee properly and regularly taken adequate backup measure with respect to such data.
- (6) Kulzer shall not be liable for damages resulting from defects of the Software present at the beginning of the Term unless Kulzer is responsible for such defects and otherwise liable under this clause.
- (7) Licensee shall only have the right to terminate this Agreement for defects if Kulzer was unable to remedy such defect after being given an adequate grace period by Licensee.

## **10 - Export Control Laws**

- (1) Licensee is aware that the Software may be subject to export control regulations. Licensee is responsible to observe the export control laws applicable to its country of residence and the intended country of use of the Software. In the event that the Use of the Software would constitute a violation of applicable export control laws, Kulzer shall have the right to withdraw from this Agreement and to disable the License Key.
- (2) Licensee shall be liable for all damages by Kulzer in connection with a violation of applicable export control laws by Licensee.

## **11 - Miscellaneous**

- (1) Verbal side-agreements have not been made. All changes to, additions to and terminations of this Agreement, or other legally constitutive declarations must be in writing.
- (2) In the event that one or more provision of this Agreement, or a provision added to it in the future, are found to be completely or partially invalid, inoperative or inexecutable, or later on lose their validity, operability or executability, or should a lacuna emerge, then the validity of the remaining provisions shall be unaffected. In place of the invalid, inoperative or inexecutable provision, or with the goal of closing the lacuna, Kulzer and Licensee shall agree upon a provision which they presumably had agreed upon, if they had known of the invalidity, inoperativeness, inexecutability or incompleteness upon the conclusion of this Agreement. Should a provision be or become invalid due to the scope of service agreed upon therein, then the scope of service agreed upon in the provision is to be modified to the legally permissible scope.
- (3) If the invalidity, inoperativeness, inexecutability or incompleteness of a provision is based on a clear, specified measure of performance or time (period or date), the parties shall agree upon the legally permissible measure which comes closest to the provision.



- (4) The legal venue for all disputes arising from or in connection with this Agreement is Kulzer's place of business. The place of performance of the services to be performed by Kulzer and the payment obligations of Licensee is Kulzer's place of business.
- (5) This Agreement and any amendments hereof shall exclusively be governed by the law of the Federal Republic of Germany. The UN Sales Convention (United Nations Convention on Contracts for the International Sale of Goods) and the rules on the conflicts of laws shall not apply.